CHAPTER – 7

CONCLUSION, FINDINGS & SUGGESTIONS

7.1 INTRODUCTION

The seventh chapter of our study is the concluding chapter of the thesis. This chapter has been planned to highlight the main defects of the Act. This chapter is very important as it highlights the lacunae of the Act, procedural difficulties being faced by the consumers in getting their grievances redressed. This chapter has been discussed on the following lines:

7.2 CRITICISM OF THE ACT

In a country where most of the people are illiterate and live below the poverty line, it is too ambitious to expect adequate knowledge of
legislative provisions, and their rights on the part of the consumers. The businessmen and industrialists on the other hand are always seriously engaged in finding out some loopholes or other in the consumer protection legislation that has been enacted to augment their profits in an undesirable fashion. Further, mere enactment of any amount of legislation cannot serve the purpose.

The machinery that is available at present for the redressal of the grievances of the consumers is available mostly in urban areas. In rural areas there is virtually no mechanism for consumer protection. Even in some of the urban areas it is not so much effective as it should be due to various reasons.

The crying need of the hour is the organisation of the consumers into powerful unions at various levels to protect their rights and privileges and safeguard themselves against the exploitation of the fraudulent businessmen and industrialists. Self-help is the best help.

This realisation must dawn on every consumer in the country. It is only then that the consumers in our country can find salvation from their problems. Legislation is no panacea for all the problems of consumers. They have to help themselves.

To sum up, it is not the legislation alone that we can depend upon for safeguarding the interests of the consumers. There should be more interests of the consumers. There should be more awareness, education,
understanding and realisation of the rights and privileges on the part of the consumers and more than anything else a strong organisation that will really help in building up a more effective consumerism in our country.

Competition ushered in by economic reforms is the best friend of the consumers, as it would provide goods of quality at competitive prices. Also it would give consumers a wider choice and would serve the cause of consumer protection in a big way.

The old protective regime and the 'licence raj' had done immense harm to both the industry and the consumer. The economic liberalisation would now force the domestic industry to manufacture goods of international standards if it has to survive in the midst of competition from abroad. The market forces would take care of pricing.

Mainly, the following lacunae may be mentioned in the Consumer Protection Act:

1. The term 'complaint' does not include unfair trade practice indulged by large industrial house. It is under MRTP Commission. There is no doubt that the Commission is doing excellent work in the matter, however, the office of the Commission is at New Delhi. So it is difficult for a common man to complain at New Delhi office for a small defect etc.
The procedure of complaint is also lengthy which may not be followed by uneducated consumer.

2. The order of the redressal agencies include one or more of the following things namely - to remove the defect; to replace the goods; to return the excess price; to try such amount as may be awarded by it as compensation to the consumer for any loss or injury by the consumer. The last part is not clear. How much compensation may be paid?

3. The Act does not empower the Forum/Commission to forfeit all defective or hazardous commodities or goods they have already come in circulation.

4. The Act acknowledges only six rights of the consumers. It also completely ignores the right of consumers to a healthy environment. This is very important in case of pollution control.

5. The appointment of official and non-official members in council will make political impression. The consumer movement may be in the hands of political' parties which is not fair and good.

6. The provisions of this Act are in addition to and not in derogation of the provisions of any other law for the time being
in force. So it is easy for traders to seek protection under any other law. This is a subordinate Act.

7. There are some difficulties in procedure. It is not too clear. Follow-up action is also not provided in the Act.

7.3 PROCEDURAL DIFFICULTIES OF THE ACT AND VARIOUS BODIES

From the discussions above, it is clear that working procedure of the Consumer Protection Act is quite lengthy and complicated. There are several procedural implications and a consumer has to go through a long procedure in getting his complaint redressed. Sometimes there is difference of opinion and inadequacy in forum. In the case of Chokhani Gas Services vs. Vinod Kumar (1993-2-CPR-848 Raj.) two judgements were given.

Where the proceeding is conducted by the President and one member and they differ, they should state the difference and refer the same to the other member for hearing the matter on the point of difference and then the opinion of the majority would be regarded as the order of the forum. An order passed when the forum was presided over by one member only has been held to be invalid.

Where a matter was heard by the President and the forum and a member but order was passes only by the President and subsequently the
two other members passed a separate order admitting the claim whereas the President had rejected it, the order of the two members was held to be not proper, because one of them was not a party to the hearing. The pronouncing of two different judgements on two different occasions was held to be not proper.

7.4 TYPES OF RELIEF NOT ALLOWED UNDER THE ACT

The authorities under the Act have to confine themselves to the types of relief provided in the section. No relief can be allowed outside the scope of the section.

Thus, where a contractor failed to erect and Commission the equipment in terms of his contract, it was held that breach of contract of this kind was not remediable under the Act. It could hardly be described as a deficiency in service.

The matter should go under the law of contract to an ordinary civil court. Failure on the part of an educational institution, like Indian Institute of Technology, to bring about a promised improvement in the strength and design of helmets, is not in the manner of a commercial service and would, therefore, be outside the Act.

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2 N.K. Goyle vs. Registrar, IIT (1991) II CPJ 614 Maha
Approval of building map plans by the Municipality of the area is not a service of commercial nature and, hence no consumer action lies on the part of the applicant whose building plan was not approved. He was required to pay Rs.3000 towards the costs of the Municipality.

An order of the State Commission at the instance of an insurer, who engaged a surveyor and then doubted his integrity, that the insurer should conduct an investigation of his conduct in the matter and take action against him, was set aside as being beyond jurisdiction, it being not known whether the insurer had a right to take such disciplinary action.3

**Telephone Directory Service**

The National Commission did not sustain the allegation that the Telephone Department is bound to publish the telephone directory annually. Rule 452 of the Indian Telegraph Rules, 1951 which was cited in support of the contention was found by the Commission as laying down only this that a copy of the, telephone directory shall be supplied free of charge for each telephone extension or party line.

The rule does not lay down any interval of time at the expiry of which a new directory should be published and distributed.4

3 Adarsh Associates vs. S.B. Enterprises (1994) 1 CPJ 16 NC, where fraud and cheating was the basis of the complaint and not defective goods or deficient services, consumer complaint was not entertained.
4 Telecom District Manager vs. Dev Raj & Sons (1994) 1 CPJ 23 NC
Annual Membership

Where the question whether the annual membership fee of a Municipal swimming pool meant that the payment was valid for 12 months or only up to the end of the financial year on March 31 and the Municipality had its own rules on the point, it was held that no relief could be allowed which would be against the rules.

Electricity Tariff

A dispute as to the applicable tariff was not allowed to be agitated before a Consumer Forum.\(^5\)

Government Orders

Where the allotment of house plots to those who did not construct within time was cancelled at the behest of the Government and the possession could be restored to the allottee to enable him to resume construction only after the Government order was quashed, no consumer remedy was allowed to the allottee.\(^6\)

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\(^5\) Phool Chand Agarwal vs. Bihar State Housing Board (1994) 1 CPJ 46 NC.

\(^6\) Agnidhar Prasad VS. Bihar State Housing Board (1994) 1 CPJ 46 NC.
Land Acquisition

Acquisition of land under the Land Acquisition Act on compensation is not a commercial transaction for consideration so as to fall within the jurisdiction of consumer forum. The fact that the Improvement Trust to whom the land was handed over after acquisition promised some plots at normal rate of premium to the person ousted by the acquisition would also not constitute a consumer transaction. The Trust did offer plots to the oustee but he did not like them and, thereafter, the Trust cancelled the allotment, no consumer remedy was made available.  

Quota Fixation and Allotment

Failure of the Government to fulfil a quota allotment in its entirety is not the subject-matter of a consumer complaint.

Water Supply

Inadequate supply of water by Municipality is not a matter of consumer dispute. Neither the supply is a service of commercial nature nor water tax is in the nature of consideration for a contract. The order of the State Commission directing the Municipality to take steps for increasing the pressure of water supply to the premises of the complainant and Rs.5,000 by way of damages was held to be without jurisdiction.  

7 Nagpur Improvement Trust vs. Arvind Shriniwas Rao Bobele (1994) I CPJ 48 NC
8 Mayor of Calcutta MC vs. Tarapada Chatterjee (1994) I CPR 87 NC.
Judicial Set- UP

Inadequacies of the judicial system or of the administration of justice cannot be made the subject-matter of a consumer dispute. Nobody is purchasing justice for consideration. Court fee is not a consideration. Justice is not a marketable commodity.\(^9\)

**Governmental Works**

The regulatory services of the Reserve Bank of India cannot be made the subject-matter of a consumer dispute. Development and promotional activities undertaken or promised to be undertaken, such as the development of an industrial area, by the State or its agencies cannot be the subject-matter of a consumer dispute, where it was prayed that the National Dairy Development Board be directed to release stocks and formulate reasonable and balanced marketing policy, it was held that such reliefs were not allowable under the Act.\(^10\)

Fulfillment of such social needs can, however, be recommended. The Union Government was accordingly told of the advisability of

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\(^9\) Akhil Bhartiya Grahak Panchayat vs. State of Gujarat (1994) CPR 84 NC. Following some earlier decisions of the National Commission, it has been held that Municipal fraud in allotting a plot to the complainant, which has already been allotted to another organisation, not a matter within, the Act.

promoting iodization of salt in goitre-prone areas. Appropriate orders were passed where a fair price shop, a part of the Government public distribution system, was not functioning fairly.*

**Municipal Services**

Deficiency in municipal services like maintenance of drainage or water supply is not a consumer cause. It is a public cause. Hence, individual consumer remedy is not available. In the matter of individual services like service of bills or mode of realisation, if anything wrong is done, consumer remedy is available.\(^{11}\)

### 7.3 OBSERVATIONS AND RECOMMENDATIONS

The Consumer Protection Act, 1986 helps the fate of the consumer in two very important respects. It provides, in the first place, a cheap, expeditious, quick and swift remedy. It is a measure of sure and swift justice. It brings justice to the door-step of the consumer.

A dispensary of justice is there in every district known as the District Consumer Forum. The matters of jurisdiction have been modified so as to enable the consumer to proceed in his own district where he suffers as a consumer. Secondly, a good enough improvement has been

\(^{11}\) H.P. Gupta vs. MC of Delhi (1993) 2 CPJ 708, bank balance of the tax payer attached despite explanation, remedy.
effected in the system of consumer remedies which was in work before the Act.

It is no longer necessary that the consumer should be confined in his remedies only to his immediate dealer. He can sue in his own home town the distant manufacturer with whom he had no direct contract relationship.

The responsibility and liability of the manufacturer-cum-dealer combine for giving a healthy product to the society cannot be excluded or limited in reference to the consumer. The same pattern of responsibility is applicable to dispensers of consumer services.

The Act covers all kinds of services. It also covers all kinds of consumer dealings whether for cash or in kind. It protects the consumer from the burden of restrictive and unfair trade practices.

It enables the Consumer Fora and Commissions to award 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 caused by defective goods or services.

The Act, if properly implemented, is likely and is also capable of instilling in the business community a sense of discipline and responsibility. It should be able to create a new business motto: "Give a fair deal to the consumer".12

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Thus, it is clear that there are procedural difficulties as well as legislative difficulties in implementing the Act. The ignorance of the consumers is the greatest difficulty in getting proper relief. Sometimes there is negligence on the part of the consumers.

This is the greatest hinderence in it. For this there must be greater and greater consumer education and awareness. The consumer should gather courage and gather all evidences to get relief. Sometimes there is necessity for getting public opinion and making concerted efforts by the consumers' pools, associations, clubs and other consumer organisations.

Compensation for loss or injury caused to the consumer is the most common relief provided under the Consumer Protection Act, 1986. Fixation of the appropriate figure of compensation is bound by the principles of the subject under which the claim arises, e.g. contract and tort principles.

Consumer fora too have to follow those principles, for example, that compensation cannot be allowed for remote or indirect losses or injuries. Those principles may have to be departed from or modified in certain peculiar consumer cases where redemption of consumer sufferings may not be possible by resort to typical legal and business approaches. Some such decisions of the National Commission deserve to be noted.
In many tort cases the amount varies with the status of the complainant. In an action for defamation, much greater money is recoverable by a man of status in the society than what comes to the share of an ordinary man.

In contract also, the courts may take the social status of the claimant into account. Where a band, which was booked before, failed to appear at the wedding reception, the court took into account the estimation of the aggrieved father held by his social and business friends.

But in consumer cases, this is not likely to be so. Where a State Commission awarded high compensation to a passenger of status for deficient railway service, the National Commission reduced Rs.10,000 to Rs.1,500 representing an amount which would have been payable to an ordinary person.

For better implementation of the Act, following are the main suggestions:

- The unfair trade practices adopted by the large house must be included in the Act and consumer may have choice between the Forum and MRTP Commission for complaint.

- The compensation must be clearly specified in the Act. The compensation should be based on the gravity of the offence and its ill effects on the consumer.
• The Act must empower for forfeit of hazardous commodities in circulation. It must specify the point of storage of goods.

• The right of healthy environment must be included for better environment of our beautiful world.

• The appointment of members must not be on the ground of political benefits but it should be done through trusted consumer organisations, which have high impact on consumer movement.

• The Central and State Government must implement this Act in better spirits. They must support consumer movement in the country.

• The consumer education must be vigorously develop in urban as well as rural area of the society. Man, woman and child have better involvement in the matter.

• The Government must take strong steps towards businessmen, manufacturers and traders who are in the mass media and they should be debarred from all Government assistance.

• The Government should give financial support to registered consumers’ associations for better consumer movement.
In the end it can be concluded that the scope of the Act should be widened to cover different types of reliefs to the consumers. Sometimes the reliefs seem to be remote but they should also be extended so that more and more people can get benefits of the Act. Simplification in the procedural aspect is also very necessary.

If the procedure of the Act is direct and simple, the Act will be in the common reach of the public and the community at large. The consumer should be educated and made aware of their basic rights as have been mentioned earlier. The relief should also be in commensurate with the laws of the consumer. It may be monetary, physical, sentimental or mental.

The officials appointed for this purpose should be honest, competent and protector of consume interests. The last, but not the least, strong and effective consume movement is the need of the time. It should be the way of life for sections of the society to being a real consumer. Then the Consumer Protection Act will ensure consumerism in the country.

It is hoped that if all the recommendations given above are accepted and followed, their will be proper redressal of consumers' complaint and grievances. It is further hoped that the study will go a long way in its mission.

The researcher will be amply rewarded if his recommendations are thoughtfully considered and liberally implemented. The researcher will also be satisfied if the present study proves useful and stimulates the
policy makers, professionals, practitioners and academicians to seriously probe into the shortcomings of the Act and suggest further measures for improvement.