General Introduction

(1) John Kennedy, late President of United States once observed that a country whose administration did not afford redress for consumer protection would not be in a state of civilisation. The problem is whether in the light of the existing legislation made for protecting consumers in India, can we afford to call ourself civilized? The answer is obviously 'No'.

The purpose of consumer protection legislation should be to (A) Eliminate impure and harmful food, drugs and cosmetics. (B) Prevent fraud, deception and false advertising (C) Standardise weights and measures and improve labelling (D) promote fair competition (E) Assure fair rules in transportation, power, fuel.

The problem is, does the Consumer Protection Act, serves this purpose? If, 'yes' how far? The researcher intends to examine this in the object.

The important measure of legislative reform has been the enactment of the Consumer Protection Act of 1986. According to the statement and objects and reasons of the bill, it seeks to promote some basic rights of consumers, viz, the right to safety, right to be informed of quality, potency and purity of products, to access to variety of goods at competitive prices, to redressal of grievances and to consumer education. The Act provides for setting up of quasi-judicial authorities for redressal of consumer disputes.
This study aims to project and suggest not only the ways and means to those engaged in serving the consumer but also to proclaim equilibrium between the buyers and sellers within socio-economic plight.

(2) Public Interest Litigation movement is perhaps the striking innovation in the recent past in the delivery of legal services. It is a strategic arm of the legal aid movement which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity. The Public Interest Litigation is litigation which is initiated not for the benefit of one individual but for the benefit of a class or group of persons who are either the victims of exploitation or oppression or who are denied their rights. The purpose of such litigation is to provide protection to those people who are socially and economically disadvantaged.

(3) Exemption clauses which excludes or limits the rights of the injured party to bring an action for damages are world wide problem. Their purpose is to negative the terms which would normally be implied in favour of a buyer. The attitude of courts to these clauses is already one of hostility. There is always the problem as to deciding whether an agreement which has the appearance of a legal contract but contains a wide exclusion clause, is or is not intended to be legally binding.
Why, then, are such clauses accepted by the consumers, whether they accept them because they regard them as theoretical or they are not in a position to shop around for better terms? Even if a consumer accepts them how far it will bind him? Whether third party can claim benefit of those clauses and, if not, whether doctrine of privity of contract is sufficient device for not granting benefit of exclusion clauses to third person?

Construction of exemption clauses is one of the thorny problems in the law of contract. The defendant may be responsible for the plaintiff's damages, but has he sufficiently excluded his liability to pay for the legal consequences of it? I have tried to examine all these problems.

(4) Tort litigation has been sporadic. Tort cases came up before the appellate courts. The damages recovered in such actions are not in comparison to the damage sustained. Tort litigation is time consuming. It takes five to ten years to complete the litigation. In spite of these discouraging facts, there is likelihood of tort litigation picking up in the present day. With better awareness of the rights of the consumers, they are likely to seek assistance of consumer organisations to pursue their claims.

Under the law of torts duties are imposed on people to take care with a view to prevent injury to others. The standard of care is that of reasonable man. Breach of duty must cause damage to the plaintiff.
In this chapter, I have tried to examine problems regarding torts.

(5) Every person is a consumer in one transaction or the other. He is described as V.I.P. He spends money for getting in return something which will be of use or of convenience to him. In case of failure, he can enforce his rights and claim relief. It is not an outcome of the twentieth century legislation. Even during the period of ancient Rome, protection was available to the consumer. The law assures protection against injustice which consumers face in the market place. It has established three-tier quasi-judicial machinery. The consumer's right to information is considered as a central philosophy governing requirements in this vital area of consumer protection. What are the problems the consumer is confronted with and what role consumer can play, I have tried to explain in my project at appropriate places.

(6) In a country like India, where consumer protection laws are widely scattered and inadequately catered, provisions contained in company legislation could be fruitfully used to protect the consumer interests to a great extent. The chief sphere of activity of corporate law providing protection to consumers is that of prevention of economic concentration, making it difficult for giant corporations to control the market. Companies occupy a vital and prestigious position in our society. The report of the Sachar Committee insists on the need for adequate disclosure of the affairs of the
company to impose social obligation on them. The acceptance of the concept of social responsibilities should be reflected in the information and disclosure that the company makes available for the benefits of its various constituents like the shareholders, creditors, employees, consumers and the community.

By developing a system of checks and controls, company legislation in India protects the consumer interests. Attempts are made to model the consumer and community interests into account.

(7) The objective of the M.R.T.P. Act, 1969 is to provide that the operation of economic system does not result in the concentration of economic power to the common detriment. It also provides for controlling the monopolies and prohibition of monopolistic and restrictive trade practices. "The object is to keep watch over the behaviour of all monopolies and monopolistic and restrictive trade practices and interfere only when they are prejudicial to public interest". This enactment is a positive step towards consumer protection.

The enactment to curb the monopolies and restrictive trade practices is a positive attempt to promote consumerism in an onward journey towards building consumer movement in India.

1 Sacher Committee Report p.115 para 12.5.
(8) The consumer in the market is not able to know to what extent he is subjected to the menace of adulteration. It is so rampant in the nation's economy and evil has gone to national health and safety. The Prevention of Food Adulteration Act has been enacted keeping this view in the mind which came into force in 1954. The Act, keeping in view the menace of adulteration to the society and to make the machinery more effective to curb the increasing tendencies in adulteration, has been amended in 1964. The Act provides broadly to protect the interest of the consumer, a Central Committee for Food Standards, Central Food Laboratory, prohibition of import of certain articles of food, law on sea customs, powers of custom officers. The Act having been enacted with the object of eradicating that anti-social evil and for ensuring purity of articles of food.

(09) We are on the threshold of dealing with the problem of environmental pollution. In 1980, the Government of India established the Department of Environment to serve as a nodal agency for environmental protection and eco-development. Our Government propounded a policy of preservation of ecological balance and control of pollution. The Ganga Water Authority has already started working and de-polluting of the Ganga. Our plans of maintaining ecological balance are making headway. The task is himalayan and resources are scare. Our task is to create awareness among the people, since environment can not be maintained free of pollution without the co-operation and involvement of the people. Our community should fully become aware that a healthy and unpolluted environment and maintenance of proper ecological balance are essential for the existence of every living being. Environmental protection is man centred.
Environmental protection has suggested that it is of national importance. The environment includes all parts of nature necessary for the health and happiness of man. Laws can not work without public co-operation. It is the duty of every citizen of India to protect and improve the natural environment to have compassion for living creatures.

(10) The consumer has every right to know the ingredients of drugs and cosmetics. There is an inevitable need for safeguarding the consumers against adulteration of drugs and cosmetics. Drug control is considered to be an important form of consumer protection. The main object of the Act is to prevent sub-standards in drugs and cosmetics. Drugs and cosmetics Act, 1940 provides regulation for the import, manufacture, distribution and sale of drugs and cosmetics. The Drugs and Cosmetics Act, 1940 as amended in 1982 has strengthened the enforcement machinery to rope the offenders and see to it that adulterated and spurious drugs and cosmetics are not manufactured and sold in the market. The Drugs and Cosmetics Act is considered to be adequate to protect the interest of the consumer.

(11) Due to the shortage of certain necessities of life and their non-availability at reasonable rates, it has been found necessary to empower the Government to control production, supply and distribution of essential commodities under the Essential Commodities Act, 1955. This power is not new but a continuation of the system which was in use under the Defence of India Rules. Many unscrupulous traders and distributors hoarded essential commodities with a view to profiteering in the event of any natural calamity, such as floods, droughts,
or failure of crops. Under this Act the Central Government has been authorised to declare any commodity as an essential commodity. It may control the price at which such a commodity may be bought and sold. Supply of essential commodities is ensured through regular channels. Vigilance is called for on the part of consumers to strengthen the machinery of the law by complaints before authorities.

(12) Substantive consumer rights pertaining to goods and services are contained in the Sale of Goods Act, 1930. The Act aims at protecting some valuable rights of the consumer. It is difficult to judge quality, nature and performance of the product at the time of purchase. In view of this it is becoming important to compel a manufacturer to make disclosures regarding the composition, performance and hazards of the products. The nature of implied condition and warranties have to be redefined to suit of the existing situation.

(13) Weights and measures have been controlled for hundreds of years. Governments have always been concerned with fraud and deceit. The Standards of Weights and Measures Act, 1976 is enacted to establish standard weights and measures, to regulate inter-state trade or commerce in weights, measures and other goods which are sold or distributed by weight, measure or number and to provide for matters connected therewith. The Act prohibits the manufacture and use of non-standard weights and measures.