



STATE OF THE INDIAN CONSUMER

Analyses of the Implementation of
the United Nations Guidelines for
Consumer Protection, 1985 in India



जागरूक उपभोक्ता !
सुरक्षित उपभोक्ता !!

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Printed by:
Jaipur Printers P. Ltd.
Jaipur 302 001

Published by:
Consumer Unity & Trust Society
D-217, Bhaskar Marg, Bani Park, Jaipur 302 016, India
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Websites: www.cuts.org

With the support of:



Consumer Welfare Fund
Government of India, New Delhi

ISBN: 81-87222-21-2

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Prologue

We will have to strain our every nerve to purify our political, administrative and electoral processes and to remove distortions that have come into our democracy. K. R. Narayanan, President of India, 15 August 1997, on the occasion of the Golden Jubilee of India's Independence.

Perhaps, this clarion call did not move most of my fellow countrymen. For, they have become so callous, dejected and frustrated that any call will not make even the slightest difference in our governance system. Besides, most of my fellow countrymen are individuals, not citizens. Indeed, a revolution is required to get for us our elusive economic freedom and responsibilities. In more ways than one, it is the consumer and other social movements, which is discharging this role.

Tryst with destiny

Fifty-four years ago, on the midnight of 14/15 August 1947, when India's first Prime Minister, Jawaharlal Nehru spoke about "tryst with destiny", other national leaders cursed the plague of corruption. On 11th August, Mohammed Ali Jinnah, the founder of Pakistan, warned the new nation about corruption, black marketing and nepotism. Recently, the former longest-serving Chief Minister in India, Jyoti Basu of West Bengal, ticked off allegations about corruption: "These things happen!"

Since 1996 the Government has started speaking about sweeping reforms in the governance system. Transparency was promised through the enactment of an Access to Information Act, though many State Governments have already brought it in either through a legislation or an administrative order. However at the central level, the same has yet to be enacted.

Corruption eating our entrails

But, if we examine our governance system, not much has changed since independence. On the contrary, it has worsened, while the cure for it continues to remain elusive. Scandals in high places never stop from erupting like an active volcano. At least, we are learning about them. Thanks to a pro-active judiciary, media and the citizenry—who are relentlessly pursuing public interest causes through various methods, including litigation. At the grass root level, there is no way that a person can get nearly anything done without a bribe. These are the same people, who out of fear or admiration or despondency vote the same corrupt people to power. The cancer is so wide and deep-rooted, that it will take many more years to hope for a clean society. However dirty it might be, India has survived all these fifty (+) years as a functioning democracy, and the world's largest.

PDS—A holy cow and a dead horse

Conversely, it is our peculiar democracy, which has bred unholy and symbiotic nexuses at the grass root between anti-social elements and our polity. The heavily subsidised Public Distribution System, which aims to provide food security to the poor, is both a holy cow (touch me not) and a dead horse (difficult to

revive). It operates through a chain of fair price shops, mainly in the hands of traders, who are but a part of this unholy nexus. Margins for these traders are so low, that none can operate a fair price shop honestly. So black marketing and corruption are inseparably manifest in the system. Thus protection to these traders ensures their loyalty to a degenerate polity during, before and after elections. And this acceptance perpetrates the helplessness of people.

The tragedy is compounded by the fact that every leader uses this beneficial scheme to make one or the other announcement to show his concern for the poor. Many states have launched populist schemes to give food grains at half the subsidised cost, and the cost to their exchequers has been huge. All State Governments are bankrupt and their revenues go towards meeting the costs of a bloated bureaucracy. Let me also not be so uncharitable as if no poor person is benefiting from the system. They are, but a minority only. The cost-benefit does not justify the doles.

Poverty and reforms

Alas, after fifty + years we remain one of the poorest nations in the world. Of the one billion people, nearly 320mn are below the poverty line. Of these 50mn are destitutes i.e. not even getting one square meal a day. These estimates are also controversial.

Reforms have been launched in our country in 1991 to take it out of a centrally-planned economy to a market-oriented one. The signing of the new GATT in 1994 has added new dimensions. But the reforms face many hiccups. The whole system of permits-quotas-licenses has to be changed. This cannot be done overnight but through a gradual approach. The early signs are also not promising—the gap between the rich and poor appears to be increasing. Thus the fragile national consensus for reforms is fast eroding. Everyone is blaming globalisation and liberalisation as if they are adding to our problems, rather than finding solutions. Thus policies are vacillating, which the bureaucrats enjoy as it gives them more powers to apply their own ‘discretion’. On the other hand the government does not wish to talk to people directly. That only compounds the problem.

One of the problems of our government has been the lack of communication with people directly. Even if some sections would like to establish a channel and launch a programme many doubting Thomases spike the efforts. For example in late 1999 just before the (aborted) Third Ministerial Meeting of the World Trade Organisation at Seattle, USA, a committee of secretaries of the Government of India decided to launch a public education campaign to tell people what the WTO means and what is likely to happen at the 3rd ministerial. The campaign never took off, with the result the WTO has now become the favourite punching bag of politicians of all hues. Indeed the new WTO treaties are about contestability of markets, with the WTO itself as the biggest competition regulator. It is thus pushing governments to adopt market reforms, which may be quite foreign for many.

No declared consumer policy in India

If the state is to adopt a market-oriented policy i.e. assuming that people in the country are consumers with or without purchasing power, then common sense dictates that it should have an integrated consumer policy, which is declared by the government as its policy to promote consumer welfare. A policy, which will cover the interests of both the haves and have-nots. Alas, there is no such policy in India today. One ostensible problem is that there is a consumer dimension to almost every policy. This will result in the consumer affairs department becoming an irritant for other branches of the government.

As we see in India, the consumer affairs department is one of the junior ones in the hierarchy of other economic affairs departments. It has just one secretary assisted by an additional secretary and a deputy secretary, with few under secretaries and section officers. It does not even have the pivotal joint secretary, which position usually runs the government as the head of a division. The Department's economic

adviser has sometimes doubled up as the joint secretary, but without those powers. An example of how the department can be ignored by other departments was seen in a meeting called by the commerce department to discuss the status of discussions at the WTO with the Indian ambassador at Geneva in 1999. Nearly 50 officers of the relevant and affected departments were called for the meeting, but none was invited from the consumer affairs department.

The documentation

This document has engaged us (for nights and days) and many others, since the last six years. It is only the first draft of a monumental project that we have undertaken. We have tried to avoid much economic analysis, for tomes exist on it. Instead we have taken an activist approach without sacrificing the basic principles of economics or law.

The report takes stock of the measures for consumer protection that have been enacted or implemented—or not—in our great country since 1985. We chose the starting point as 1985, because it was in April, 1985 that India was one among the 185 odd countries who agreed to adopt the United Nations Guidelines for Consumer Protection.

Stocktaking of consumer protection measures in India

Even before the adoption of the UN Guidelines, the Government in 1984, in its 20-Point Programme, at No.17, expanded the section calling for promotion of a strong consumer protection movement. The earliest fillip to this was provided for in 1977, when a private member's bill for a consumer protection law was put forward but failed. Subsequently in the 1980s few states took measures for an independent system of consumer redressal.

Therefore, it will be unfair to say that consumer protection measures in India did not exist before 1985. The legal basis for this was provided under the Fundamental Rights and the Directive Principles of State Policy in our Constitution, that “We the People of India” gave unto ourselves in 1949. Interestingly, it is the world's biggest written constitution, and India also finds a place in the Guinness Book of Records for having the largest number of legislations on its statute book.

Some 40 bits of legislation were enacted or strengthened over time to protect the consumers' interest. (Some of these legislations are of British vintage and have thrown up contradictions too). But their implementation was not adequate, nor did any of them provide for a comprehensive coverage of consumers' rights. Redressal through the existing civil court system was cumbersome, lethargic and accursed too.

First effort for a comprehensive consumer law

The first concrete effort to enact a comprehensive consumer protection legislation was made in March 1985, just about the time when the UN Guidelines were being wrapped up in New York. A 28-member National Consumer Protection Council—consisting of various ministry representatives—after two meetings, decided to convene a National Workshop on Consumer Protection on March 11-12, 1985 with consumer representatives. Following this a draft bill was discussed at another meeting on January 20-21, 1996.

This Herculean effort culminated in the same year. We the People of India gave ourselves a unique consumer redressal and representation system, when the Parliament enacted the Consumer Protection Act (COPRA), on December 17, 1986. The Act was notified in May 1987. Though it came forty years after our political freedom, it was welcomed as one of the first steps in our fight for economic freedoms. Hailed the then Food Minister, H. K. L. Bhagat: “It is the magna carta of consumers”.

Transfer of power to people?

Simultaneously six other consumer protection laws were amended to give consumers and their organisations the right to prosecute offenders. These laws are:

- Standards of Weights and Measures Act, 1976;
- Prevention of Food Adulteration Act, 1954;
- Bureau of Indian Standards Act, 1986;
- Agricultural Produce (Grading and Marking) Act, 1937;
- Monopolies & Restrictive Trade Practices Act, 1969; and
- Essential Commodities Act, 1955.

Hitherto prosecution powers rested only with Government functionaries. Thus power was shared with every citizen in India, at least on paper. These powers could not be used in the manner that it was aimed at. The sheer procedural problems made these far too complex. Secondly, most consumer groups do not have the resources to employ trained staff.

One group in Gujarat did make an attempt in early 1990s under the Prevention of Food Adulteration Act, i.e. to seize samples of suspected unsafe food from the market. It had a trying time to get even the procedural formalities done, and the state health authority: the Food and Drugs Administration were equally puzzled whether consumer groups had such a power at all.

This issue remains a challenge for future work; to see how the laws can be simplified and people can use their powers to prosecute offenders. The consumer affairs department needs to do a project, which can prepare a good road map for the implementation of the laws in not only letter but spirit as well. Establishing a committee or a working group will not be enough. This should be done after a research report is prepared which will show the way forward.

1986—A turning point

These pro-consumer steps in 1986 heralded a radical change in India's history of consumer protection and economic freedoms. COPRA is unique in the world, because:

- Exclusive courts for consumer disputes were established in all the 458 districts (over a period of time) with superior courts at the state and the apex consumer court at the national level;
- Six consumer rights were spelt out in a statute, though not enforceable; and
- Consumer Protection Councils were established in all the states, with a central one at the national level.

Buttressing the right to representation

These councils—with majority non-official participation—ensure the right to representation in at least addressing consumer policy issues. The earlier version was without any legal status and was scrapped. Though not required by the law, some States like, Rajasthan, Andhra Pradesh and Tamil Nadu also established district level councils. The rationale was that if the movement has to succeed, it must begin at the grassroots.

In a very recent development, another amendment to COPRA has been moved in the Rajya Sabha (upper house of the parliament) in April 2001. This amendment has provided for mandatory establishment of district councils with the provision of holding atleast two meetings in a year.

At the national level, the Central Consumer Protection Council, with the *object of promoting and protecting consumers' rights*, has a term of 3 years. In the beginning it was required to meet at least twice a year, which was reduced to once a year by an amendment in 1991. But, it has functioned most

effectively through working groups on specific issues. Currently there is a smaller Standing Working Group, which meets quite often. I had the privilege on serving on several of them, which included one on a voluntary code of conduct for consumer organisations, Perspectives for the 8th Five Year Plan, rules for the Consumer Welfare Fund, two critical groups on amendments to COPRA, and a Steering Committee to look into various pending recommendations. Their output has substantially shaped the bits and pieces of consumer policy in India.

The Councils at the State level function, if at all, in a token manner to fulfill their formal responsibility. CUTS had the privilege of having served in the Central, Rajasthan and West Bengal State Consumer Protection Councils for three terms of 3-years each. Today it is represented in the West Bengal Council since the last 2 + years. After a gap of one term, it has also been re-nominated to the Central Council. The Central Council meets for the whole day while meetings of state councils are often a mere formality, meeting for a few hours only. Not only that, there is very poor follow up too. This would also vary according to the minister in charge.

At the district level in Rajasthan, many of our networking grass root groups were nominated to the District Consumer Protection Councils. While these bodies also functioned with varying speeds of vigour, it empowered the grass root groups phenomenally. It gave them credibility, and strength to raise and resolve many consumer problems at the local level. In Madhya Pradesh, legislators are authorised to nominate persons to represent them in district bodies, other than ones connected with planning etc.

Implementation problems

For a huge and a resource-starved country like India with a population of 1bn as of May 1999 and 18 major languages, there were serious implementation problems in COPRA in the beginning and some still persist. For instance the delay in settlement of cases in spite of a time limit under the law, and that no second adjournment will be granted. This unique feature was inserted bearing in mind the excruciating delays in our civil courts, and that people do not develop a similar disdain. Unfortunately most of our consumer courts are headed by retired civil judges, who, except in rare cases, suffer from a retired mindset. In some cases sitting judges also hold the office, but it being not so glamorous, it doesn't attract good people. Many of the members are also retired bureaucrats or self-serving politicians, who add to the problem. With the low allowances, it is impossible to attract good and active people to man these fora.

Participation of lawyers compounds the problem. On many occasions, we have sought an amendment in COPRA to bar the appearance of lawyers, save and except in some circumstances, but their lobby is much stronger than consumers. There are a few precedents too, such as lawyers are not allowed to appear in labour courts and family courts, but that did not help.

However the 2001 amendment bill has proposed the debarring of lawyers except in three cases:

- When the complainant has engaged a lawyer then the defendant has the right to engage a lawyer;
- When the complainant is a lawyer, and
- when the defendant has taken the approval of the complainant to engage a lawyer.

We have been pursuing this amendment for a long time, but the lawyers lobby has been quite strong to ensure that the proposals do not succeed. I keep my fingers crossed that when the amendment bill is debated in the parliament, this proposal succeeds. In our earlier working group recommendations, we had not proposed that the other party can engage a lawyer if the complainant is a lawyer, which doesn't look very sensible. We had certainly proposed that if there are questions of law or the case is complex requiring evidence and cross examination, the consumer forum may direct both parties to engage lawyers. That proposal has not been accepted.

Another important delay-defeating amendment has been proposed, that no adjournments will be granted in the ordinary course. However, if an adjournment is granted, it should be accompanied by a speaking order. I am a little skeptical about this, because our judges, who have been brought up in a culture of delays, will write a half-page note and call that a speaking order.

In the future, unless special efforts, such as above, are not made to capture the delays in COPRA, people will lose faith. That can be retrogressive for the society.

Exponential growth of the consumer movement

However, a major unintended outcome of this beneficial law was the exponential spurt in the voluntary consumer movement in India.

This happened because, under the definition of complainant in COPRA, voluntary consumer associations were recognised as having *locus standii* to file complaints on behalf of consumers, even if they were not members of the association. Until 1984, there were about 35 odd consumer groups in the country. Today the number exceeds 1000 not counting several other voluntary organisations who are pursuing consumer protection activities.

The State of Bihar in eastern India was the first to establish a consumer court (District Consumer Forum) and a superior court (State Commission) in Patna in 1988. This is indeed surprising because Bihar is notorious for delays. However, the State of Andhra Pradesh in south India deserves kudos for being the first state for having set up consumer courts in all its districts by 1989. A funny side of this effort was that in some cases even illiterate members were appointed on the bench of the consumer courts. They were from the ruling party, and thus a typical symptom of policy ineffectiveness in India. Nearly all states had similar problems. This is not to say that political appointments are *per se* bad, but it displays governance problems. This problem was also rectified in the 1991 amendment by asking for a selection committee to evaluate the credentials of prospective members.

In 1988, the Government of Andhra Pradesh also directed all its 30 plus district collectors (chief administrative officers) to catalyse the setting up of voluntary organisations by approaching socially minded people. With the result (on paper at least), Andhra Pradesh has one of the highest number of voluntary organisations in the country. Many have been wound up by now, while many more have also been formed in the aftermath. Other states, depending on their resources and the imagination of its leaders and civil servants, pursued the matter with varying speed and vigour.

Thus India has the biggest consumer movement in the world today. But has it been able to change the scene drastically? The answer is both yes and no.

Consumer fund for promoting activities

One of the major victories of the consumer movement was the setting up of the Consumer Welfare Fund through credit of excess excise recoveries. The fund is now having a deposit of over Rs.8bn, and still growing. This is being used to fund consumer protection activities. This report has also been assisted from this Fund.

Many will not agree with me that all things are hunky dory. Of course not. How is it possible in a complex socio-economic situation like ours. But before I go further, let me confess that I am an activist and an incorrigible optimist. Therefore I would like to look at the half-full glass—and not a half-empty glass—with the conviction that things will continue to change for the better. I can be accused of cynicism or scepticism, but not pessimism or despair.

The good news is that another of our lobbying points in this regard will also succeed. The 2001 amendment bill has provided for refunds to a class of unidentifiable consumers, as a result of an order, to be deposited in a consumer fund both at the state level and the central level. This is good news, and if implemented, will help the consumer movement to push ahead. The bad news is that these funds will all be administered by government agencies, and they are not too efficient in doing so. Our own experience with the CWF is that while it has built up a corpus of over Rs.600mn, it has not approved or disbursed more than Rs.20mn ever since its inception. Moribund government rules are applied to stifle any meaningful action.

The half-full glass

To begin with in recounting the positive side, there have been many landmark judgements under COPRA, which have challenged the whole basis of consumer abuse. In many early cases, the concerned negligent officials of some of the public sectors were made to cough up the damages. The principle was that if the public sector has to pay, it will ultimately affect the same consumer, in her role as the taxpayer.

I still remember the days (1985) when the draft COPRA was being debated in the high rungs of our steel frame. Among other silly things, they wanted to exclude the public sector from its coverage, because the 'king can do no wrong'. The then Prime Minister, Rajiv Gandhi, put his foot down and expressed his protest in words akin to this: "It is necessary to pin their accountability to the consumers who pay through their nose for shoddy goods and sloppy services." Thus public sector and the cooperative sector is covered under COPRA. Until 1991 these two sectors were exempted from the Monopolies and Restrictive Trade Practices Act. As a direct result of this, in 1991, this exemption was dropped in one of the amendments.

Challenging many citizen abuses

The sheer rise in the consumer movement both in urban and rural areas has led to challenging many other abuses a citizen suffers, which includes what the President of India has called for (see anchor). The movement is straining its nerves in removing distortions which have crept into our governance system and the marketplace. Just few examples—of non-court advocacy—to taste the flavour:

- In a village in Rajasthan, in 1992, agricultural land belonging to a man from the oppressed sections was forcibly taken over by persons from a feudal section. The poor man ran to a consumer group, the Kota Zilla Gramin Upbhokta Sangrakshan Samiti for help, as it was the only social action group in the village. After failing with the local authorities, KZUSS wrote a complaint to the Chairman of the Revenue Board. A prompt enquiry took place and the land was restored with compensation of Rs. 6,000 without any court action. This was not a consumer abuse, but a social abuse, which has been going on in India since centuries. And there are many such success stories.
- In Calcutta a lady school teacher met with an accident in an Otis elevator in 1985 and was thus rendered incapacitated for nearly 14 months at considerable financial loss and peace. Again, without going to court, CUTS fought and succeeded in getting her a compensation of Rs.50,000 from Otis Elevator Co. in 1987. The highest lift accident compensation ever paid in India, said the Limca Book of Records. Similarly, consumer groups elsewhere have been able to get unique redressal without going to court.

The Otis Elevator case is that of a strict product and service liability. Both the manufacture and maintenance of the lift was by Otis Elevator. As usual the standard defence of the fine-print line was taken that their liability does not exist. But the fear of COPRA encouraged them to settle the matter before we went to the court.

Services—A problematic area

A cinema theatre in New Delhi, 'Uphaar' (means gift in Hindi), was burnt down on 13 June 1997—due to a faulty transformer, improper design and lack of fire safety measures—while a show was going on. 59 people died in the rush and inferno. This was one of the biggest consumer service tragedies which continues to occupy headlines. This tragedy exposed the sheer negligence of both the cinema owners and the authorities (municipal, electricity and police) in ensuring public or consumer safety. A victims' network has been launched and both civil and criminal proceedings have been launched against the cinema owners. Till the time of writing this the cases are still pending in the civil courts. The victims did not move a consumer court.

Similarly, municipal and builders' negligence has resulted in many buildings collapsing. In many cases municipal negligence has resulted in water-borne diseases breaking out. In the overall, implementation of consumer or civic safety measures are in a pathetic state. The legislation is not lacking, but the enforcement is mortgaged to corruption, lethargy and inertia, and turf battles.

Disharmony in consumer laws and co-ordination

One example of turf battles is that of harmonisation of food laws which are under the supervision of several Departments through different laws. For instance food safety is governed by:

- Prevention of Food Adulteration Act, 1954 which is under the administrative control of the Ministry of Health;
- Bureau of Indian Standards Act, 1986, which sets the performance and quality standards. It is under the Ministry of Food & Consumer Affairs; and
- Fruit Products Order, 1955, notified under the Essential Commodities Act, 1955 which establishes the standards of all fruit or synthetic fruit-like products. It is administered by the Ministry of Agriculture, Department of Food Processing.

A Committee of Secretaries by the Government of India was established sometime in late 1980s to get them harmonised. This arrived at a conclusion that it should be done immediately. Now an inter-departmental committee is looking into it for the last decade or so, and is yet to arrive at any conclusions. Since the whole process is confidential, we know about it only through off-the-record conversations.

Disco-ordination and consumer safety

Even if the overlapping laws are harmonised the implementation problems will continue to plague us. Let me share one of my experiences of the lack of inter-departmental co-ordination and consumer safety. In 1988, over 1500 people in Behala, a suburb of Calcutta, were paralysed after consuming adulterated rape seed oil sold through a ration shop, *Garib Bhandar* (means the Poor Man's Store in Hindi). We filed a class-action complaint before the National Commission under COPRA, and the victims got some relief.

The ration shops are under the control of the Food and Supplies Department of the Government of West Bengal, while the food safety law (PFA) is under the supervision of the Calcutta Municipal Corporation, as the designated "local health authority". In this case the Corporation in a sworn affidavit said that as ration shops are under the Food Department's regulation, they cannot inspect them. As if the Corporation is doing its duty at all, where they can do it.

Consumers are to economy what voters are to politics

In conclusion, it will be appropriate to share one conversation that I had with a pessimist. She asked me why am I doing what I am doing, when consumers are so apathetic. My response was quite simple: "I am doing this for two reasons. First, if we do not do what we activists are doing, things will get worse. The society will get further demoralised and any amount of legal protection will not help. Second, I would not like the next generation to question me as to what did I do for them in arresting this morass."

Taking a leaf out of a freedom struggle on January 26th, 1990 (Republic Day) we designed, adopted and declared two more rights of consumers:

- Right to boycott
- Right to opportunities

These were also adopted by the 3rd National Convention of Consumer Activists held in Calcutta in November 1991 with a recommendation to take in up at the international level. The rationale behind the right to opportunities is that without it the right to basic needs remains meaningless. The right to boycott will only recognise what consumers and others have done over years to assert their rights, when other remedies have failed. A resolution to this effect was moved at the 16th World Congress of Consumers International, Durban, November 2000, but due to lack of a proper debate it could not pass.

In signing off, let me remind people that, what voters are to politics, consumers are to the economy. If the nation has to develop, consumers have to be satisfied, with the poor up front.

Jaipur
June 2001

Pradeep S. Mehta
Secretary General

Executive Summary

I. INTRODUCTION

The purpose of economic planning is to allocate resources, as far as possible, for the maximum satisfaction of consumers' needs. This leads directly to the idea of consumer sovereignty. Besides, there is logical, moral and political force in the proposition that the consumers themselves should have the right to take decisions about the allocation of resources for their own needs.

When we talk about consumer rights, it generally covers all types of rights, such as human rights, social rights, political rights and economic rights of the people in general. A 'consumer' includes the poorest and the richest human beings in society. However, it is the poorest, who are in greater need of protection, but who are, ironically, denied their rights, including rights to basic needs, in different parts of the world.

The process of development coupled with increasing liberalisation and globalisation across the country has enabled consumers to realise their increasingly important role in society and governance. However, the concentration of the market in the hands of a select few has affected consumers' behaviour over time. In this regard, the famous quote of the noted diplomat and economist, John Kenneth Galbraith, is quite appropriate: "It is not the consumer who is the king, but it is the large corporation who is the king in the economy. Whatever happens is not because the consumers want it that way, but simply because large powerful corporations prefer it that way."

In a developing country like India where the incidence of poverty and unemployment is very high and the level of literacy is very low, the population faces a volume of problems, particularly in the context of consumer related issues. Unlike in the developed world, consumers in these countries have not been able to play a greater role in the development process.

Under consistent lobbying by the International Organisation of Consumer Unions, now known as Consumers International, the United Nations adopted a set of Guidelines for Consumer Protection on April 9, 1985 (vide General Assembly Resolution No: 39/248), which were revised in 1999. The Guidelines address the interests and needs of consumers worldwide and provide a framework for Governments, particularly those of developing and newly independent countries, to use for elaborating and strengthening consumer protection policies and legislation.

The UN Guidelines have outlined eight areas for developing policies for consumer protection, which have been translated into eight consumer rights for our discussion in this study. This report/study is meant to highlight the present status with respect to the eight consumer rights in the Indian context. The main objective of this stock taking exercise is to help in the drafting of a National Consumer Policy, provided at the end of this report, and to suggest measures to be undertaken in the future for the proper implementation of the same. The report is also expected to help other countries, particularly the developing ones, in protecting and promoting consumer rights. The eight consumer rights, the stocktaking and analyses of which constitutes our present study, are:

- Basic needs,
- Safety,
- Choice,

- Information,
- Consumer education,
- Redressal,
- Representation, and
- Healthy environment.

II. BASIC NEEDS

The basic needs of the people (consumers) of a country emanate from the question of survival and dignified living. In a developing country like India, basic needs are traditionally related to *roti, kapda aur makan* (food, clothing and shelter). However, there are three other related items that are absolutely essential for dignified human living. These are health care, drinking water & sanitation and education. There are two other items, which also need to be added to the basket of basic needs, as without these, it may not be possible to provide the other basic needs. These two are the right to energy and right to transportation.

Thus there are two ‘goods’ and six ‘services’ which come under the ambit of basic needs. Without the fulfillment of these eight needs it would be impossible for any human being to live in a dignified manner.

UN Guidelines

The Guidelines do not explicitly mention the right to basic needs, but expect Governments to take appropriate measures so that consumers can have easy access to “essential goods & services”. The Guidelines in short state that: “In advancing consumer interests, particularly in developing countries, Governments should, where appropriate, give priority to areas of essential concern for the **health** of the consumer, such as food, water and pharmaceuticals. Policies should be adopted or maintained for product quality control, adequate and secure distribution facilities, standard international labeling and information as well as education and research programmes in these areas. Government Guidelines with regard to specific areas should be developed in the context of the provisions of this document.”

It also states that Governments should, where appropriate, consider:

- Adopting and maintaining policies to ensure the efficient distribution of goods and services to consumers and also providing assistance for the creation of adequate storage facilities in rural centres; and
- Encouraging the establishment of consumer cooperatives, especially in rural areas.

The salient features and findings on the implementation of the Guidelines in India with respect to the eight components of the basic needs are described below.

Right to food

A broad definition with respect to food can be provided in terms of food security. Generally it is believed that food security can be achieved by merely achieving food availability. But in reality the macro aspect of food availability of a country cannot be equated with food security *per se*. The micro issues like peoples’ purchasing power or ‘entitlement to food’ become more critical, particularly for a country like India. That is to say, food might be available, but consumers may not have the wherewithal to buy it, or for hypothetical purposes, even if they have the capacity to buy, access may be difficult for various reasons.

The instrument for ensuring food security (the right to food) for the people of India, particularly for the poorer sections of society, is through the public distribution system (PDS). Presently, the PDS follows a three tier pricing structure: for families above poverty line (APL), for families below poverty line (BPL),

and a special category for representing the poorest of the poor, called *Antodaya*. As per the latest arrangement the *Antodaya* families are given food at highly subsidised rates through fair price shops, while the BPL (ordinary) families are given food items at higher rates, although still subsidised. The APL families are not entitled to subsidised food.

The majority of the states have not been able to lift their full allotment of food quotas from the Food Corporation of India (FCI), because of financial problems. Some field level studies also show that on an average only about 25 per cent of the poor are availing the benefits of the PDS system. This, of course, varies across state to state. Besides, the mismanagement of the FCI has also added to its economic cost, which in recent years has been nearly 50 percent of the procurement cost. This has led to a huge drain on the government exchequer.

The micro aspects of the failure of the PDS relate to factors such as low margins of the FPS owners, thereby leading to corruption, transportation bottlenecks, shops not being opened at convenient times, etc.

To make the PDS successful, one needs to look at some of the success stories in the country. These include the Employment Guarantee Scheme (EGS) in Maharashtra, community-managed PDS and 'grain banks' in a few tribal villages in Orissa, etc. For ensuring the success of such schemes, civil society can play an important role.

Right to clothing

The UN Guidelines do not speak about clothing. But, clothing is a fundamental need and therefore, it comes under the right to basic needs. Thus, the Textile Policy must address the issue as to how this basic necessity can be provided to the poor.

One of the objectives of the Textile Policy, 1981, which has a direct bearing on the consumers, is "Strengthening and streamlining infrastructure for distribution of cloth to weaker sections of the population". The Textile Policy, 1985, and the Textile (Consumer Protection) Regulation, 1988, also addressed some of the issues related to this. The main objective is to enable this sector to increase the production of cloth of good quality at reasonable prices for the vast population of the country. Another important measure was the de-licensing of the sector in August 1991. Under this policy, no prior approval is necessary to set up textile units including power looms, i.e. to enable increased availability as well as access to clothing.

As per the Government policy, the Textile Commissioner has issued a notification called Textile (Consumer Protection) Regulation, 1987 (later amended in 1988), for the benefit of the consumers. The main purpose of the notification is to provide markings on cloth and yarn manufactured from cotton, man-made fibre and wool for quality control purposes as well as for price marking.

Right to health care

As per the Guidelines a consumer's health is related to food, water and pharmaceuticals. Since food and water are dealt separately, the right to health can be interpreted as limited to health care facilities and pharmaceuticals. Elaborating further, the Guidelines state:

"Governments should develop or maintain adequate standards, provisions and appropriate regulatory systems for ensuring the quality and appropriate use of pharmaceuticals through integrated national drug policies, which could address, *inter alia*, procurement, distribution, production, licensing arrangements, registration systems and the availability of reliable information about pharmaceuticals".

The Government policy with respect to the right to health care has been outlined in two policy statements: National Health Policy and the Drug Policy. The main objective as defined in the National Health Policy is to "Achieve Health for All". The health services (implemented by the States), are to be provided to the population through various means like Primary Health Centres (PHCs) and sub-centres, besides providing hospitals at district and state headquarters and at other important places.

The main objectives of the drug policy are to strengthen quality control, appropriate standards for both imported and domestic products, etc.

In India, the overemphasis on the curative aspect of health care has resulted in a lop-sided health care system. The poor health care system is best reflected in the high infant mortality rate, which at 71 per thousand births is one of the highest in the world and almost double that of China (38 per thousand births). The National Health Policy did address this issue, *albeit* in an unfocused way. The objective needs to be based on the preventive aspects of health care under a decentralised system of planning, and on a rational drug policy.

Right to drinking water and sanitation

A related issue to the right to health care is the supply of safe drinking water and provision of sanitation facilities. The Guidelines urges Governments to develop, maintain and strengthen national policies to improve the supply, distribution and quality of drinking water. Thus, it is the responsibility of the state organs to formulate appropriate policy and to provide this vital utility service.

In 1986, the Government of India established “Technology Mission on Drinking Water”. Under the mission, the government seems to have adopted very tall targets. However, only 55.92 percent rural households had access to safe drinking water in 1991.

The situation in the case of sanitation programme is even more dismal. As per the World Development Report, 1999, only four per cent of the rural households had access to proper sanitation facility in 1995.

Right to shelter

Another basic need is housing or shelter. The Guidelines are silent on this issue. Here also, the state should formulate the broad policy objectives and address the implementation problems. Further, there is the vulnerable section (the poor, low-income and disadvantaged consumers) of the population for which direct state intervention is necessary.

In 1998, the Government of India adopted a new housing policy titled the “National Housing and Habitat Policy 1998 (NHHP)”, replacing the earlier policies. This policy envisaged a major shift in the role of the Government from that of being a provider to that of a facilitator.

The policy made many promises with regard to housing in general, and more particularly for the poorer sections of society. However, the majority of the poor and disadvantaged sections are not able to afford housing even if it is subsidised.

Right to education

Nobody can take part in the development process without having a basic knowledge of what is going on around her/him. In other words, education expands one’s horizons. The Guidelines do not say anything on general education, as a basic need, but talks only about consumer education.

The right to education is mentioned in the Chapter of Directive Principles of State Policy in the Constitution of India, which is complementary to the Chapter on Fundamental Rights to achieve the goals of a welfare state. According to this, the State shall endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children until they complete the age of 14 years. This has been re-emphasised again and again in subsequent policies of the government.

In 1993, the apex court ruled in one case that primary education is a fundamental right. Moreover, the proposed 83rd Constitutional (Amendment) Bill 2000, when passed by the parliament will make elementary education a fundamental right. But when this bill will be passed in the parliament is anybody’s guess.

However, it is very doubtful, whether the states have been able to make adequate provisions till date. Moreover, having adequate number of schools is one thing and making every child going to school is another matter. This is reflected in the percentage of children dropping out after they attend school. The dropout rate is as high as 45 percent in rural areas for girls and 30 percent for the boys for the children in the age group of 5-14 years.

There is a tremendous pressure on the existing institutions particularly at primary and middle level in terms of enrolment. This is reflected in the pupil per institution, which has increased to 177 in 1992-93 from 149 in 1980-81 in the case of primary institutions.

Right to energy

Energy is an essential utility service. The Guidelines do not address this issue as well. With respect to energy, the issue is not only that of supply, but also of an affordable price. In India it is the decentralised sources which meet most of the energy demand in rural areas. About 40 per cent of the energy consumed come from non-commercial sources. In 1998-99, the per capita consumption of energy was 287 kilograms of oil equivalent (kgoe) as against the world average of 1470 kgoe.

The mismanagement of the State Electricity Boards (SEBs), including corruption in the system, has led to serious problems, with the result that the boards are facing huge financial difficulties. The liberalisation policies of the Central as well as State Governments have further accentuated the problems of these boards. Though the ultimate goal is ensuring good quality and quantity of power to every consumer at the right price.

The Planning Commission estimated that there needs to be additional capacity of more than 30,000 MW of power during the Eighth Plan. However, the SEBs were neither in a position to finance internally nor could they tap the capital market. The World Bank also stopped funding to the SEBs. Hence it became imperative to invite the private sector to mobilise resources. But the resources available in the domestic capital market were also not sufficient. Hence it became necessary to mobilise foreign investment through schemes like equity partnership, build operate and transfer (BOT), or in the form of portfolio investment. The Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948, were amended to usher in a new legal, administrative, and financial environment. Efforts at power sector reforms have included:

- Allowing private participation in power generation (1991);
- Restructuring of SEBs (since 1993);
- Private sector participation in transmission and distribution (1998), and;
- Setting up of Central Electricity Regulatory Commission (CERC) and State Electricity Regulatory Commissions (SERCs) (1998).

Right to transportation

The Guidelines do not address this issue also. As in the case of energy, it is necessary to address the issue of transportation and roads in terms of people's access and ability to proper mode of transportation. In 1998-99, about 47 percent roads in India were of the unsurfaced category. Furthermore, there was only 0.73 km of road length per sq. km. of geographic area during 1996-97. The rail service reaches only 3 percent of villages. Inland water transport service is also existing. Therefore, there is a definite need to adopt an integrated transport policy, taking both road and rail transport, and also water transport, into account.

The State Road Transport Undertakings (SRTUs), which were the backbone of this vital service, have been the victims of mismanagement as in the case of SEBs. Most of the SRTUs are in the red, and consequently private operators have stepped in but in an unregulated manner. In this game of privatisation, the private operators are not serving the uneconomical routes.

III. SAFETY

The right to safety is important for safe and secure living. Without any effective regulatory mechanisms consumers suffer most in terms of safety. The right to safety means the right to be protected against products, production processes and services, which are hazardous to health or life. It includes concern for consumers' long-term interests as well as for their immediate requirements.

UN Guidelines

The UN Guidelines consider two kinds of safety: Physical safety and Standards for the safety and quality of consumer goods and services. As regards physical safety, it states that:

“Government should adopt or encourage the adoption of appropriate measures, including legal systems, safety regulations, national or international standards and the maintenance of safety records to ensure that products are safe for either intended or normally foreseeable use. Consumers should be instructed in the proper use of goods and should be informed of the risks involved. Vital safety information should be conveyed to consumers by internationally understandable symbols wherever possible”.

The Guidelines also recommend the adoption of policies to ensure that manufacturers compensate for defective or hazardous products.

As for the second i.e., standards for the safety and quality of consumer goods and services, the Guidelines state:

“Government should as appropriate, formulate or promote the elaboration and implementation of standards, voluntary and other, at the national and international levels for the safety and quality of goods and services and give them appropriate publicity. These standards should also be reviewed periodically to conform to accepted international standards. Further, the Government should encourage and ensure the availability of facilities to test and certify the safety, quality and performance of essential consumer goods and services”.

Present situation

In India there are constitutional, legislative and administrative provisions with respect to this right. Among the constitutional provisions, the most important one is the protection of life and personal liberty (Article 21). Two major legislations are the Prevention of Food Adulteration Act, 1954, and the Bureau of Indian Standards Act, 1986.

ISI marks certified by the BIS are voluntary in most of the cases, but manufacturers are increasingly resorting to such practices in recent years. For certain products these marks are compulsory. These are food additives, cement, LPG cylinders, oil pressure stoves, electric appliances like irons, plugs and sockets, etc.

There are a number of recognised laboratories, both in the public and private sectors in India, to carry out tests as per Indian standards. There are also a number of laboratories carrying out tests related to food products in the country, including research institutions. One consumer organisation: Consumer Education and Research Society, Ahmedabad, has also set up a testing laboratory to test some products of day to day use, such as food, pharmaceuticals and electrical goods. Two more consumer organisations: Consumer Guidance Society of India, Bombay, and VOICE, New Delhi, are doing testing programmes through external resources. However, there is no coordination among them, with the result that efforts have often overlapped.

Implementation

India cannot be questioned for not respecting the UN guidelines when one looks at the laws, rules, testing and research facilities set up as required per the Guidelines. Some of the standards are also periodically upgraded. But when coming to the implementation of these rules, laws (guidelines), we are quite inefficient. Despite making it mandatory for certain products to adhere to the ISI norms, many products can be found in the markets without ISI specification/marks. Even the ISI marked products in certain cases are found not to be adhering to the specifications. Consumer organisations and other NGOs have highlighted these lapses from time to time.

Majority of the consumers are not aware of the existence of such rules/laws. They are also not aware of their rights and in case of any problems they are not sure whom they should approach. Besides, rampant corruption in the system makes the law ineffective in many cases. Therefore, voluntary consumer organisations have a bigger role to play in this regard.

Possible solutions

From the above discussions it is clear that the strengthening of the implementation mechanisms of the existing laws and rules is the need of the hour. This obviously calls for the routing out of existing corruption in the system, and enabling consumers to prosecute offenders. Consumers are also required to be more vigilant to expose the wrong practices being followed. This will require consumer organisations to be better organised and resourced to cope with increasing demands on their time.

From the Government's point of view, a holistic approach with respect to the right to safety is needed. In other words, the Government of India must draw up an integrated and effective consumer safety policy; especially the creation of independent Consumer Products and Services Safety Commissions at the national as well as state levels with consumer organisations as a part of them. Such a policy should be based on the following legislative and administrative measures:

- Standardisation, regulation and enforcement;
- Mandatory standards and notification system for hazardous goods and services;
- Legislation governing not only compensation, but product liability, and product recall and replacement;
- International and regional co-operation for ensuring safety standards, which can be implemented across different countries and cultures;
- Availability of easy facilities for consumers to check adulteration and sub-standard goods; and
- Encouragement of consumer organisations for testing without the fear of libel/defamation.

One of the areas of improvement could be the monitoring of the implementation process. Consumer organisations should have an effective role in the monitoring and implementation of the system. For this, it is necessary to advocate for transparency and public accountability in the way decisions are taken. The Government should also carry out a detailed study on the accidents in all areas and other cases related to consumer safety. The study should also deal with the various Acts under different Ministries and also the possibility of harmonising these.

IV. RIGHT TO CHOICE

The right to choice deals with the issue of choosing between different alternatives. The right to choice can be defined as an assurance, wherever possible, of availability, ability and access to a variety of products and services at competitive prices. The related issue: 'competitive' price, does it always mean 'just' (right) price? It is here that the role of institutions (by taking into account both consumers' as well as producers' interests), comes in, i.e. to pursue the objective of right to choice under the framework of a "welfare state".

UN Guidelines

The Guidelines do not address the issue directly. It deals with its economic aspects only under its section on promotion and protection of consumers' economic interests.

The broad objective of protecting consumers' economic interests is to provide an enabling framework under which consumers can obtain optimum benefits from their available economic and other resources. Another major objective is to ensure that the providers of goods and services adhere to established laws and mandatory standards so that consumers' economic interests are not violated. Most importantly, it states that the "Government should encourage fair and effective competition in order to provide consumers with the greatest range of choice among products and services at the lowest cost".

In specific terms, the Guidelines speak about the following provisions with respect to the right to choice:

- Control of restrictive business practices;
- Goods that meet the standards of durability, utility, reliability and fit their purpose, and availability of reliable after sales service and spare parts;
- Protection of consumers from unfair contracts and regulation of promotional markets and sales; and
- Review of legislation and enforcement of weights and measures regularly.

Present situation

In India there are several legislative and administrative measures which provide guidelines to consumers regarding the type of goods and the terms and conditions under which he/she should buy, and be assured of a fair deal. These measures also spell out the various responsibilities and duties on the part of suppliers and the penalty/punishment for not adhering to the conditions stipulated.

One of the most important among these is the Monopolies & Restrictive Trade Practices Act (MRTP), 1969. The main objective of this Act is to ensure fair competition among the producers as well as service providers. Also, the objective is to give consumers as many choices as possible. Furthermore, the Act also prohibits some forms of monopolistic, restrictive and unfair trade practices. COPRA also has provisions for dealing with unfair and restrictive trade practices.

Unfortunately, the MRTPA does not cover various other types of anti-competitive practices and has no power to impose penalties. Thus the law is likely to be scrapped and a new comprehensive competition law will be enacted during the current year i.e. 2001. The new law is likely to take care of the shortcomings. At another level there is some opposition to the new law by several vested interests, who feel that the market can take care of anti-competitive practices. They are also afraid that the new competition authority will become a super policeman thus stifling growth.

A new development in India is the formulation and adoption of independent regulatory mechanisms in the area of electricity, telecommunications, insurance etc. This move has resulted more from the concern for providing a predictable legal environment to private investors rather than for the promotion and protection of consumer interests. However, consumer interest has been reflected in all the new laws that are being enacted for the purpose of deregulation and privatisation. For telecom and insurance there is only one central regulatory authority, while for electricity there is one at the centre and one each in all the states. One welcome step is that there is a consumer advisory council in each of these bodies, and public hearings are being conducted on a regular basis. It is therefore expected that these regulatory authorities will ensure fairness in each of these service sectors.

Another important law is the Bureau of Indian Standards Act, 1986. It seeks to set up a benchmark of high quality supported by a visible presentation. The idea is to help consumers to make informed choices

by making it mandatory on the suppliers/manufacturers to provide information related to product quality & standard (ISI marks), quantity, types of ingredients etc.

Weights and measures are regulated through a central law: Weights and Measures Act, with the industries department in most States as the state regulator. Each district also has a weights and measures inspector to oversee that vendors and producers are using proper weights and measures. However, the number of inspectors is very few compared to the need, with the result that the prevalence of short weightment and measurement are the order of the day. In particular, short weighing is rampant among small vendors who are mobile, such as vegetable and fruit sellers. Even large factories indulge in short weighing, and never get caught.

Implementation issues

Inadequate implementation of these laws is due to several factors. Firstly, a major factor is that of limited information about the products. The situation is further aggravated by the absence of effective regulatory mechanisms, both in product as well as utility sectors.

The second drawback is that often people have pre-conceived notions regarding the outcome of any decision process. Thirdly, the Indian industry is mostly engaged in price competition, not quality competition, which is an essential factor for consumers' satisfaction and value for money. Fourthly, very often the right has not been properly implemented mainly because of lack of knowledge on the part of consumers. Finally, consumers are also responsible for the lack of implementation. This is due to a peculiarity of the majority of Indian consumers; they want their rights, but at the same time they shirk their responsibilities.

Steps towards improvement

In order to improve the situation/system, policy interventions are required in three areas: availability, information and regulation. By availability we mean the removal of constraints like hoarding, black marketing etc., and ensuring fair play in business.

Secondly, there should be correct information about the product so that the consumer can make a free and fair (informed) choice. Misleading advertisements should be declared an economic and moral offence. On regulations, an effective competition policy is required to protect consumers' economic interest (and also for public interest), particularly in this era of globalisation. It is a welcome move by the Government of India to formulate a new competition law.

Making available unlimited goods and thereby providing a variety of goods and services to consumers is not the first best solution. That is to say that unregulated competition does not automatically protect consumers' interests. Therefore, an effective regulatory mechanism is required to protect, enforce and execute the policies in such a way that consumer welfare is maximised. Therefore, the role of the state and the market should be complementary in nature and not a substitute for each other.

In the area of enforcement of laws, consumer participation is an effective way forward. The government needs to ensure that the consumer movement is bolstered with resources, which need not necessarily come from the treasury.

V. RIGHT TO INFORMATION

Consumers should have the right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, so as to make the right decision and protect themselves against abusive practices. Besides this, consumers should also have the right to access information related to public affairs, which are dealt with by the government and its agencies.

UN Guidelines

The UN guidelines contain the right to information to consumers under various themes on consumer protection. The Guidelines also call for necessary legislation relating to diffusion of information on consumer protection.

The following provisions are mentioned in the Guidelines with regard to consumers' right to information:

- Government should encourage all concerned to participate in the free flow of information on all aspects of consumer products
- Information should be available to consumers on the proper use and risks associated with consumer products
- Information on weights and measures, prices, quality, credit conditions and availability of basic necessities
- Information on available redress and other dispute-resolving procedures

Present situation

Like most of the rights, the implementation of this right is being done through constitutional, legislative and administrative provisions. Various interpretations of Article 19(2) of the Constitution of India, clearly state that there should be a definite policy or uniform guideline on the part of the state to help consumers make an "informed choice". Furthermore, provisions regarding the right to information are there under the Consumer Protection Act, 1986; the Monopolies & Restrictive Trade Practices Act, 1969; the Standards of Weights and Measures Act, 1976; the Bureau of Indian Standards Act, 1986 etc.

The Department of Consumer Affairs has taken certain steps to provide information to the public. Among the measures taken are the publicity campaigns through published materials, TV serials and documentaries and also the encouragement of consumer organisations to conduct awareness generation programmes. One very good and forward looking strategy is to establish consumer information centres in all districts, to be operated by a voluntary consumer organisation or the district council established under the panchayati raj system. These centres are being hooked up with the Government of India's National Informatics Centre, thus providing access to myriad information stored in the government archives.

A Bill on the Right to Information is pending before Parliament for enactment. It was to have been placed during the Winter Session of Parliament and subsequently in the Monsoon session in 2000. No decision has been taken yet regarding this. However, the bill in the existing state has certain anomalies. Some of the State Governments have already enacted their own freedom of information laws and regulations.

Implementation problems

Implementation problems are due to several factors. The most important is the inter-play of many institutions/ Ministries with little co-ordination. Without any comprehensive regulation or definite guidelines (covering all products and services), consumers are not able to make proper use of the information provided. Another major problem is the poor dissemination of information due to the lack of effective institutional mechanisms. This particularly affects the illiterate and disadvantaged consumers.

Possible solutions

The Government or concerned agencies should be able to disseminate information in simple language including local languages. Consumer organisations have a greater role to play in seeking information from the government and other related bodies involved in public affairs/development for the benefit of the consumer, more particularly at the grass root levels.

The following legislative and administrative measures are to be considered for the proper implementation of the right to information:

- Strengthen the legislation on mandatory labeling/information on both consumer products and services.
- Governments at the national, sub-national and local levels to provide resources and mechanisms for developing effective delivery of user-friendly information to not only literate but also illiterate consumers.

Governments should empower consumer organisations to carry out the task and also encourage the mass media to allocate time for consumer information.

VI. RIGHT TO CONSUMER EDUCATION

The right to consumer education means the right to acquire the knowledge and skills to be an informed consumer. It is easier for the literate to know their rights and to take actions to influence factors which affect consumers' decisions. This is not to say that illiterates are ignorant but they are certainly at a disadvantage, as they cannot read on their own.

UN Guidelines

According to the Guidelines, governments should encourage the development of general consumer education programmes, bearing in mind the cultural traditions of the people concerned. The aim of such programmes should be to enable people to act as discriminating consumers, capable of making informed choices of goods and services and conscious of their rights and responsibilities. In developing such programmes special attention should be given to the needs of disadvantaged consumers.

The following provisions are mentioned in the Guidelines:

- Introduce consumer education in the basic curricula of the education system;
- Governments to develop a greater number of consumer education programmes in the mass media aimed at rural and illiterate consumers.
- Business to undertake/participate in factual and relevant consumer education programmes; and
- Governments to organise training programmes for teachers, consumer organisations, mass media, professionals, etc.

Present situation

At present there is no clear-cut policy in India with respect to consumer education. The Union and State Governments have accepted the introduction of consumer education in school curriculum. The National Council of Educational Research and Training (NCERT) is working on developing a syllabus and textbooks on consumer education. The Indira Gandhi National Open University (IGNOU) has devised a syllabus for distant education on consumer protection.

Furthermore, the Government of India, through the Consumer Welfare Fund, has made provisions to fund consumer education programmes undertaken by consumer groups or the state governments. It is to be mentioned here that the role of the press is vital for educating the consumers. Today, most of the leading Indian periodicals carry regular consumer columns, while television channels also have regular consumer programmes.

Despite various measures taken by the Government and several consumer organisations, the majority of the consumers are still not fully aware of all the consumer protection legislations and its implementation mechanisms.

Reasons for lack of awareness

Besides having a low ratio of literacy, high incidence of poverty etc., even the well to do consumers do not appear to be very concerned about consumer protection laws and as such for the need to fight for their rights. This is because of many reasons. One of them is the severe apathy on the part of this group of consumers. Another reason is the lack of faith in the system, whether judicial or administrative. The third and most important factor is the lack of awareness about consumer issues, which reflects the poor situation of consumer education/information dissemination.

Consumer education in India faces the universal problem of matching limited resources against an infinite need. Furthermore, in a large country like India, with a multiplicity of languages, the problem is of a larger dimension. Apart from the problem of resources, there is also lack of planning in developing a comprehensive curriculum for consumer education.

Besides all this, educating consumers requires time, personal dedication, professional skills etc. The consumer movement in India has also not been able to penetrate into the rural areas in the desired magnitude. But the good news is that in many States the efforts to educate consumers in rural areas is going on very strongly. The problem is with the sheer size of the need, which cannot be matched with the limited resources of the voluntary consumer movement.

Possible solutions

The general consumer education should be need-based. It should attempt to teach a value system, which goes beyond acquiring skills, wise use of money and possessions and effective complaining. Such a programme might include care for the environment, duties and obligations as well as rights, concern for the disadvantaged, and an awareness of the finite resources of the economy. This would require motivation on the part of different players: business executives, bureaucrats, planners, teachers, students, consumer organisations etc.

The following administrative and legislative measures would be necessary for effective implementation:

- Consumer education programmes through co-operation with other branches of the Government like the Department of Education and the business chambers;
- Specific consumer education resource books, particularly for children and women; pictures and sketches may be incorporated for easier understanding;
- Budgetary provisions and institutional mechanisms to be provided to conduct training on a regular basis; and
- Consumer organisations and other NGOs are to be provided resources to carry this out effectively, besides involving the target beneficiaries in planning and implementing the programmes;

The Department of Consumer Affairs should monitor and evaluate the existing mechanisms, including the present Consumer Information Centres regarding their effectiveness as well as constraints. For this a study could be conducted by an independent agency.

VII. RIGHT TO REDRESSAL

The socio-political dimension of the issue stems from the fact that in a stratified society (polity) like India, vulnerable sections may not have real access to justice. This right includes the right to receive compensation for misrepresentation of shoddy goods or unsatisfactory services and the availability of acceptable forms of legal aid or redress for small claims wherever necessary.

UN Guidelines

The Guidelines provide a framework for governments to use in elaborating and strengthening consumer protection policies and legislation. One of the major objectives of the Guidelines is that governments should establish or maintain legal and administrative measures to enable consumers to obtain redress through formal and informal procedures that are expeditious, fair, inexpensive and accessible. Another objective is to encourage all enterprises to resolve consumer disputes including advisory services and through informal complaint handling mechanisms. The third objective is that the information on available redress and other dispute resolution procedures should be made available to the consumers on a regular basis.

What is the situation In India?

In India, until the Consumer Protection Act (COPRA) was enacted in 1986, consumers had to rely upon a number of legislations but none provided an effective remedy against violation of their rights. COPRA was designed with the specific purpose of protecting consumers' rights and providing a simple quasi-judicial dispute resolution system for resolution of complaints. The purpose of the Act is to take the system of redressal to the peoples' doorsteps.

Furthermore, COPRA envisages the establishment of Consumer Protection Councils at the Centre and in the states whose main objective is to promote and protect the rights of consumers. These Councils are advisory bodies and meet once a year with a generalised agenda. Under COPRA, three-tier quasi-judicial machinery at the National, State and District levels has been established. Apart from the COPRA, redressal mechanisms are incorporated under the MRTP Act, 1969, Indian Arbitration Act, 1940, and through complaint mechanisms provided by various businesses. However, despite the existence of such a holistic law, the situation in India (with respect to consumers' redressal), is constrained with problems (like delays in judgement, non-compliance with orders etc.).

Implementation issues

The first and foremost problem is that most state governments do not evince the requisite enthusiasm and attention in promptly implementing the provisions of COPRA by carrying out their mandatory obligation of establishing District Forums and State Commissions. Secondly, even with the existence of a justice delivery system, the system is plagued by systemic problems resulting in inordinate delays. Apart from these, consumers are also reluctant to make use of the redressal system. One major reason is the non-availability of proper guidance from voluntary consumer organisations and fear of exploitation by lawyers.

Lately the redressal system has become overloaded with inordinate delays in taking decisions, including at the point of admission of a complaint. The consumer courts are becoming like civil courts, with presidents (judicial members) asking for a more formal approach. Equipment and facilities are also a problem in many cases. Sometimes these forums have even asked complainants to engage lawyers, even when it is not really required. There have been instances when the National Commission has taken more than five years to decide cases. Recently, the National Commission was referring cases for arbitration and the Supreme Court had to intervene to curb this illegitimate practice. All these factors have resulted in frustration among the consumers.

The appointment of members is another problem. In the past, members were appointed on the basis of their connections rather than merit. Now the system has improved substantially due to an amendment in the law requiring a selection committee to appoint them. Advertisements are also being released for better selection. However, due to very poor compensation packages, good people are not attracted to these positions. In the case of retired judges or civil servants wishing to be appointed, it is not such a problem because the allowances that they get are in addition to their pensions. However, in many cases the appointments of the State Commission Presidents do not last for more than two years on an average,

when they are actually required to be in office for five years or upto the age of 65, whichever is earlier. There is a lackadaisical approach in selecting such people.

Possible solutions

According to Section 2 (1) (d) of COPRA, the definition of consumer is limited and restricted in its scope and ambit. In a welfare state like India, the government is the biggest provider of services, especially to the poor. These services include health care and municipal services. The exemption of these services, on the ground of want of consideration, results in the defeat of the purpose of the right to redressal. Therefore, the definition of the word ‘consumer’ should be inclusive to encompass all such services so as to enable consumers’ access to justice.

Secondly, there should be a product liability law to save consumers from their harmful effects, and from the necessity to prove a ‘defect’ in the product and the ‘negligence’ of the manufacturer. Such a law should relieve consumers from the obligation of establishing negligence. The burden of proof should be reversed to the defendant.

Thirdly, there should be speedy redressal of cases. Three things have to be done on a priority basis for this purpose: improve the institutions, upgrade the quality of the personnel and simplify the procedures.

In order to fulfil the objective of effective consumer redressal, the following legislative and administrative measures are to be taken:

- Strengthen the existing forums for consumer disputes;
- Adopt legislation for alternative dispute resolution or binding arbitration;
- Co-regulation with mandatory participation of public interest groups;
- Encourage business to establish ombudsman schemes to avoid costly and time consuming litigation;
- Business to establish consumer cells under their Chief Executives;
- Chambers of Commerce should pursue and establish:
 - Voluntary codes;
 - Consumer complaints cells;
 - Voluntary arbitration mechanisms; and
 - Information dissemination mechanisms for publicising these measures.

VIII. RIGHT TO REPRESENTATION

The right to representation (to be heard) means the right to advocate consumers’ interests with a view to receiving full and sympathetic consideration in the formulation and execution of economic and other policies, which affect consumers.

This right includes the right to representation in the Government and in other policy-making bodies as well as the right to be heard in the development of products and services before they are produced or set up. In other words, the right to representation is a right as well as a responsibility on the part of civil society to ensure that consumer interest prevails.

UN Guidelines

The Guidelines suggests various measures with respect to the right to representation. Firstly, governments should facilitate the development of independent consumer groups. Secondly, opportunities are to be provided to consumer groups for presenting their views in the decision-making processes (to speak on

behalf of consumers). Therefore, the broad objective of the right to representation is to protect consumers, particularly the disadvantaged ones, from systemic problems.

Present situation

In order to facilitate the process of representation, the government has set up different Parliamentary Committees as well as representation mechanisms in various Departments. Both the Houses of Parliament have Petitions Committees and petitions on public issues may be presented to each or any one of them. The Committee also considers representation, including letters and telegrams from individuals and associations, which are not covered by the Rules, in relation to the petitions and then gives directions for disposal.

The second important representation mechanism is that of complaints to the Government Departments (under Article 350 of the Constitution of India). The Directorate of Public Grievances handles complaints that are addressed to the Central Government. Thirdly, any individual or association can seek remedies through representation by filing writ petitions in the Supreme Court or in the High Courts. Fourthly, there is the proposal to introduce the Freedom of Information Bill, 2000, which will facilitate the process of representation. Finally, consumer and other groups are using their right to representation as members of various Committees of the Government.

However, here again the problem is that of over-burdening the justice delivery system, and the apathy of the government machinery to hear peoples' concerns.

Implementation Problems

A major problem related to representation is because of the corruption in the system itself. Corruption leads to unnecessary delays in obtaining justice. Secondly, there is a lack of effective co-ordination between different consumer organisations to ensure proper representation. The third major factor is the lack of proper handling of different representations. The apathy and lack of coordination between different administrative Departments towards consumer causes also adds to the problem.

Possible solutions

There should be a balance between the supply of and demand for justice. Secondly, the administration should be effectively trained to handle situations, as and when they arise. Thirdly, there should be a simple and holistic law to provide the right to representation, covering the entire gamut of the issue. Fourthly, and most importantly, consumer organisations should increase co-operation among themselves and other NGOs to make speedy and effective representations on important issues.

The following legislative measures are necessary for proper implementation of the right to representation:

- Strengthen the legislative intent and resource requirements to ensure the development of an independent consumer movement;
- Constitutional provision is required not only for access to information but for representation as a fundamental right of citizens; and
- Mandatory consumer impact assessment and consultation in every area of governance where consumer interests are involved.

IX. RIGHT TO HEALTHY ENVIRONMENT

Resources used in the production and consumption of goods and services should be utilised in a healthy and ecologically sound manner. This is the rationale behind the right to healthy environment. Consumers can ensure their right to healthy environment through redressal and information.

In actual practice, both in the formulation of law and the actual application of it, there is a great deal of complexity. Therefore, the issue has to be looked at from two different dimensions: quantitative as well as qualitative.

UN Guidelines

As per the Guidelines, Governments should adopt measures relating to use, production and storage of pesticides and chemicals. Governments should also ensure the inclusion of health and environmental information in the labeling of pesticides and chemicals. The Guidelines only spoke about these two issues, when there are scores of other issues that affect a consumer's right to a healthy environment. The Guidelines have now been revised to include guidelines for sustainable consumption. The elaborate mention of these in the Guidelines now lists out both the rights and responsibilities of the consumer. However, these are yet to be incorporated in government policy and/or legal measures.

Present situation

The Environment Protection Act, 1986, besides other Acts, is the most comprehensive measure with respect to the right to healthy environment. This Act provides the guidelines for the management of hazardous wastes etc., e.g. safety report, safety audit etc. The other main environmental legislations include regulation of pollution of water, air and soil. Following the Bhopal Gas Tragedy, there is also a law that defines the public liability of a polluter. However, when it comes to implementation the effectiveness of the laws gets diluted.

Implementation problems

One reason for ineffective implementation is the multiplicity of laws, which in turn leads to a multiplicity of administrative mechanisms, corruption and lack of resources to implement the laws faithfully.

Furthermore, implementation ineffectiveness is accentuated due to the confusion regarding its interpretation in legislation and those in case laws (judiciary). The third important reason is lack of awareness on the part of consumers regarding the hazardous nature of pesticides and chemicals. The fourth important reason is ineffective training of the people responsible for ensuring a healthy environment.

Possible solutions

One way to improve the situation is through enactment of sub-ordinate legislation under the broad purview of the EPA, 1986. Another effective way is to train the government officials dealing with environmental issues. The third route is through the creation of a decentralised institutional framework for diffusion of information to consumers at large.

To achieve these objectives, the following measures should be adopted:

- Strengthen legislation relating to regulation and control of pesticides and chemicals, including preventative and compensatory provisions;
- Mandatory labeling and education programmes obliging manufacturers to notify any hazards to the Government and users;

- Education programmes for users of pesticides and chemicals; and
- International co-operation in the regulation of trade in banned/severely restricted pesticides and chemicals.

X GENERAL CONSUMER ISSUES

From the foregoing discussion it is evident that in India it is not the legislative measures that are lacking in providing the consumer with the mechanism or the enabling environment for protecting the various rights we have discussed, though in certain cases some kind of legislative measures are required. The challenge is in the strengthening of the administrative mechanisms in implementing such measures, with incentives for the enforcement officials so that they perform their duties without being influenced or handicapped due to lack of resources.

The government should necessarily revamp the entire public distribution system in the country. It should ensure that the poorest, i.e. below the poverty line (BPL) population gets the maximum benefit from the PDS system. The Central Government should be able to devise a system such that the State Governments are able to lift their quota from the FCI and also ensure that the food reaches the poor. Where the State fails, the Central Government should directly allocate/purchase the food grains for the States, and accordingly adjust the amount from the central allocation of funds.

The FCI may be permitted to buy food grains from the market rather than at a pre-determined price fixed by the Government, and that too because of the pressures from the rich farmers' lobby. The FCI has to bring down the economic costs by a reduction in administrative and storage & handling costs.

The Central Government, depending on the situation, should intervene whenever the movement of essential commodities is stopped by certain states. Punishment to hoarders, black marketers and food adulterers of essential commodities should be made more severe and the penalty should be imposed in such deterrent amounts that it acts as a great disincentive for perpetrators. For this purpose, the judicial machinery has to be strengthened. Provision for special courts may be necessary to deal with such situations and to have expeditious trials.

In all other basic need issues like health, education, etc. the involvement of the community is a must. Unless people are empowered or motivated to take part in the development process, the government programmes are not likely to succeed. There are many good examples in certain pockets of India regarding this. These may be studied and accordingly replicated in other parts of the country with certain modifications to suit local requirements and needs. However, the basic question is how to remove corruption from the system, or atleast minimise it, and how to strengthen the government machinery. How do we ensure that the bureaucrats dealing with such issues, particularly at the micro level, are committed to do the work they are required to do?

One of the most important issues regarding consumers is the right to education? Do the majority of consumers really know about their rights? Do they have information as to whom they should approach in case these rights are violated? Though the Department of Consumer Affairs is taking some steps in this direction, the result is not very impressive. A strong consumer movement, which seems to be lacking, is necessary in the country for this purpose. Enough money is available with the Consumer Welfare Fund, and appropriating similar sources of credit can generate similar types of funds, which do not belong to the exchequer. Real action is needed at the grass root levels. Local consumer groups should take out a monthly factual sheet on the activities in their local areas. Local newspapers have become a cause of worry to politicians who don't bother about big newspapers as the former have a more defined local coverage.

There has to be a concerted effort in establishing consumer organisations at the block level, which would permeate the consumer protection culture to the grass root. In the state of Rajasthan, CUTS is involved in establishing consumer groups in all the 238 blocks by the year 2003. Till now more than half the

blocks have already been covered, while systematic efforts are being made to meet the target. Efforts are also being made to make them self sufficient, so that they can be more effective.

The members of the consumer courts, particularly the non-judicial members, should be given training similar to that given to the food inspectors and other Government officials, but these training programmes need to be organised by professional groups. Voluntary consumer organisations should also be given such training, particularly in taking samples of food and other items of daily use. They should be trained in testing etc. as well. The consumer organisations in turn should provide and disseminate information to the people at large. The Government should also conduct a study regarding the present state of consumer education and effectiveness of the various consumer education/information measures including that of the role of consumer organisations.

Consumer education should be made compulsory in schools. A suitable curriculum should be devised for different classes. Many consumer organisations have already done some work in this area, which needs to be further bolstered. The students should be educated not only through classroom lectures but also through real examples. The teaching methods should be participatory in nature. For this purpose, the training of teachers, particularly of those belonging to the rural schools, becomes very important. The teacher training institutes should also have a syllabus related to consumer education.

Followed by consumer education is the right to information, more particularly information related to various laws and institutions, which have a bearing on consumers on a day to day basis. The draft bill on the right to information has several drawbacks, which need to be addressed before the bill is adopted as a law.

One of the most important rights of the consumers is the right to redressal. Majority of the consumers are not sure as to whom they should approach in case the service providers or the suppliers of goods are taking them for a ride. For this purpose, the existing consumer courts need to be strengthened.

The Presidents of any consumer courts, whether at the National, State or District levels, should hold office for a minimum of five years. In any case it should not be less than three years. Preferably, a sitting judge who has more than five years of service left before retirement should be appointed. The judges should be provided all kinds of facilities as are given to their counterparts in a civil court, so that they are not hamstrung in providing redressal. Most importantly, they will need to undergo a psychological test to see how open they are to new ideas, otherwise the consumer courts will suffer and the consumers will not get speedy justice.

The Act empowers the State Governments to set up a number of courts for speedy disposal of complaints. The number of consumer courts could be decided based on the number of pending cases in the districts or in the State. The process of new appointments in the consumer courts should start well in advance, i.e. at least three months before any incumbent's term ends.

Advocates/lawyers should not be allowed to appear on behalf of the disputing parties. Accordingly, the Advocates Act needs to be suitably amended. It has been observed that due to the delaying tactics of advocates many cases have been pending in the consumer courts. The consumer courts are set up for speedy trials and all the members should be competent enough to deliver their judgement based on the COPRA. Otherwise, the whole issue of providing fair and speedy justice will remain just on papers, as has been seen in recent years.

All the above issues can be implemented usefully if the consumer movement gets involved seriously. The better-educated persons/consumers in society should also raise their voices and fight for the desired changes. Unless the consumers raise these issues, either through active participation in consumer organisations or through other groups, the question of the rights of consumers will only remain textbook material.

1

Right to Basic Needs

1.1 INTRODUCTION

1.1.1 Curtain raiser

The right to basic needs is the most crucial and fundamental of all rights. It envisages a range of instruments for the survival of a human being (consumer) and seeks to ensure a minimum standard of living necessary for human dignity.

However, it is neither correct nor legitimate to interpret ‘survival’ or the ‘survival of the fittest’ of social Darwinism. Adhering to such a notion would exclude a large section of the population from the domain of socio-economic development. In other words, fulfillment of basic needs is necessary for participatory human development; not only in the sense of growth *with* equity but in growth *through* equity.

1.1.2 Basic needs—A brief overview

Basic needs can be defined as the essential requirements for a human being’s dignified living, and those that assure integrity and unity among themselves in a larger society. The right to basic needs is fundamental for attaining social, economic and political justice in a civilised society.

Article 25 of the United Nations Declaration of Human Rights states: “Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing, medical care and necessary social services.”

Apart from the human rights aspect, basic needs have a relationship with economic and civil rights. The economic dimension of basic needs is related with the perspective of participatory development. A large section of population may be left out of the development process unless they have access to basic needs.

Furthermore, the right and access to basic needs are required for social mobility within the social structure, particularly in a stratified society as that of India. An indicator of a stratified society is the exploitation of the poor by the rich, and the perpetuation of this exploitation is due to the existence of poverty, illiteracy, superstition, ignorance and indifference among the people. In such a society, vertical social mobility is almost non-existent, and hence it is necessary to build up horizontal social mobility through the assured satisfaction of basic needs of life.

1.1.3 Why basic needs?

The answer to this question lies at the heart of the debate on poverty eradication. In the 1950s and early 1960s (during the first phase of the post-colonial era), the economic literature on poverty eradication was dominated by the inverted-U hypothesis of Simon Kuznets (1955). According to this hypothesis, with the

growth of an economy, income inequality will initially rise and then will gradually decrease over a period of time.

Thus, the hypothesis was based on the concept of relative poverty, i.e. the relative distribution of income (and hence, income inequality) between different groups within an economy. In other words, the approach towards poverty eradication was based on measures that raise the real incomes of the poor by making them more productive so that the increased purchasing power of their earnings enables them to acquire their basic needs.

In the late 1960s it was realised that the problem of poverty in developing countries cannot be resolved by looking only at the relative distribution of income. It was because of this that the concept of 'absolute (structural) poverty' started gaining significance.

In the beginning of the eighties the 'basic needs approach' started gaining wider acceptance. According to Streeten *et al* (1981), the income approach (i.e. efforts to make the poor more productive) is incomplete and partial as compared to the basic needs approach, for the following reasons:

- (1) Some basic needs can be satisfied only, or more effectively, through public services, through subsidised goods and services, or through transfer payments. The relevant question is whether the poor have the capability to access those services through increased income generation. The basic needs approach distinguished itself by investigating why these services have often failed to reach the groups for whom they were intended, or were claimed to be intended, and why they have often reinforced inequalities in the distribution of income.
- (2) Consumers (both rich and poor) are not equally efficient in satiating their needs in the area of nutrition and health. This inequality is all the more highlighted when individuals are experiencing an upward shift in their income levels, and simultaneously moving up vertically (for example, from subsistence farming activity to an industrial one).
- (3) The manner in which additional income is earned may affect nutrition adversely. For example, more profitable cash crops may replace cheap and inferior crops like millets that are grown for consumption in the family.
- (4) There is the problem of mal-distribution within households. For example, women and children tend to have a lower proportion of their needs met than do adult males.
- (5) A substantial proportion of the destitute are sick, disabled, aged, or orphaned. Their needs can only be met through transfer payments or public services, since they are incapable of earning. This group has been completely ignored by the income or productivity approach.
- (6) The income approach pays attention to the choice of technique but has neglected the means to provide for appropriate products. This leads to a wrong choice of the final product mix, i.e. the product mix may cater to the demand of only a small section of the population. An essential feature of the basic needs approach is to choose appropriate final products and produce them by using appropriate techniques.
- (7) The income approach completely ignores the importance of non-material needs. Non-material needs (e.g. participation in the development process) are important not only in their own right but as instruments for meeting some material needs more effectively, at lower costs, and in a shorter period.

1.1.4 Indicators of basic needs

Basic needs like health-care, education etc., can be achieved by various combinations of growth, redistribution of income and assets, and restructuring of production. When one talks about the indicators of basic needs, it is the composition of production or its beneficiaries, rather than the indices of total production or income distribution, which is of principal concern. It is because of these factors that one needs to consider an indicator, or a set of indicators, by which deprivation can be judged and measured, and policies directed at its alleviation/eradication can be initiated and monitored.

After having debated about the imperative of using indicators, it is necessary to look for the types of indicators. Are we looking at the *inputs* or the *results* as indicators for measuring the fulfillment of basic needs? A simple example will de-mystify the concept.

Suppose we want to measure the fulfillment of a basic need—say health-care. This can be done by looking at inputs like number of doctors per thousand persons, average number of persons served by a primary health centre etc., or by looking at the results, such as infant mortality rate, life expectancy at birth, etc.

If one uses the input-based indicators it defeats the very purpose of looking at the issue of basic needs. There are at least two reasons for this (remember the example of measuring health).

Firstly, the number of doctors does not indicate the distribution of these doctors or the degree of their specialisation. In other words, distribution of resources (here, number of doctors) may be highly skewed. Secondly, and more importantly, even if they are perfectly distributed, what is the guarantee that they will discharge their responsibilities and duties? On the other hand, indicators like infant mortality rate or life expectancy at birth indicate the degree to which the basic need of health-care has been fulfilled rather than only looking at the resources expended.

However, input measures also have their own use. By examining them, one can get an idea of the government's intentions, commitment and efforts to provide public services. In other words, for purposes of assessing policies and monitoring performance, both sets of indicators are important. Another important use of input measures is that they can be used as a 'good' proxy when appropriate output (result) measures cannot be readily found.

To sum up, the discussion on the right to basic needs focuses on the alleviation of poverty through a variety of measures rather than mere re-distribution of income, or increasing the level of productivity of the poor. In simple words, such a change in focus supplements attention to *how much* is being produced, by also looking at issues of *what* is being produced, in *what ways*, for *whom*, and with *what impact*.

The next important step is to identify the elements of the basic needs basket. At the outset, it needs to be mentioned that the basket is not exhaustive, i.e. over time more and more elements are being added to it.

1.1.5 Basic needs—The Charter of Consumer Rights

The UN guidelines have specified three areas in relation to basic needs (Box 1.1). However, the Charter of Consumer Rights drafted by Consumers International (formerly the International Organisation of Consumer Unions), has identified six types of goods and services that come under the purview of basic needs. In the goods category, there are two: food and clothing. Healthcare, drinking water & sanitation, shelter and education are in the service category. For any society, it is necessary to add two more essential services-energy and transportation- in the domain of basic needs.

Box 1.1: UN Guidelines on Right to Basic Needs

- Ensure food security;
- Improve the quality and appropriate use of pharmaceuticals through an integrated national drug policy; and
- Develop, maintain and strengthen national policies to improve the supply, distribution and quality of drinking water.

After the identification of the elements of the basic needs basket, it is necessary to look at the indicators of those elements (Box 1.2).

Box 1.2: Indicators of Basic Needs		
Elements	Input-oriented	Result-oriented
1. Food	Per capita availability	Calorie supply as percent of requirements
2. Clothing	Per capita availability	—
3. Health care	Population per Primary Healthcare Centre	Life expectancy at birth
4. Drinking water & sanitation	Households with safe drinking water Households with toilet facility	Infant mortality rate Do
5. Shelter	Population per household	Percentage of households living in kutchha houses
6. Education	Institutions per sq. km.	Literacy rate
7. Energy	Per capita consumption	Households with electricity
8. Transportation	Road length per sq. km.	Surfaced road as percent of total road length

1.1.6 Present situation in India

In the early 1970s, there had been a shift in the development doctrine—from trickle down to that of ‘basic needs’. It was recognised that there was no effective social security system for the bottom 20 percent of the population. The 42nd Amendment (1976), to the Constitution of India, incorporated the word ‘socialist’ in its Preamble. However, even today, the performance of India in providing the basic needs of life is not up to the mark. In fact it is quite dismal as can be observed from Table 1.1.

The concern for the issue of consumer protection (especially regarding the fulfillment of the right to basic needs) in India, got sharpened due to the following stipulations under the 20-Point Programme announced in 1976.

- Bring essential consumer goods within easy reach of the poor;
- Restructure the distribution system so that subsidies reach the most needy;
- Strengthen the public distribution system; and
- Build a consumer protection movement.

The basic objective of the 20-Point Programme was eradication of poverty. However, though some progress has been made in realising that goal, a vast population of India is still living below the poverty line. Table 1.2 provides state-wise (major states only) and area-wise (rural and urban) data on population below the poverty line in 1973-74, 1993-94 and 1999-2000 as per the estimates provided by the Planning Commission.

There has been a drastic fall in the poverty ratio from 54.9 percent in 1973-74 to 22.1 percent in 1999-2000 at the all India level as per the Planning Commission estimates. This seems to be a miraculous achievement. However, the estimation of the poverty ratio by the Planning Commission has been criticised by many economists.

Table 1.1: Indicators of Basic Needs in India					
Indicator	Unit	Year		Year	
Food grain availability	Kg/annum/capita	1997-98	223	1983	191
Fabrics	Sq. Mts/annum/capita	1997-98	26.9	1981	16.1
Households living in pucca houses	Percent	1991	41.6	1981	32.7
Households living in kutcha houses	Percent	1991	27.4	1981	34.0
Primary health centres	Population/unit	1995	28225	1991	27942
Hospital beds	Population/bed	1995	874	1991	1036
Households with safe drinking water	Percent	1991	55.9	1981	26.3
Households with toilet facility	Percent	1993	12.0	1991	8.84
			(Rural)		(Rural)
		1993	62.2	1981	57.44
			(Urban)		(Urban)
Primary education institutions	Pupil/institution	1992-93	177	1980-81	149
	Institution/sq. km	1990-91	0.17	1980-81	0.15
Middle level educational institutions	Pupil/institution	1992-93	215	1980-81	174
	Institution/sq. km	1990-91	0.05	1980-81	0.04
Households with electricity	Percent	1997-98	42.3	1980-81	14.3
Electricity consumption	kilowatts/capita	1997-98	322	1980-81	175
Road length	Km/sq. km	1996-97	0.73	1980-81	0.45
Un-surfaced road/total road	Percent	1996-97	54.1	1980-81	43.5
<p>Note: * Data for triennium ending 1998 and 1996 are taken; # Primary as well as community health centre, and only rural population is considered; \$ total population is taken; @ total generation is taken as electricity consumption.</p> <p>Source: Basic Statistics Relating to State of Indian Economy, Centre for Monitoring Indian Economy, September 1994 and March 2000</p> <p>Basic Statistics Relating to Infrastructure in India, CMIE, March 2000</p> <p>Statistical Outline of India 1998-99, Tata Services Ltd, Department of Economics and Statistics, Mumbai.</p>					

Though there has been an achievement (not to talk about the problem of estimation) in terms of poverty reduction in the country (indirectly reflecting improvement in the basic needs of the population), the incidence of poverty remains one of the highest in the world.

It would be useful to arrive at a composite index to rank the states in terms of fulfilling basic needs. However, as discussed in section 1.1.4 about the result achieved through application of inputs not being available in certain cases, developing a composite index may not reflect a true picture.

Instead of looking at a composite index, a better alternative is to narrow the range of indicators to one or two indicator(s), which are closely related to other indicators of basic needs. Life expectancy at birth may be one such indicator. In India, during the period 1981-88, life expectancy at birth was 56 years. As of today, it is 64 years—not much progress in the last decade!

Till today, there is no over-reaching policy in India to address the issue of basic needs and the right to basic needs, holistically. Holistic policy, however, does not mean centralisation of the issue. By holistic policy we mean a broad macro direction to the problem within the framework of Indian national culture, to be implemented at the local level, and by local authorities, viz. indicative planning.

The framework of Indian national culture is defined in the Chapters on Fundamental Rights and Directive Principles of State Policy of the Indian Constitution. In sum, the concept of basic needs and the right to basic needs have holistic as well as multi-dimensional perspectives and, therefore, the issue should be approached from different viewpoints, keeping in mind the cultural and societal diversity in India.

The figures in Table 1.3 indicate some basic indicators across the states in terms of achievement of minimum needs. There is quite a lot of variations in terms of various indicators. Since most of these needs fall under the State Governments, some states have done much better than others as the table shows.

Table 1.2: Incidence of Poverty			
<i>Unit: In percentage</i>			
State	1973-74	1993-94	1999-2000
Andhra Pradesh	48.9	22.2	15.77
Assam	51.2	45.0	36.09
Bihar	61.9	55.0	42.60
Gujarat	48.2	24.2	14.07
Haryana	35.4	25.1	8.74
Karnataka	54.5	33.2	20.04
Kerala	59.8	25.4	12.72
Madhya Pradesh	61.8	42.5	37.43
Maharashtra	53.2	36.9	25.02
Orissa	66.2	48.6	47.15
Punjab	28.2	11.8	6.16
Rajasthan	46.1	27.4	15.28
Tamilnadu	54.9	35.0	21.12
Uttar Pradesh	57.1	40.9	31.15
West Bengal	63.4	35.7	27.02
India	54.9	36.0	26.10
<i>Source: 1) Basic Statistics Relating to States of India, Centre for Monitoring Indian Economy, September, 1994,</i> <i>2) Planning Commission estimates</i>			

1.1.7 Problems of implementation

Whether a plan model would work well or not is determined by three factors: consistency, feasibility and implementation. According to Chakravarty (1986), the failure of Indian planning is mainly that of implementation. According to him, an implementation failure may be said to arise if one or more of the following conditions hold:

- Planning authorities are plainly inefficient in gathering the relevant information within the range of required precision;
- Planning authorities respond with considerable time lags when the underlying situation changes; and
- Agencies through which the planning authorities are supposed to implement plans have little or no capacity (in some cases, motivation) to carry them out. There are two important sub-cases: a) publicly owned agencies, which operate largely according to 'non-price' signals (such as government 'orders'), and b) private agencies, whose behaviour is largely determined by the profit motive. In the latter case, the plan may have projected a product mix on grounds of social desirability, which may not be optimal for the agency concerned.

The failure to fulfil basic needs in India can be attributed to a combination of the three factors mentioned above. In such a situation, the question then arises as to whether the fulfillment of basic needs should be left to the market system.

To find an answer to this question, one has to recall Friedrich List's main criticism of the free market system. According to List (1928), the free market system attached too much importance on 'production' and too little to 'productive power'. In India also, too much emphasis is being given to the rate of growth of per capita gross national product, whereas there is inadequate emphasis on increasing the productive power of a vast majority of the population through the fulfillment of basic needs which, in turn, helps in increasing the productive power of the nation.

Having said this, it is necessary to find a solution to the problem posed above, which is not easy in a diverse country like India. However, one solution lies at the heart of the Indian Constitution (though more *unitary* in nature than *federal*). The solution can be found in the *Panchayati Raj* (local self-government) system (with its objective of participatory economic, social and political development) and the associated concept of local area planning.

There has to be a vertical division of responsibilities (including that of resource generation) between the Centre, the States, and the local level institutions in activities based on the likely "spread effects". In simple words, the States should acquire the responsibility of exercising those activities (through local level institutions) where the spread of their effects are most conspicuously felt within the concerned State itself. Some examples of those activities are agriculture, small and micro enterprises, health, education, supply of drinking water and sanitation, housing etc.

Table 1.3: State-wise Data on Basic Needs Indicators					
State	X ₁	X ₂	X ₃	X ₄	X ₅
Andhra Pradesh	203	44.1	66	0.63	55.2
Assam	146	52.9	78	—	15.2
Bihar	121	38.5	67	0.12	36.1
Gujarat	137	61.3	64	1.15	84.8
Haryana	483	55.9	69	0.53	89.6
Karnataka	172	56.0	58	0.56	61.8
Kerala	52	89.8	20	0.23	27.1
Madhya Pradesh	242	44.2	97	0.96	60.3
Maharashtra	157	64.9	49	1.31	61.4
Orissa	201	49.1	98	0.34	10.8
Punjab	782	58.5	54	0.43	80.9
Rajasthan	214	38.6	83	0.67	53.2
Tamilnadu	122	62.7	53	0.17	63.4
Uttar Pradesh	228	41.6	85	0.15	48.9
West Bengal	126	57.7	53	0.40	46.8
India	191	57.7	72	0.52	53.0
Note: X ₁ : Per Capita foodgrain availability (Kg per year) during 1983 X ₂ : Literacy Rate, 1991 X ₃ : Infant Mortality Rate during 1998 X ₄ : Homeless Households in 1981 X ₅ : Length of surfaced road as percentage of total road length in 1998-99 Source: Ministry of HRD, website, Department of Family Welfare, Ministry of Health, website Basic Statistics Relating to States of India, CMIE, September, 1994					

1.1.8 Some recent policies of the Government of India

Even after half a century of India's independence, the provision of basic services, particularly in the rural areas, remains far from satisfactory. About 40 percent of villages are without proper roads; 1,80,000 villages do not have a primary school within 1 km; 1,50,000 villages have drinking water problems; there is a shortage of 14mn rural dwelling units; rural health infrastructure suffers from large deficiencies. The government has pledged its commitment to remove these basic problems and has given 'rural development' high priority in its agenda for 2000-2001 and 2001-2002. Rural development has been integrated with the agriculture sector for this purpose.

Universalisation of elementary education has been identified as one of the key objectives. A new Department of Elementary Education and Literacy has been created under the Ministry of Human Resources Development to give a new thrust and focus to these efforts. To tackle the drinking water problem effectively, a new Department of Drinking Water Supply in the Ministry of Rural Development has been set up with the objective to provide drinking water facilities in all rural habitations in the next five-years.

To impart greater momentum to these efforts, a new scheme called the "*Pradhan Mantri Gramodaya Yojna*" was launched in 2000. The objective of the scheme is to undertake time bound programmes to fulfil the above-mentioned critical needs of the rural people. A sum of Rs. 50,000mn has been provided for this scheme in the budget for 2000-2001. Out of this a sum of Rs. 25,000mn has been earmarked for launching a nationwide programme of constructing rural roads and improving rural connectivity.

Under the scheme Central assistance is to be provided to the States for implementing specific projects in these sectors. The concerned Ministries in the Central Government lay down the guidelines and monitor the implementation of these programmes. The erstwhile Basic Minimum Services Scheme has been merged with the new scheme. This makes the overall provision in the budget for schemes concerning the basic needs of the rural population to more than Rs. 1,30,000mn.

With the above issues as a backdrop, the eight basic needs are briefly analysed in the subsequent sections.

1.2 RIGHT TO FOOD

1.2.1 A brief overview

Though the right to food is considered predominantly an economic right for survival, right to food is indispensable for human development. Therefore, the right to food for the poor is also linked to the rights to land, work (just wages), health, a clean environment (energy), and an equitable economic order.

Thus, the consumers' right to food is fundamentally related to food security and food entitlement (nutrition). With respect to the right to food, the United Nations Guidelines for Consumer Protection, 1985, state that the State should take into account the need of all consumers for food security when formulating national policy and plans with regard to food.

Ellen & Uvin (1995) state, "Bearing in mind the right to an adequate standard of living, including food, contained in the Universal Declaration of Human Rights, we pledge to act in solidarity to ensure that freedom from hunger becomes a reality".

1.2.2 Definition and objectives

Food security is a complex issue in India (or for that matter in any poor country). Broad estimates of poverty in India vary between 250mn to 300mn. Given such a broad base, even if there is some reduction in the incidence of poverty (i.e. the reduction in percentage of population living below the poverty line), the absolute number of poor would not fall much in the near future. With such a level of poverty, it is necessary to distinguish between food availability and food security. For example, as of today, India is witnessing a

paradox, i.e. there is sufficient food but yet there is hunger. Therefore, availability is only an aspect of food security, not the issue itself.

Food security on the demand side has to cover a) availability, b) ability and c) access. In simple terms, availability deals with the distributional aspects of the food available in the economy. Ability is whether a consumer is able to pay for the available food. Access is little more than availability and ability, and deals with various socio-political dimensions of food security, even when food is available and consumers are supposedly able to pay for it. However, when the food is available and consumers have access, but are not able to pay for it, then the problem is purely of low purchasing power.

On the supply side, the issue has to cover: a) policy, b) pattern and c) production. Policy has to address the question of food policy under different perspectives. Pattern is about cropping, and dynamics of international trade and price policy affecting it. Production deals with the overall supply of food and agricultural policy affecting production.

1.2.3 The economics of food security

As mentioned above, per capita food availability is a subsidiary element in the food security equation, nationally as well as internationally. The issue of food insecurity fundamentally reflects inequities in existing economic and social arrangements.

There are four fundamental aspects of these arrangements. They are:

- The distribution and ownership pattern of tangible as well as intangible assets;
- The exchange mechanisms within and across borders;
- The existing social security system in the country; and
- The social structure of a community, and the (social) dynamics of interaction between different communities at the local level.

Of these, the first two have traditionally been in the domain of economics, and determine the consumer's ability to buy food. The next two aspects are dealt through an understanding of the sociology of food security, and are fundamentally linked with access to food.

It is also necessary to explain the factors responsible for breaking the link between food production and food security. The issue can be approached from two different angles: labour market conditions and commodity market conditions.

A fundamental law of the market is that of the human propensity to trade, barter and exchange. However, the question is whether the market assures everyone's survival? Classical economists have answered this question through their notion of "subsistence level of wages". For instance, the Malthusian theory of population is based on this notion.

What is the modern counterpart of subsistence level of wages? The answer is efficiency wage hypothesis, which links effort and nutrition. With a given level of expenditure on wages, a profit maximising employer will offer that wage which would maximise the effort (productivity) that the employees can make. Naturally, a worker entitled to less food cannot compete with a well-fed fellow. An employer will then have no incentive to reduce the wage rate.

In a labour surplus economy, this will result in unemployment and thus, will reinforce the link between less food entitlement and unemployment. Therefore, not only the per capita availability of food but food entitlement (which depends on many factors of which distribution is a major one) is a major element of the food security equation.

The second place where the link between food production and food security may be broken is the commodity market. In this case, one will find conflict of interests between producers and consumers. Take, for example, a situation of good food grain harvest. The conventional theory of the product market states

that given a constant level of demand for a product, if there is an increase in supply then there would be a fall in the product price.

In that case, the food security of landless labourers and urban poor will improve (by taking into account availability of food and ability to buy it). On the other hand, the food security of marginal and small producers will deteriorate, unless there is enough food for self-consumption. In the former case, the food security situation improves due to increase in real wage rate. While in the case of the latter, the food security depends on effective entitlement (with the possibility of a fall in real wage rate). Here, it is necessary to mention that food security also depends on the existing “control mechanism” over food at the local level.

A comparative analysis of the Bengal famine of 1943 and the Bangladesh famine of 1974 will simplify the analysis of the contrasting situations as mentioned above.

The Bengal famine of 1943 is an example of how weak the inter-linkage between food production and food security is. The famine was not the result of a bad harvest. Yet people died because of lack of entitlement over food. In fact, due to lower prices, food grains actually moved out of food deficient areas. The farmers had no control over their production.

On the other hand, the Bangladesh famine of 1974 was due to heavy floods and resultant crop failure. The real wages fell because of high food prices and non-availability of gainful employment.

To summarise, food production is definitely a factor in the food security equation but not the sole factor. Labour and commodity market distortions have vital roles in explaining the weak link between food production and food security. Furthermore, the distribution and ownership pattern of tangible and intangible assets have links with the control over food and hence, over consumer’s access to food (especially of marginal and small producers who are consumers as well).

1.2.4 Government Policy

In India, the objective of ensuring food security for the poor is dealt through various welfare-enhancing institutional measures/systems. Among important measures/systems are the public distribution system (PDS), employment guarantee scheme, community managed PDS and grain banks etc. Inter-linkages between these measures/systems and food security as defined in Section II will be clear if *the objective is to improve the welfare of the poor*. In simple terms, consumers’ welfare depends on, among others, the availability, access and ability to obtain goods. At the same time, overall production, the production pattern as well as policies affecting the production system, in turn affect the above factors.

This Section primarily deals with the issue of the PDS as a welfare measure for the poor, and discusses its effect on their food security. However, it also analyses two alternative measures/systems affecting the right to food for the poor, and their welfare.

The PDS in India started during the Second World War. The objective then was to prevent misallocation of food grains between urban and rural areas. As mentioned before, the Bengal famine of 1943 was not due to crop failure, but due to hoarding by traders and middlemen, coupled with the lack of government policy to prevent food from going out of the rural areas. Hence, the idea was to ensure food availability in rural areas through statutory urban rationing. Immediately after independence, the first five-year Plan stressed the need to increase farm output. However, the second five-year Plan (1956-61) reduced the financial outlay for agriculture in favour of industry.

At that time, the objective of the PDS was to supplement capital formation for industrial development. This was possible because the food obtained through PDS was largely procured through food aid. The underlying idea was “food as capital”; a phrase popularised by the noted Cambridge economist, Nicolas Kaldor.

The situation has changed over time, and so has the objective of the PDS. Since the mid-1960s, there were two major objectives of the PDS. The first was to reduce food insecurity. The second objective was

to achieve self-sufficiency in food production through guaranteed outlets for farmers. The instrument to achieve the first objective is the creation of a wide network of fair price shops, supplying products at subsidised prices. In 1957, 18,000 fair price shops were part of the PDS, and in recent years, the number has gone up to 4.6 lakhs.

The second objective was accomplished through the creation of the Food Corporation of India in 1964, and by setting up of a system to determine agricultural procurement prices in 1970.

In recent times, a third objective has also been incorporated, viz. to enhance the welfare of the poor by ensuring a fixed quota of food grains availability at subsidised prices through the targeted public distribution system (TPDS). The system follows a two tier subsidised pricing structure for families below the poverty line (BPL) and for those above the poverty line (APL), with the former representing the poorest of the poor.

The PDS is one of the most important welfare programmes in India, on which the Government of India spends about Rs. 90,000 mn per year (Mooij, 1999). In the recent past, this amount was 50 percent of the Government spending on the anti-poverty programme and 2.5 percent of the overall Central Government expenditure (Radhakrishna et al, 1997)

1.2.5 Existing System

The existing system of ensuring and implementing the right to food (and thus enhancing the welfare of the poor) is to be analysed under three inter-related frameworks: legal, administrative and enforcement mechanism.

Legislative

Legislative measures with respect to the right to food are not specifically mentioned in the Constitution of India. However, the Chapters on Fundamental Rights and Directive Principles of State Policy enacted certain justifiable as well as non-justifiable rights in relation to that.

Article 21 (Fundamental Right) states that no person shall be deprived of his life and personal liberty except according to procedure established by the law [emphasis added]. Commenting on Francis Coralie Vs. the Union territory of Delhi (1981 1 SCC 608, AIR 1981, SC 746) case, the former Chief Justice of India, P N Bhagwati said: “We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head.”

The objective of the Directive Principles is to achieve a Welfare State (among others, ensuring basic needs) by supplementing Fundamental Rights. Article 37 states that the State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to adequate means of livelihood. Article 47 calls upon the State to raise the level of nutrition and the standard of living and to improve public health.

For the limited purpose of market regulations, there are few laws governing food. The Essential Commodities Act, 1955 has the objective: “to ensure equitable distribution and availability at fair prices of essential commodities.”

Essential commodities are those that the Union Government may notify and declare to be essential for the purpose of this Act. The production, supply and distribution of any essential commodity can be regulated or prohibited by the Union Government by an order under this Act. A supporting legislation is the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

Another important legislation is the Food Corporation of India Act, 1964. The object of the Act is to ensure minimum prices to primary producers, and to protect consumers from the vagaries of speculative trade. The primary function of the Food Corporation of India is to undertake the purchase, storage, movement, transport, distribution and sale of food grains and other foodstuff.

Administrative measures

Among the administrative measures ensuring the enhancement of the welfare of the poor, the PDS is the most important one. While the PDS is under the purview of the Union Government, which provides subsidised food grains, kerosene, cloth etc., the State Governments are required to implement it through their Food and Civil Supplies Departments. Entry 27 of List II (State List, Seventh Schedule of the Indian Constitution), states: “Production, supply and distribution of goods subject to the Provisions of Entry 33 of List III.”

Subsequently, Entry 33 (b) of List III (Concurrent List) states: “Trade and commerce in, and the production, supply and distribution of foodstuffs, including edible oilseeds and oils.” Thus, existing administrative measures give a framework for overarching policy at the Union level, to be implemented at the state and local levels by state and local authorities (Entry 5, List II).

A related administrative measure is with respect to Agricultural Policy (Procurement and Distribution). The FCI provides the administrative framework for procurement and distribution of food through the PDS. Procurement is done through announcement of post-harvest procurement prices. The use of levy is mostly avoided.

Implementation mechanisms

The enforcement is mainly done through the PDS. Under the old system, every citizen was entitled to get a fixed amount of food and other items, provided they/their family had a ration card. The PDS operates through mostly privately owned Fair Price Shops (FPS). In some places consumer co-operatives run the FPS. Normally, food grains are sold twice a week; in some cases, even twice a month. However, there is no provision that one will receive her/his quota after the stipulated date.

The existing mechanism has another feature. Presently, the PDS follows a three- tier pricing structure: for families above poverty line (APL), for families below poverty line (BPL), and a special category representing the poorest of the poor, known as *Antodaya*. As per the latest arrangement the *Antodaya* families are given food at highly subsidised prices through fair price shops, while the BPL (ordinary) families are given food items at higher rates, although subsidised. The APL families are not entitled to subsidised food. Targeting of the poor is done through local level certification.

1.2.6 Drawbacks of the System

According to Prof. M. L. Dantwala, an eminent agricultural economist of India, the PDS should be viewed as an income transfer in favour of the poor. Hence, drawbacks can be identified and pointed out only if that objective is not fulfilled. Income transfer is defined an implicit subsidy given under the PDS.

Many studies have been conducted on the effectiveness of the PDS. A study by Kirit Parikh (Parikh, 1994), pointed out that both implicit subsidy and targeting effectiveness are poor. The reasons behind such poor targeting and income transfer through implicit subsidy, as per Parikh, are:

- Wastage due to lack of storage and transportation facilities;
- Transportation bottlenecks resulting in poor availability, especially in rural areas; and
- Rampant corruption, and lack of awareness on the part of consumers.

As discussed earlier, the PDS was created to resolve the food security problem. In the wake of the structural reforms introduced in 1991, the PDS has been increasingly criticised. The criticisms are based on the following factors:

- The drain in exchequer because of the huge amount of subsidy.
- There are considerable leakages. Food that is meant to be sold at fair price shops sometime never reaches the cardholders, because it is lost or sold illegally to others.

- Persistence of malnutrition. Despite the huge subsidy and large-scale intervention, the food security of many vulnerable households is still marginal or insufficient. Distribution to the states has not been proportionate to the number of poor people in each state, and within states the available supplies have not reached the poor to the extent it was desired (Tyagi, 1990).

This is besides the general lack of food availability through the PDS, as witnessed in 1990s. According to the Indian Council of Medical Research, the government would need to distribute a minimum of 32.4 million tonnes of food grains per annum through the PDS for survival. Yet, between 1990 and 1993, the government reduced the total availability of food grains through the PDS from 20.8mn tonnes to 15.1mn tonnes. These estimates are based on Alternative Economic Surveys (the official data show opposite trends).

The reduction of availability of food grains may have arisen because of the difference in allocation and the off-takes. Table 1.4 shows that that the off take of food grains by the states under the PDS varied from 53 percent to 88 percent (Datt, 2000). There was a steady decline in percentage of off take from 87.5 in 1991-92 to 53.3 in 1994-95. Thereafter it started increasing and reached 81 percent in 1998-99. Sharp fluctuations in the offtake is either due to narrow margins between the open market and the issue price (see box 1.3), or the low release of PDS supplies by the Government to the dealers, or the lack of commitment to the PDS programme (Datt, 2000).

Table 1.4: Foodgrains Allocation and Offtake Under PDS							
	Allocation (Million Tonnes)			Offtake (Million Tonnes)			
	Wheat (1)	Rice (2)	Total (3)	Wheat (4)	Rice (5)	Total (6)	6 as % of (3)
1991-92	10.36	11.36	21.72	8.83	10.17	19.00	87.5
1992-93	9.25	11.48	20.73	7.85	9.69	17.54	84.6
1993-94	9.56	12.41	21.97	5.91	8.87	14.78	67.2
1994-95	10.80	13.32	24.12	4.83	8.03	12.86	53.3
1995-96	11.31	14.62	25.93	5.29	9.46	14.75	56.9
1996-97	10.72	15.16	25.88	8.52	11.14	19.66	76.0
1997-98	10.11	12.83	22.94	7.08	9.90	16.98	74.0
1998-99	10.11	12.93	23.04	7.95	10.74	18.69	81.1
<i>Source: Economic Survey, Ministry of Finance, Government of India (1999-2000)</i>							

The drawback of the PDS can be gauged from table 1.5. There are considerable regional disparities in the quantities of foodgrains distributed under the PDS. The pattern of distribution of grain does not seem to be related to the extent of poverty as reflected in Table 1.5. For example Kerala, which had one of the lowest incidences of poverty, had benefited more than a very poor state like Bihar.

Table 1.5: State-wise Distribution of PDS Foodgrains and Poverty			
States	Average Annual Lifting of PDS Foodgrains (1986-96) in Thousand Tonnes ^a	Per Capita Distribution of Foodgrains (1993-94) (Kilos per year) ^b	Percentage of People below the Poverty Line ^c
Andhra Pradesh	2,396	33	22
Bihar	527	6	55
Gujarat	801	13	24
Haryana	97	5	25
Karnataka	900	18	33
Kerala	1,776	63	25
Madhya Pradesh	481	6	43
Maharashtra	1,489	13	37
Orissa	426	12	49
Punjab	24	1	12
Rajasthan	662	13	27
Tamil Nadu	1,011	19	35
Uttar Pradesh	661	4	41
West Bengal	1,454	19	36
India	15,309	16	36
Source: a. Government of India, 1997, b. Radhakrishna et al, 1997, c. Government of India, 1997 (quoted from Mooij, 1999)			

The effectiveness of the PDS could be judged by the extent to which the poor have benefited. A study carried out by Mahendra Dev (Dev, 2000) for the rural and urban areas of West Bengal and Maharashtra, showed that the target ratio (Number of poor people using the PDS to total number of people using the PDS) for urban West Bengal varied from 35.7 percent in the case of wheat to 64.5 percent in the case of rice. For rural Bengal the ratio varied from 39.8 percent in the case of wheat to 51.3 percent in the case of rice. For urban Maharashtra, the variation of ratio is 52.4 percent in the case of rice to 61.3 percent in the case of wheat. In the case of rural Maharashtra the coverage seems to be better with the ratio ranging from 53.9 percent for wheat to 56.9 percent for rice.

The percentage of the poor to the total poor using the PDS facilities varies from 19.1 in rural Bengal in case of rice to 23.4 percent in the case of coarse cereals, implying that a large section of the rural poor is not being benefitted by the PDS. The situation in rural Maharashtra seems to be better where the percentage of rural poor to the total poor using PDS has been 39.3 percent in the case of wheat and 60.5 percent in the case of coarse cereals (Dev, 2000). In Maharashtra, rural areas showed better coverage than urban areas in the case of food grains whereas in West Bengal urban areas were better covered than the rural areas.

It was also observed from the analysis of data for West Bengal and Maharashtra that the PDS does not particularly favour the poor. In fact the rich get a slightly higher proportion (Dev, 2000). Another study (Parikh, 1994), done in the case of rural areas for the year 1990 showed that in 9 states out of the 15 states, targeting effectiveness was poor in the sense that the ratio was less than 1. Parikh analysed this in the case of the bottom 20 percent of the households.

From the above discussion it has been observed that the poor in India have not been benefited to the extent that it was desired as per the government's policy and programmes, taking into account the food security issue.

1.2.7 Implementation Problems

Apart from the drawbacks of the system in terms of targeting, income transfer and reduced availability, there are structural problems in implementation. The reasons for such problems are within the socio-economic and political structure of India.

The core of the problem is the almost non-existent bargaining power of the bottom 20 percent of the population. However, it does not mean that the rest of the 80 percent of the population necessarily have this bargaining power. The political economy in India is such that only the rent seekers have effective bargaining power. On the other hand, the social structure in India is still not conducive for vertical social mobility. The non-existence of vertical social mobility (i.e. social rigidity), has its effect on access to basic needs like food.

The structural (practical) problems are listed below:

- It is often being witnessed that even adjacent villages have different food availability, and yet no transaction takes place. This problem is due to market distortions like poor networking, lack of information etc.;
- Sometimes food is available, yet the poor are unable to buy it. This problem is particularly acute for agricultural labourers and other daily wage earners. The reason is lack of coordination between the time of wage disbursement and the working hours of the fair price shops;
- Yet another problem is with respect to migrant labourers. Due to the absence of a permanent address, they are unable to get a ration card, and thus do not have access to the PDS.
- Over time changes in food habits also have their effect on access to food, especially in tribal areas (Jha, 1992)
- Poor profit margin for the FPS owners has manifested into inherent corruption within the system (see Box 1.3).

Box 1.3: Why Corruption and Non-transparency in the System?

This view was expressed by Bhairon Singh Shekhawat, Chief Minister of Rajasthan at the Chief Ministers' Conference on May 24, 1997, New Delhi. The agenda of the conference was to improve governance and make the system more responsive to people.

The issue of transparency in the PDS is related to low margins allowed to FPS dealers. For example, for distribution of sugar in the PDS, the margin of Rs. 8.22 per quintal with Rs. 15 as the price of the empty bag is allowed. The average dealer in the concerned State gets the monthly quota of 10 bags of one quintal each. Thus, the margin received by such dealers in PDS sugar sales comes to about Rs. 240 per month. Taking both sugar and wheat into account, the monthly income of a dealer comes to about Rs. 690.

How can one expect honesty with such low margins? The FPS dealer does not work with an altruistic motive and everyone knows how he covers his losses. Therefore, if we wish to have a transparent PDS system, then there should be adequate margins for FPS dealers.

For this, Shekhawat suggested that the State Governments should be free to decide the sale price of commodities in the PDS at the State level by adding appropriate cost margins to the issue price of FCI for these commodities.

Another problem related to implementation is to provide food to the poor at affordable prices. The policy makers in recent years as well as the critics have been more concerned with fiscal problems rather than with food security for the poor. In an attempt to bring down the subsidy, the Government of India has raised the PDS retail prices several times. This increase has been mainly due to the increase in cost of procuring food grains. Between 1995-96 and 1999-2000, the procurement price of paddy has been raised by 36 percent and that of wheat by more than 50 percent (Reddy, 2000). Added to this is the FCI's Operational Cost. For example, in 1999-2000 the FCI's economic cost of wheat was 58 percent higher over the

procurement cost. In rice it was 30 percent (Reddy, 2000). This may not curtail the food subsidy to the extent the Government thought since the procurement is not going to be reduced. The FCI has to keep more stocks, which in turn will lead to further increase in costs.

It may not always be possible to identify the BPL families in the PDS scheme. Implicitly, the Government of India also acknowledged that the identification of beneficiaries could be problematic. In a situation of severe maladministration and a non-functioning delivery system, one therefore cannot expect that allotted quantities will reach the beneficiaries. But this does not mean that the PDS system should be completely abolished. Alternatives have to be formulated.

1.2.8 Quest for Alternatives

The PDS in its present state is not effective in enhancing the welfare of the poor by ensuring adequate food availability for them. A major reason is the anomaly between the stated objective and its implementation. Therefore, a crucial factor for enhancing the welfare of the poor is to define on what basis subsidised food is supplied through the PDS. From the objective already mentioned one can discern that the basis is the benefit principle, i.e. to benefit those who do not have either the ability or access to minimum levels of food (see Box 1.4).

Box 1.4: PDS—A Success Story!
<p>Bastar and Sarguja are two tribal districts of Chhattishgarh state, which was earlier a part of Madhya Pradesh. Many things are common between them. However, one uncommon factor is the implementation of food security through the PDS. The Bastar district Civil Supplies Department set up mobile ration shops on trucks to provide subsidised food grains, salt, kerosene and cloth to the 219 weekly <i>haats</i> (markets).</p> <p>One of the reasons for the success of the scheme has been its harmony with the tribal way of life. Tribal people normally barter their goods within their neighbourhood. Bearing this in mind, the Civil Supplies Department began supplying subsidised food grains without demanding ration cards at the weekly <i>haats</i>. For the tribals, haat is not a market only, but a veritable socio-cultural institution.</p> <p>Thus, the Bastar model of reaching down provides an example of the success of local area planning based on the benefit principle, and not on just the ability to pay. On the other hand, there were a large number of starvation deaths in Sarguja at around the same time. One major reason for the starvation deaths in Sarguja was the failure of the PDS.</p>

On the other hand, when it comes to implementation, the basis of the objective has changed to ability to pay, *albeit* implicitly. In other words, over the years the PDS has increasingly been catering to the needs of a small section of population, i.e. those who have purchasing power. This is the reason why the PDS off-take fluctuates more often than not (Table 1.4 and Table 1.6).

A couple of important queries arise from Table 1.6. First, whether the fluctuations in the PDS off-take is due to change in procurement or in buffer stocks? The answer is neither, because the indices as provided in Table 1.6 have positive as well as negative values. The second query is whether the fluctuations in the PDS off-take are related to the over all production in food grains? Here, the answer is no, because the correlation between the fluctuation index and the production of food grains is only 0.19, which is not significant.

Table 1.6: Foodgrains: Production, Procurement, Distribution and Buffer Stock							
Unit: Million Tonnes							
Year	Production	Procurement *	Rice	Wheat	Public Distribution	Buffer Stock	Fluctuation Index @
1985	150.44	20.1	9.6	10.4	15.8	25.2	—
1986	143.42	19.7	9.1	10.5	17.3	23.6	-4.77
1987	140.35	15.7	7.7	7.9	18.7	14.1	-0.39
1988	169.62	14.1	7.3	6.6	18.6	9.6	0.01
1989	171.04	18.9	9.9	8.9	16.4	12.1	-0.03
1990	176.39	24.0	12.8	11.1	16.0	19.1	-0.09
1991	168.37	18.2	10.5	7.8	19.1	12.2	0.02
1992	179.48	18.9	12.6	6.4	17.2	14.7	0.10
1993	184.49	27.2	14.4	12.8	17.9	22.2	0.09
1994	191.12	25.3	13.4	11.9	18.7	27.7	-0.63
1995	187.00	22.3	10.0	12.3	25.8	23.3	-3.21
<p>Note: * Procurement figures are not equal to the sum of rice and wheat procurement figures because of the procurement of coarse cereals; @ Fluctuation is calculated as the procurement elasticity of buffer stocks.</p> <p>Source: Singhal (1996)</p> <p>Statistical Outline of India, 1996-97, Tata Services Ltd., Department of Economics and Statistics, Mumbai.</p>							

Therefore, the argument is that fluctuations in the PDS off-take have nothing to do with the total production of food grains or the procurement of food grains. Hence, it can be safely concluded that the PDS model itself is not bad for ensuring food security in India, but what is lacking is poor implementation of the model which, in turn, is due to the lack of clear policy guidelines.

1.2.9 Mix of policies required

PDS does not or cannot offer a comprehensive solution to the problems of food security of the poor. Other anti poverty programmes have to be strengthened as part of income generation among the poor. A mix of policies, such as effective implementation of anti poverty programmes, control of inflation, improvement in health facilities etc is needed for increasing the food security in the country. A very successful scheme, the Employment Guarantee Scheme (EGS) was launched in Maharashtra in 1972 and its result has been encouraging. The result achieved through the EGS seems to be much better than that of the PDS. However, this also has its own limitations since it cannot cover the entire state at the same time and provision of employment as such will not solve the problem of food security.

At the same time the PDS has to be strengthened and the cost of operation of the FCI has to be reduced through prevention of pilferage and loss in storage. The government may think of dismantling the announcement of procurement prices so that they are market driven. As long as the government succumbs to the pressure from the farmers lobby, the whole issue of providing food at subsidised prices cannot last very long. The increase of procurement prices of food grains is after all helping only the rich farmers, who already have enough marketable surplus.

1.2.10 Conclusions

The right to food is one of the fundamental basic needs for human beings to survive and live with dignity. In India, though the right to food is not enshrined in the Constitution, it has been covered under the right to life and personal liberty (Article 21).

Food security in the Indian context, or for that matter in any poor country, is an issue much beyond food availability per se. The right to food for the poor must take into account access to food entitlement.

Under the broad guidelines of the Welfare State (the Directive Principles of State Policy) the Government contemplates enhancement of the welfare of the poor by, among others, ensuring food availability for them through an institutional mechanism called the public distribution system. The objective of the PDS is to enhance the welfare of the poor by steady availability of food grains at affordable prices, so as to match the demand and supply.

However, the PDS has failed to address its objective. Apart from the problem of corruption (due to low profit margin of the FPS shop owners) and various other issues, which have been spelt out, this institutional mechanism suffers from ambiguity with respect to the objective that it has to serve.

It has been explained that if the objective is based on the benefit principle (to enhance the welfare of the poor), then the PDS can serve as an effective safety net for the poor. Together with this, other policy initiatives like the employment guarantee scheme have to be resorted to for solving the problem of food security. There should be proper identification of the beneficiaries and the implementation mechanism of Government institutions including the grass root NGOs should seriously oversee the progress made.

1.3 RIGHT TO CLOTHING

1.3.1 A brief overview

Clothing is an essential requirement for livelihood. As the development doctrine changed from trickle down to basic needs, the right to clothing was recognised as a fundamental consumer right.

Clothing is inherently related with the textile industry. The textile industry in India is predominantly cotton-based; 73 percent of the fabric composition of the country is accounted for by cotton.

After independence, fabric production has taken a big leap forward. In the decade between 1989-90 and 1999-2000, the total cloth production in India has registered a cumulative growth of 86.8 percent. During the same period, the per capita availability of cloth has increased from 22.65 metres to 30.55 metres, which means a decade's growth of 34.9 percent.

The per capita consumption of cloth was, however, on the lower side. As per the Consumer Purchases of Textiles 1997 study, the per capita consumption of cloth was 16.14 metres. In value terms it was Rs. 927.60. Here again, we find that the availability does not ensure entitlement, because of lack of purchasing power.

The textile industry consists of three sectors: mill, powerloom, and handloom. The latter two come under the 'decentralised' sector. Over the years, the government has given various incentives for the growth of the decentralised sector, which is important for the fulfillment of the right to clothing. As a result of these incentives, the share (in total production) of the powerloom and the handloom sector has increased from 24 percent in 1950-51 to 93.5 percent in 1998-99.

1.3.2 Definition and objectives

Since cloth is a mass consumption item, covering all sections of society, it has been declared an essential commodity.

The objective of the right to clothing has been stated in the Textile Policy, 1981. Out of the six objectives, two objectives have a direct bearing on consumers. They are:

- Increasing the production of cloth of acceptable quality to meet the clothing requirement of the growing population which can then buy it at reasonable prices; and
- Strengthening and streamlining the infrastructure for distribution of cloth to weaker sections of the population.

Furthermore, the Textile Policy, 1985, stated that the primary objective of the policy has been clearly mentioned as consumer satisfaction and consumer protection. In addition to that, it said that the existing marketing and distribution system of the industry would be reviewed to introduce changes, wherever necessary, in order to evolve a more efficient system which would reduce costs and margins and provide both consumer satisfaction and consumer protection.

1.3.4 Existing system

The legal framework of the right to clothing is covered indirectly within the right to life and personal liberty (Article 21). The Supreme Court in its judgement (Francis Coralie vs. Union Territory of Delhi, AIR 1981, SC 746) stated that “the right to life includes the right to live with human dignity and all that goes with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter...”

Among the administrative measures, the Ministry of Textiles is responsible for policy formulation, regulation, and development in respect of the entire textile sector including cotton, wool, silk, jute and other fibres. The developmental activities of the Ministry are oriented towards making adequate quantity of raw material available to all sectors of the textile industry and augmenting the production of fabrics at reasonable prices.

After the publication of the new Textile Policy, 1985, a meeting was organised by the Ministry of Textiles with organisations representing both producer and consumer interests. The Ministry, on the basis of the deliberations at that meeting, prepared an action programme, which covered areas such as price stamping, fibre composition, technical specifications etc.

1.3.5 The Existing System and its Drawbacks

At the local level, the right to clothing, *albeit* indirectly, is being implemented through the institutional mechanism under the public distribution system.

In 1978, the government of India launched a new scheme called *Janata* cloth scheme to help the poor. The scheme was introduced with the twin objectives of providing employment to the unemployed and the under-employed handloom weavers and making cloth available to the poor at subsidised rates.

However, this scheme also faced the same drawbacks as those that were prevalent in the public distribution system. The Public Accounts Committee (PAC) of the Union Parliament criticised the scheme in its report of 1996. The PAC report stated that instead of creating more jobs, it caused more unemployment, more avenues for corruption and left the poor deprived of an affordable piece of cloth (see Box 1.5).

Box 1.5: Ministry Weaves A Sari Scam!

A *sari-dhoti* scam has been unraveled in the Ministry of Textiles. A Rs. 200 Crore (Rs. 2bn) contract of the Bihar Government to buy 2.68 Crore (26.8mn) handloom *saris* and *dhotis* for the poor has been entangled in a major controversy over who the real beneficiaries are.

The contract was aimed at helping the poor handloom weavers. However, private traders and powerloom owners reaped the benefits, depriving thousands of handloom weavers across the country of their livelihood.

Questions are being raised about the role of the Association of the Corporation and Apex Societies of Handloom (ACASH), the main contractor.

Ironically, the Chairman of ACASH is the national development commissioner of handlooms.

So far, ACASH has supplied *saris* and *dhotis* worth Rs 22 Crore (Rs. 220mn) to the Bihar Government, all made on the powerloom and not by handloom as the contract stipulated. Ironically, ACASH certified these as handloom products.

Officials said, private powerloom owners got a double benefit out of this racket as a pair of *sari* and *dhoti* produced on a powerloom costs only Rs 110 as against Rs 160 on a handloom.

The following critical points with respect to the collapse of the scheme are made in the PAC report:

- Unsatisfactory distribution system;
- Inadequate quality control;
- Payment of irregular subsidy;
- Underpayment of wages; and
- Absence of proper monitoring mechanism at the Centre and the States.

“Considering that an amount of Rs. 1127 Crore (Rs. 11.27bn) has been spent on the scheme in the form of subsidies, the Committee takes a serious view of the failure”, stated the report.

The report has pointed out several instances of irregularities in the implementation of the scheme in Uttar Pradesh, one of the largest recipients of the subsidy. One major irregularity was the diversion of finished *Janata* cloth to the open market, where it fetched a higher price.

According to the report, the Uttar Pradesh government had released Rs. 9 Crore (Rs. 90mn) as subsidy to the implementing agencies in violation of the prescribed rules.

“What is surprising is that the *action taken note* of the Ministry is completely silent about the status of the submission of inquiry by the State Government”, said the report.

Another criticism is addressed to the Textile Regulation, 1988, itself. The retailers are particularly vocal and have expressed strong resentment at the enforcement of the regulation. The main criticism has been that the implementing agency only causes harassment to the traders without effectively protecting consumer interests.

1.3.8 Conclusions

The right to clothing is a fundamental right for a life with dignity. In India, this right has been considered as one of the basic needs (as mentioned in the 20-Point Programme, and according to a Supreme Court judgement).

However, the Government of India and various State Governments have taken a piecemeal approach regarding this right. The public distribution system is grossly incapable of addressing the issue.

More importantly, the objectivity of the approach is based on the ability to pay. This basis is fundamentally wrong in a country like India where more than 300mn people are living below the poverty line. Therefore, the approach should be based on the benefit that the poor get from the scheme of distribution of cloth at subsidised rates. For this purpose, proper targeting is to be done.

However, the approach of the Textile Committee of the Government of India is grossly biased in favour of urban areas, and the bottom 20 percent of the population in the income distribution scale seems to have not been benefited. The fact is that a majority of the poor live in villages, and they have neither the ability to buy nor the access to minimum clothing.

The main objective of the Textile Policy, 1985, was to enable the sector to increase production of cloth of good quality at reasonable prices for the vast population of the country. The second important measure was the de-licensing of the sector in August 1991. Under this policy, no prior approval is necessary to set up textile units, including powerlooms. The third major change in the policy was the introduction of the Small Enterprise Policy, 1991.

These policies are not only aimed at ensuring increased availability of clothing, but also aim to help the poor to have better access to clothing at affordable prices. What is required is proper implementation of these policies. Here lies the importance of consumer and other voluntary organisations to play the role of watchdogs keeping an eye on proper policy implementation.

1.4 RIGHT TO HEALTH CARE

1.4.1 A brief overview

The World Health Organisation (WHO), in a Conference in 1998 at Alma Ata, declared, “The Conference strongly reaffirms that health, which is a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity, is a fundamental human right and the attainment of the highest possible level of health is a most important world-wide social goal whose realisation requires the action of many other social and economic sectors in addition to the health sector”.

The Declaration urged upon all nations to make full use of all available resources as well as mobilise the human potential of all communities to implement the policy of *Health for All*.

Health care is one of the basic needs of humanity at large. The neglect of health care reduces a person’s capability to take part in the various activities within society. Besides this, such neglect reduces the capability of the whole society in the future. Therefore, health care is not only an object of development by itself, but a pre-requisite for the development of future generations. In other words, a healthy society can contribute more to development, which, in turn, leads to a healthier society.

In the words of Jonas Salk, the pioneer of the polio vaccine: “I regard health not as an abstraction, but as something specific and concrete, not in terms of the absence of a negative condition (i.e. disease) but as a positive state (i.e. health). By this I mean a state in which the potential of the individual is developed in a balanced way, so that he may cope with the vicissitudes of life and function fully in the service of life in evolution.”

In the context of the development objective of primary health care through the means of participatory economic development, the Declaration urged individuals and families to show greater acceptance of responsibilities for the socio-economic development of their community. The Declaration considered the following factors as important for individuals and their families in their need to participate in solving their health problems:

- Self-reliance,
- Social awareness,
- Creation of self-help groups,
- Self-care, and
- Role of government and non-government organisations to guide and help them.

1.4.2 Definition and objectives

The concept of health care has changed over time—from a static concept of “physical condition” to the dynamic concept of “ability to cope”. In other words, mere absence of diseases does not render a person healthy, and at the same time the presence of physical defect does not necessarily make a person unhealthy, i.e. health is a more broader concept than a narrow bio-medical model. Besides the absence of physical disease and/or defect, the concept of health takes into account the notions of well-being, continuity and stability of physical, mental, emotional and social health as well as nutritional aspects of food entitlements. Thus, health is considered as an input of the totality of life, and a focal point of human development.

In 1984, the World Health Organisation defined health as “a state of complete physical, mental and social well-being and not merely absence of disease or infirmity”. According to Mirza (1997), though this definition has been criticised by many on account of it being too inclusive and utopian, its underlying assumptions are valuable for three reasons:

- It includes both positive and negative aspects of health;
- It is a very broad definition of health and operates in areas of life which extend beyond the conventional biomedical concerns of health services; and

- It includes lay perceptions of health which are central to well-being and quality of life outcomes.

In sum, the right to health care can be defined as that right which not only makes available to people proper health care facilities but also enhances their ability and access to make proper use of those facilities.

Therefore, the objective of the right to health care should be based on the principle of whether this right is valuable to the freedom of a person.

To the extent that the right to health care can increase a person's freedom (capability) in many ways, Dreze and Sen (1995) state the following:

- Being healthy is a valuable achievement in itself, and the opportunity to be healthy can be of direct importance to a person's effective freedom;
- A healthy person is capable of utilising economic opportunities available in the society in a better way than others; and
- The right to health also has instrumental social roles. In other words, it can help in making collective demands, and in turn help in expanding the facilities that the society enjoys and lead to better utilisation of available services.

In short, the objective behind the right to health care is based on increasing the overall capability of the citizens to expand their freedom, and to take part effectively in the development process.

On the other hand, the UN Guidelines for Consumer Protection, 1985, has dealt with the right to health care in its Chapter on Right to Basic Needs as: "to improve the quality and appropriate use of pharmaceuticals through an integrated national drug policy". The Guidelines have called upon governments to develop adequate standards, provisions and appropriate regulatory systems for ensuring the quality and appropriate use of pharmaceuticals through integrated national drug policies. The UN Guidelines have urged national drug policies to address, *inter alia*, procurement, distribution, production, licensing arrangements, registration systems and availability of reliable information about pharmaceuticals on the basis of the WHO recommendations.

Thus, with respect to the consumers' right to health care the UN Guidelines speak about only one aspect, i.e. its relation with the national drug policy. The Guidelines do not analyse the issue of the right to health care in the holistic manner as defined in the Alma Ata Declaration.

1.4.3 Government policy

In India, the objective of ensuring "Health for All" has been dealt through institutional mechanisms. Mainly, the State and Local Governments are responsible for ensuring health care.

The objective of the policy is to make health care facilities available for all at reasonable cost. However, given that a large number of people are living below the poverty line, the very mention of "reasonable cost" excludes a vast majority of population from the purview of health care facilities. They are the ones who need public health care facilities the most.

1.4.4 Existing system

To elucidate the existing system of providing health care facilities in India, it will be useful to analyse them under two heads. Firstly, the legal provisions for addressing the issue of the right to health care. Secondly, the administrative mechanisms required for dealing with the issue effectively.

Legal framework

At the outset, it should be mentioned clearly that in India the right to health care is not mentioned specifically in the Chapter on Fundamental Rights. However, Article 21 states that no person shall be deprived of his

life or personal liberty except according to the procedure established by law. Moreover, a Supreme Court judgement expanded the scope of the right to life and personal liberty. The judgement stated that right to life and personal liberty includes right to live with dignity, and thus it includes the right to health (Box 1.6).

Box 1.6: Bandhua Mukti Morcha Case

In the Bandhua Mukti Morcha case, the Supreme Court had clearly held that Art. 21 read with the Directive Principles of State Policy includes the right to health

This interpretation was made clear in a case (Consumer Education & Research Centre, Ahmedabad vs. Union of India, decided in February, 1995), involving the rights of workers in the asbestos industry who unwittingly suffer from an occupational debilitating disease, 'asbestosis', when the apex court ruled:

"The right to health and vigour of a worker while in service or post-retirement is a fundamental right under Art. 21 and other related articles of the Constitution. The right to health care is a fundamental right under Art. 21 read with Articles 39 (e), 41 and 43 of the Constitution and makes the lives of workmen meaningful and purposeful and grants them dignity of person. The right to life includes protection of the health and strength of the worker which is a minimum requirement to enable a person to live with human dignity."

Furthermore, Article 47 (under the Chapter on Directive Principles of State Policy) states that it is the duty of the State to raise the level of nutrition and standard of living and to improve public health. Article 47 further states that the State shall regard the rising level of nutrition and standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption, except for medicinal purposes, of intoxicating drinks and of drugs which are injurious to health.

Administrative measures

The administrative measures with respect to the right to health care comes under two heads: National Health Policy and Drug Policy.

National Health Policy

The present health care policy in India is based on the Sir Bohr Committee Report, 1943.

In his Report, Sir Bohr recommended a three-tier health care system:

- A primary health care (PHC) unit for a population of 30000;
- A community health care (CHC) unit with 30 beds and various specialities for a population of one lakh; and
- A district hospital with five specialities namely, gynaecology, paediatrics, surgery, medicine and casualty.

The Report grouped them as "regionalisation of health services" with a medical college as the nucleus. The Committee proposed one medical college with 2500 beds for four districts. Thus, the recommendations of the Committee were aimed at the improvement of primary health care facilities in the country.

Subsequently, the Alma Ata Conference, 1978, recommended, by and large, the same norms as were recommended by the Sir Bohr Committee. The Alma Ata Conference declared that primary health care should:

- Reflect and evolve from the economic conditions and socio-cultural and political characteristics of the country and its communities, and should be based on the application of the relevant results of social, biomedical and health services' research and public health experience;

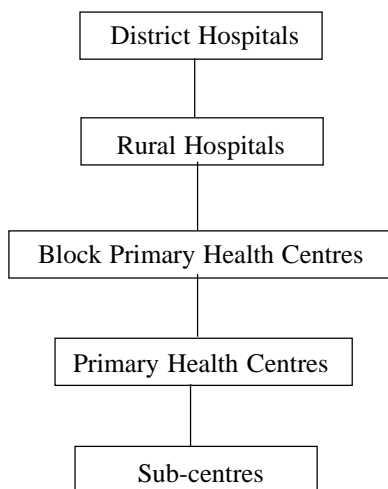
- Address the main health problems in the community, providing promotional, preventive, curative and rehabilitative services accordingly;
- Include, at least, education and enlightenment concerning prevailing health problems and the methods of preventing and controlling them, promotion of food supply and proper nutrition, an adequate supply of safe water and basic sanitation, maternal and child health care, including family planning, immunisation against the major infectious diseases, prevention and control of locally endemic diseases, appropriate treatment of common diseases and injuries, and provision of essential drugs;
- Involve, in addition to the health sector, all related sectors of national and community development, in particular agriculture, animal husbandry, food, industry, education, housing, public works and communications,, and demand the co-ordinated efforts of all these sectors;
- Require and promote maximum community and individual self-reliance and participation in the planning, organisation, operation and control of primary health care, make fullest use of local, national and other available resources, and to this end, develop through appropriate education the abilities of communities to participate;
- Be sustained by integrated, functional and mutually supportive referral systems, leading to the progressive involvement of comprehensive health care for all, giving priority to those most in need; and
- Rely on health workers at local and referral levels and also on physicians, nurses, midwives, auxiliaries and community workers, as applicable, as well as on traditional practitioners, who are suitably trained, socially and technically, to work as a health team and to respond to the expressed health needs of the community.

Subsequently, a National Health Policy was formulated in 1983 by the Union Ministry of Health and Family Welfare, based on the proposals of the Sir Bohr Committee and the Alma Ata Declaration. The aim of this policy was to attain, “Health for All by 2000 AD.”

The policy laid stress on the preventive and rehabilitation aspects of health care. It underlined the need to establish comprehensive primary health care services that would reach the populations in the remotest areas of the country. For integrated socio-economic development, the policy emphasised a decentralised system of health care delivery with maximum community participation and individual self-reliance.

One of the major changes in policy formulation was shift in the emphasis from the curative to the preventive and promotional system of health care. Again, the policy decided to take the services and supplies to the doorsteps of the people. It was, therefore, rightly decided to set up one sub-centre (mini health centre) for every 5000 population.

In short, as on this day, the administrative structure in providing health care services in rural India is as follows:



Drug Policy

In India, the Union Government has declared its drug policy from time to time. In 1974, the government had appointed the Hathi Committee to inquire into the conditions prevailing in the sphere of drugs and pharmaceuticals in the country. The Hathi Committee, in its recommendations (submitted in 1975), called upon the government to create the National Drug and Technical Authority (NDTA) to look into the licensing, quality control, pricing, marketing (including ethical promotion) and appropriate rational use of drugs.¹⁹

A decade later, in 1986, the government declared another drug policy. The Drug Policy of 1986 was titled, “Measures for Rationalisation, Quality Control and Growth of Drugs & Pharmaceuticals Industry in India”. The main characteristics of the Drug Policy, 1986, were:

- Ensuring abundant availability, at reasonable prices, of essential life saving and prophylactic medicines of good quality;
- Strengthening the system of quality control over drug production and promoting the rational use of drugs in the country;
- Creating an environment conducive to channelising new investment into the pharmaceutical industry to encourage cost-effective production with economic sizes and introducing new technologies and new drugs; and
- Strengthening the indigenous capability for production of drugs.

The implementation of the main policy provisions has been through the Industries Development and Regulation Act, on industrial licensing aspects, and through Drugs (Price Control) Orders under the Essential Commodities Act, in regard to the pricing mechanism. The government also proposed the setting up of a National Drug and Pharmaceutical Authority (NDPA) with representations from all concerned parties, including the drug industry.

Another Drug Policy was announced in 1994. The Drug Policy, 1994, recommended the government to create a:

- National Pharmaceutical Pricing Authority (NPPA) for the fixation of drug prices and for regularly updating the list of drugs to be kept under price control; and
- The National Drug Authority was to have the following functions:
 - ♦ To develop and define basic appropriate standards relating to the manufacture, import, supply, promotion and use of drugs,
 - ♦ To approve and register those pharmaceutical products, which meet real medical needs, are therapeutically effective and acceptably safe,
 - ♦ To enforce effectively appropriate quality standards of medicines and Good Manufacturing Practices throughout the country, with full regard to the needs of public health,
 - ♦ To monitor standard practices in drug promotion and use and to clearly identify those which are acceptable and prohibit those which are unethical and against the consumers’ interest, and
 - ♦ To monitor the prescribing practices and to evaluate their appropriateness for the purpose of guiding the medical profession and for achieving the aim of rational prescribing.

1.4.5 Drawbacks of the system

The drawbacks of the existing system can be analysed under two heads—macro problems and local level problems.

The macro objective of health care policy is to cover the population under the comprehensive health care system. On paper, it is true that the population covered under a single PHC is within the overall

objective figure. It is also true that in India, the number of doctors is high compared to other developing countries. At the same time, the number of assistants (nurses, midwives etc) is low in India. This structural imbalance explains the macro problems associated with the health care system.

From Table 1.7, it is clear that India has made considerable progress towards the achievement of “Health for All”. At the disaggregated level, the problem is more acute. Major problems are listed below:

- Majority of the primary health centres (PHCs) are non-functioning because of non-availability of doctors, para-medical staff etc.;
- Even if there are medical staff, they are more interested in doing private practice rather than devoting their time and efforts to the PHC;
- Timely availability of medicines is another major problem. It is the centralised medicine distribution system that is in operation. Thus, there is a total lack of co-ordination between the state medicine depot at the State capital, district depots at the district headquarters and the PHCs at the local levels. On top of this, essential drugs are generally not available, especially during the rainy season when the incidence of illness is high;
- Sub-centres, in most cases, function only once a week. Their functioning is mostly confined to family planning advice. Moreover, infrastructure facilities are negligible; and
- Excessive emphasis on family planning (and that too based on the targeting approach) takes up the majority of staff time, and therefore other aspects of health care suffer.

Table 1.7: Comparative Health Status of Indian Population, 1977-1998			
Variable	Unit	1977	1998
Crude birth rate	Per 1000 population	39.7	26.4
Crude death rate	Do	16.9	9.0
Infant mortality rate	Per 1000 live births	134	72
Couple protection rate	Percent	—	44.0
Immunisation coverage	Percent	2	94*
Ante-natal registration	Percent	Neg.	92*
Deliveries by trained			
health workers	Percent	8	57*
Mothers receiving post-			
natal care	Percent	Neg.	98*
Children covered under			
child welfare service	Percent	5	78*
* Data relate to 1996 Source: Ministry of Health and Family Welfare, Government of India.			

Another major drawback of the health care system in India is the disparity in attention and care to the health of the girl child (Premi, 1991). Studies have shown that there are significant differences in the gender-wise infant and child mortality rates.

On another plane, a fundamental factor for the poor quality of health care services in India is its vast population. Visaria (1992) briefly posed some critical questions regarding the population problem in India.

These questions and the answers to them have far reaching implications on the right to health in India. The questions are as follows:

- Has India done as well as other countries of the world in achieving its goal of population control?
- Is the decline in the birth rate and the rate of natural increase consistent with the reported increase in the percentage of couples effectively protected against the risk of contraception? If not, why not?
- Have the people recognised the seriousness of the population problem? and
- What can be done now to accelerate the decline in the birth rate?

Countries like China and Sri Lanka have reached a high level of contraceptive prevalence rate (CPR), 83 percent and 66 percent respectively, according to the Human Development Report of UNDP, 1999, as compared to India at 41 percent. The corresponding birth rates for China and Sri Lanka during 1990-95 were 2.1 percent as against 2.9 percent in the case of India.

What has been discarded by the Government till today, as far as the drug policy is concerned, is the inclusion of 'prescription audit system'. Prescription audit literally means a functional system to periodically take stock of the prescription pattern or to assess the existing prescription behaviour of medical personnel. Sheldon (1982), has defined medical audit as the study of some part of the structure, process and outcome of medical care carried out by the professional engaged in the activity concerned, to measure whether set objectives have been obtained, and thus, assess the quality of care delivered.

According to a study of prescription practices by doctors in India, conducted by CUTS during June/July 1995, mass scale irrational prescription patterns were observed. A prescription is irrational if it is incomplete, consists of polypharmacy, includes drugs of proven inefficiency or hazardous drugs and multiple drugs of similar character. These practices are adverse to the consumers' interests. Besides being hard on the consumers' pockets, it often leads to side effects and drug resistance syndrome in them.

The following facts surfaced during the survey:

- There is a universal tendency to prescribe drugs using brand names. The possible explanations are either lack of awareness about the significance of generic names among the doctors or due to commercial interests.
- Affinity towards prescribing drugs manufactured by multinational corporations.
- Tendency to prescribe comparatively costlier and higher generations of medicines.
- Rampant practice of polypharmacy, particularly in clinical situations like undiagnosed fever. Polypharmacy with anti-microbial agents was the common practice.
- Unnecessary prescriptions of drugs like broad-spectrum antibiotics in conditions of diarrhea, or cough mixtures for common cold etc.
- Incomplete prescriptions and prescriptions with unproven efficacy were also found in most of the cases.

There is no check on these irrational prescription practices. A prescription audit system based upon the carrot and stick approach is, thus, urgently needed.

To counter the abusive use of drugs, it has been proposed that a separate law to set up a National Drug Authority is needed. The objective is to ensure appropriate information about registered pharmaceuticals for the guidance of consumers, with regard to:

- The adverse consequences of non-compliance by patients, particularly in the case of antibiotics, steroids etc.;
- Dangers of self-medication; and
- The need to involve consumers as full partners in the formulation of the National Drug Policy.

Unfortunately, not much progress in this regard has been made till date. In short, the main drawbacks of the Indian Drug Policy, 1994 are:

- No provision to control proliferation of irrational drugs and drug combinations;
- No provision to control the promotion of pharmaceutical companies' ethical code of marketing;
- No provision to ensure screening of promotional materials;
- It removed all previous restrictions and compulsions on bulk drug manufacturing; and
- No provision to furnish unbiased and authentic information on drugs.

Thus, in a sense, the 1994 Drug Policy seems to have some limitations as compared to the Drug Policy adopted in 1986. The greatest paradox was that the Policy was prepared by the Ministry of Chemicals and Fertilisers, and not by the Ministry of Health and Family Welfare.

1.4.6 How to improve the situation?

From the above discussions, it has been observed that though in certain parameters we have been able to improve the situation, the attainment of "Health for All" remains only a slogan and still seems to be a distant dream. In order to improve the situation, it is necessary to adopt a comprehensive and need-based health policy at the national (macro) level. The objectives should be clearly mentioned in that policy. The basic objective should be the preventive aspects of disease control, though it would be fatal to neglect the curative aspects in totality.

However, given the size of the country and the decentralised nature of needs, micro level planning is also necessary. Here it is necessary to adopt a holistic approach to the various systems of medicine, including the indigenous system. In the context of decentralised supply of health services, mini health centres (MHC) should be activated to fulfil the need for health (see Box 1.7).

Box 1.7: Set Up, Services and Suggestions for Mini Health Centres

Ideally, the mini health centre (MHC—catering to the needs of a population of 5000) should have the following in its set up:

- A health post managed by *Lay First Aid Person* for every 1000 population;
- A male and a female multipurpose worker in the MHC;
- A doctor to be available at the MHC, at least three hours a day, three days a week; and
- The identification of, and liaison with, a referral hospital within a reasonable distance.

The following are the essential services to be provided at the MHC:

- Based on the report of the Lay First Aid Person, pregnant mothers are to be registered and antenatal care is to be provided;
- All children within the area are to be covered under the immunisation programme;
- Regular house visits and screening are to be done to prevent communicable diseases;
- Target couples are to be identified from among the eligible couples for family planning advice and services; and
- Health, nutrition and environmental sanitation education programmes are to be conducted on a regular basis.

It is also important to implement a rational drug policy. In India, many of the drugs used are either in the non-essential or in the banned category. Thus, for ensuring the basic need of the consumers' right to health care, the imperative is to have a need-based rational drug policy. The main purpose of this policy is to restrict the marketing of unnecessary and harmful drugs, and the policy should take into account the following factors:

- Ensure strict quality control of medicines;
- Control the pricing of drugs;
- Ensure that quality medicines are available to the people at a fair price; and
- Use generic names only for essential medicines and avoid the use of enticing brand names.

On the basis of the above-mentioned points, Bangladesh introduced its National Drug Policy in 1982. Akhtar (1997) has pointed out the self-evident gains which Bangladesh has enjoyed in the area of prices, production figures and quality indicators on a comparison of 1992 figures with those of 1982

Similar, but more inclusive recommendations (with respect to the formulation of National Drug Policy) were put forward by the Voluntary Health Association of India. Their recommendations are as follows:

- Ensure rational drug use, all irrational drug combinations should be banned. The WHO Guidelines for the same may be made use of;
- All drugs and various combinations, which have been banned by the Drug Controller of India, should be immediately withdrawn from the market;
- Availability of essential drugs must be ensured at affordable prices (see Box 1.8);
- Drugs cannot be treated as commodities and therefore prices of all drugs should be controlled;
- Effective quality control of drugs and their ethical marketing should be ensured by providing appropriate powers to the Drug Control authorities and strengthening of the Drug Control machinery throughout the country; and
- A rational policy on drugs of traditional systems of medicine should be formulated and implemented.

In view of the above discussions and suggested remedies for ensuring the right to health care, the following is a set of proposals (Adnan, 1997) to approach the issue holistically as well as in a decentralised manner:

- A judicious combination of increased cost recovery by the public hospitals (modest increases in user fees), and increased allocations to the public health care system (well within the government's means) to generate the resources needed to reduce the outflow of staff and to restore the reputation of reliable services at public hospitals;
- For the administrative burden of operating a nation-wide system of health care facilities, it is time to seriously consider decentralising some social functions to the state, together with adequate powers of revenue collection;
- Start a compulsory social health insurance scheme to generate additional funds, and enable the governments to retain overall control of health financing. The government should pay for the poor;
- To monitor and supervise any health corporatisation or privatisation schemes, a national board or commission should be set up;
- Need to look at health care from the viewpoint of alternative medicine systems. For instance, *ayurvedic* treatment and homeopathy should complement the western medical approach. This is also another means to combat the escalating prices of pharmaceutical drugs and other medical products;

- Adopt a national drug policy to promote essential drugs' use;
- Promote and popularise health education among the general public, via schools, community halls, and the mass media etc., as well as providing preventive health care;
- The government should appreciate the fact that increasing demands for public health are directly or indirectly caused by its neglect in controlling pollution, general cleanliness of public places and residential areas, unhealthy production of foodstuffs etc. These measures, if properly implemented, would help reduce the medical expenditure of the entire country. The money derived from a fine imposed for polluting the environment, like vehicle pollution, open burning etc., should go towards maintaining the health care system; and
- Implement the "Patients' Charter" on providers of all health services.

Box 1.8: Stress on Uniform Drug Prices

To control the entry of the multinational companies and the NRIs into the medicine market, the All India Organisation of Chemists and Druggists (AIOCD), has demanded the introduction of uniform consumer prices all over the country.

The MNCs and the NRIs had sought permission from the Finance Ministry to start nation wide distribution of medicines in the country. However, the medicine shop owners dread the entry of multinational pharmaceutical companies, as their advent would ruin them. At their national executive meeting, the AIOCD raised a demand in favour of sale of medicines at a uniform price in all states, inclusive of all taxes, a step that would help the consumers.

According to the AIOCD, there should be no tax on medicine. Out of every rupee earned through the sale of medicine, 52 paise goes to the exchequer in the shape of various taxes.

Another area of direct consequence in the direction of the protection of consumers' right to health care, is whether the medical field is considered as a service as defined under the Consumer Protection Act, 1986.

Before 1986, any dispute regarding negligence on the part of the doctors or hospitals was dealt under the Law of Torts to claim damages or under Sections 304 A, 336, 337 and 338 of the Indian Penal Code. However, after the introduction of the Consumers Protection Act (COPRA), 1986, the situation has changed completely.

In the beginning, there was a controversy about whether a consumer of a medical service could file a complaint against a doctor or a hospital for negligence. The matter was set to rest by the Supreme Court when it took up a bunch of special leave petitions in the Indian Medical Association vs. V. P. Shanta and other cases (see box 1.9)

1.4.7 Conclusions

There is no doubt that the consumers' right to health care is a fundamental right for citizens to live with dignity. In India, though this right has not been enshrined in the Chapters on Fundamental Rights, it has been spelt out quite clearly in the Chapters on Directive Principles of State Policy.

Furthermore, the broad objectives of the welfare state have been stated in the Preamble of the Indian Constitution, which defines justice as that including social, economic and political. And for consumers to achieve justice from the welfare state, it is necessary that the right to health care is considered as a fundamental right.

In India, the objectives of "Health for All" by the year 2000 are spelt out elaborately in various policy documents. However, problems crop up in the implementation of these policies. Hence, the question remains whether the problems lie at the implementation stage or in the setting of objectives?

The subject of health care cannot be dealt in isolation. The health care service has to be considered along with the availability of basic needs like food, nutrition, environment & pollution, education, sanitation & hygiene including safe drinking water, etc.

Box 1.9: Medical Service under COPRA

The Supreme Court held that under COPRA, Section 2 (1)(o):

Service rendered to a patient by a doctor (except free service) by way of consultation, diagnosis and treatment, would fall within the ambit of 'service'.

The fact that doctors belong to the medical profession and are subject to the disciplinary control of the Medical Council of India and/or State Medical Councils under the Indian Medical Council Act would not exclude the services rendered by them from the ambit of COPRA.

Service rendered at any hospital/nursing home where charges are required to be paid by the persons or by the insurance company on a person's behalf, falls within the purview of the expression 'service'.

Service rendered at a (i) non-Govt. hospital/nursing home and also at a (ii) Govt. hospital/health centre/dispensary where services are rendered on payment of charges as well as free of charge to those who cannot afford to pay. Free service would also be 'service' and the recipient a "consumer" under the Act.

On the question of the members' ability to decide medical negligence cases unless they were themselves medical practitioners, the Court ruled: "[it] cannot be expected that the members of the consumer fora must have expertise in all fields. It will be for the parties to place the necessary materials on record, which will enable the members to arrive at their findings on the basis of that material."

1.5 RIGHT TO DRINKING WATER AND SANITATION

1.5.1 A brief overview

"Gracious be divine water for our protection, be they for our drink; and stream on us bliss and happiness; Sovereigns over precious things and rulers over man, water; we seek healing balm of you"—Rigveda.

Man cannot live without water. It is one of the most crucial and fundamental of basic needs. The United Nations Guidelines for Consumer Protection, 1985, addressed the issue of drinking water though not sanitation. However, both of them are inter-linked, and therefore have to be considered together.

The right to drinking water and sanitation not only comes under the overall right to health care, but the issue can stand-alone as well. In other words, the right to health care is a step forward from the right to drinking water and sanitation. Thus, the right to drinking water and sanitation is a necessary condition for the survival of civilisation. In this context, the issue is not only that of quantitative availability of drinking water or of people's ability to have access to drinking water and sanitation but also, more importantly, the quality of water (see Box 1.10).

1.5.2 Definition and objectives

The UN Guidelines for Consumer Protection, 1985, defined the right to drinking water as: "Governments should, within the goals and targets set for the International Drinking Water Supply and Sanitation Decade, formulate, maintain or strengthen national policies to improve the supply, distribution and quality of water for drinking. Due regard should be paid to the choice of appropriate levels of service, quality and technology, the need for education programmes and the importance of community participation."

The Water Decade (1981-1990) was a co-ordinated international effort to "speed up" the water-quality transition and accelerate the introduction of water services in poor regions. One noticeable feature of the UN Guidelines is that though the United Nations formulated the same keeping in view the objective of the Water Decade, it did not specify anything on sanitation aspects. Sanitation is not only a stand-alone issue,

but related to the issue of the right to health care, both in the horizontal and vertical sense. In 1997, nearly 1.26bn people in developing countries lacked safe water supply and nearly 3.15bn lacked access to sanitation services as per the UNDP Human Development Report, 1999.

Box 1.10: What is Clean Water?

There are various scientifically derived parameters for measuring the purity of water. In most of the cases, it is the bacteria which causes water impurity. Usually, the coliform group of bacteria is being used to evaluate the sanitary quality of drinking water.

The measurement of bacteria in water is that of the Most Potable Number (MPN) per 100ml of water. Ideally, the MPN should be zero but that is rarely the case. Countries normally evolve their own 'safe' water standards. In UK, drinking water is allowed MPN value up to 3; in Japan, Class I water can contain MPN up to 50.

In India, the recommended MPN standard for drinking water is up to 3, but in reality, the MPN count goes into thousands. The main reason for this is leakage into water from pipes, and antiquated or ill-constructed sewers. Furthermore, the recommended MPN standard for inland surface water is up to 5,000. In reality, the river Yamuna, before it enters Delhi, has an MPN count of 7,500. This goes up to 25 million while passing through the Okhla sewage pumping station. This is really horrifying considering the fact that people use streams for purposes of drinking water and bathing.

Another measurement of water pollution is the Biological Oxygen Demand (BOD), measured in mg per litre. Usually, wastes discharged into a river are quantified as "total solids". Some of these are absorbed as "dissolved solids", and the rest are called "suspended solids". Organisms present in the water can consume and destroy dissolved solids, and for this they need "dissolved oxygen" (DO) present in the water. The amount of oxygen needed by these organisms to cope with the dissolved solids is called the BOD, and the greater the pollution, the higher the BOD. When the BOD levels overtake the DO levels, the water body begins to die, i.e. it can no longer 'digest' the wastes present in the water body.

It is clear from the above that the right to drinking water covers not only the supply of drinking water *per se*, but also the supply of 'safe' water for the purpose of consumption. In other words, the UN Guidelines not only cover the production and supply of drinking water, but also the right of consumers as end users to demand water free from contamination.

The broad objective of including the right to drinking water and sanitation into the overall gamut of consumers' rights are mainly two fold. Firstly, the objective concerns itself with the nation's health, economic as well as social. Unless people have availability and access to safe drinking water and sanitation, they cannot take part effectively in the production process.

Secondly, the objective is based on the Agenda 21 premise that water is a finite and vulnerable resource and one which is likely to be the principal constraint on economic development in the coming years. Thus, education programmes and community participation are being stressed upon with regard to production, supply services and end-use of water in general, and drinking water in particular. Such objectives are to be fulfilled by keeping in mind the following facts:

- Water is vital for human consumption;
- 80 percent of all diseases are caused by the use of unsafe water and absence or improper use of sanitation facilities; and
- Close link between unsafe water, lack of sanitation and disease. India loses 73mn man-days every year owing to diseases caused by unsafe drinking water.

1.5.3 Government policy

Water is a State subject in India. Entry 17 (the State List, Seventh Schedule, Article 246) mentions: “Water, that is to say, water supply, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of Entry 56 of List I”.

Entry 56, List I (the Union List) deals with inter-State water disputes. On the other hand, Entry 6 of List II deals with public health and sanitation.

It is therefore clear that the States are responsible for availability and access to safe drinking water and sanitation facilities (See Box 1.11). At the local level, in urban India, Municipal Corporations supply safe drinking water and provide for requisite sanitation facilities. In rural areas it is usually the state public health engineering department which has the responsibility to supply water and sanitary facilities.

Box 1.11 Norms for Safe Drinking Water
<ul style="list-style-type: none">• Drinking water source should be within:<ul style="list-style-type: none">▪ 1.6 km distance in plains,▪ 100 metres elevation difference in hills;• One hand pump or stand post for every 250 persons;• 40 litres of safe drinking water per capita (lpcd) for human beings• 30 litres per capita per day additionally for cattle in desert development programme (DDP) areas.• Drinking water is defined as safe if it is free from bacteria contamination, chemical contamination viz. fluoride, iron, arsenic, nitrate, and brackishness in excess or beyond permissible limits.

The Chief Ministers’ conference held in July 1996, on Basic Minimum Services, recommended a change in the above norms. It was recommended that the present norm of 40 lpcd be raised to 50 lpcd and the distance norm be reduced from 1.6 km. to 0.5 km. in the plains.

In India there is the National Water Policy, 1987, that covers some aspects of the consumers’ right to drinking water. This is, of course, not included in the Chapter on Fundamental Rights.

However, a Supreme Court judgement stated that the right to livelihood is included in the right to life and personal liberty, because no person can live without the means of living (*Olga Tellis vs. Bombay Municipal Corporation*, AIR 1986, SC 1800). Availability and access to safe drinking water and sanitation are certainly fundamental means of living. Therefore, this judgement enlarges the scope of the application of Article 21 (right to life and personal liberty—see Box 1.12).

Box 1.12: Inclusion of Drinking Water under the category of “Food”
<p>A Parliamentary Committee has recommended that the definition of food under the Prevention of Food Adulteration Act, 1954, be widened to include drinking water. The Committee wanted to make the local authorities statutorily responsible for maintaining water purity at a higher level.</p> <p>In its report presented in 1996, the Committee on Subordinate Legislation wanted the Government to amend Section 2(V) of the Act and include water, treated and supplied by the local authorities, within the definition of ‘food’.</p>

More specifically, the Supreme Court, in its judgement on *Subhas Kumar vs. the State of Bihar* (AIR 1991, SC 420), observed that right to live is a fundamental right...and it includes the *right of enjoyment of pollution free water* and air. [emphasis added]

In addition to these interpretations, Article 39 (a) states that the citizens, men and women equally, have the right to adequate means of livelihood.

1.5.3.1 Administrative measures

In India, administrative measures, with respect to the supply of drinking water, can be divided into two broad categories: urban and rural. In urban areas, the responsibility of supplying drinking water lies with municipal corporations.

Some legislation provide an obligation for supply of potable water, thus asserting the consumer's right, such as the Bombay Municipal Corporation Act.

The Calcutta Municipal Corporation Act, 1980, provides an interesting case. While the right to water exists in the relevant provisions, it is defeated by a general waiver of the city body's obligation, which relies on: "The Corporation will do all what is required under the Act, but subject to availability of resources." A similar provision exists in the Tripura State law governing municipalities. At the same time, the State law of Rajasthan covers the State's obligations without the 'endeavour' escape clause.

On the other hand, in rural areas the supply of drinking water is decentralised in nature. The governments only provide broad administrative goals and guidelines for the supply of water. In 1986, the Union Government adopted a scheme called Technology Mission on Drinking Water (see Box 1.13). The then Prime Minister Rajiv Gandhi said in the Union Parliament: "... The maximum amount of scientific and technological development will go into drinking water and the highest technology out of any of these missions will be used to give drinking water especially in those areas where there is a tremendous shortage...".

Box 1.13: Technology Mission on Drinking Water—Goals
<ul style="list-style-type: none">• Water for the entire rural population within five years;• Adequate safe drinking water by the end of the Eighth Five Year Plan;• Within accessible reach;• On sustainable basis;• Using appropriate technology; and• Full participation of the people.

1.5.4 Implementation

In urban areas, municipal authorities are implementing the objective of supply of safe drinking water to households as well as to industries.

In almost all the cities and towns, water is to be supplied in a time bound manner. Households are to pay a minimal amount of water tax for consumption of water.

Apart from in-house supply, municipalities also erect water taps for public use. People do not have to pay for this supply, i.e. water supply in this case is regarded as pure public good, and exclusion principle is not applied.

In rural areas, implementation of the Technology Mission on Drinking Water is covered under four heads.

The first is the Accelerated Rural Water Supply Programme (ARWSP), a Centrally sponsored programme under which funds are released to the State Governments in four installments, based on the physical and financial progress of the scheme.

The second is the Minimum Needs Programme (MNP) which is a part of the State plan, and funds for which are allocated to each State under their annual plan provisions.

Funds released under the ARWSP and the MNP are utilised by the State Governments for provision of hand pumps, sanitary wells and piped water supply systems, depending upon the availability of ground water.

The third category includes the mini-mission projects under which 55 districts of the country have been identified for a district-based integrated approach involving the community and non-governmental organisations, in implementation, operation, maintenance and health education. The projects are aimed at solving special problems like excess fluoride, excess iron and salinity in water.

And finally, the Technology Mission has five sub-missions for tackling special problems relating to the quality of water.

The sub-missions are as follows:

- Guinea worm eradication,
- Control of fluorosis,
- Excess iron removal,
- Control of brackishness, and
- Scientific source finding, and conservation of water and water quality surveillance.

Besides the Technology Mission on Drinking Water for rural areas, the government announced its National Water Policy in 1987. The policy was designed by the National Water Resource Council. The substantive parts of the statements made in the policy are as follows:

- Drinking water will receive the highest priority;
- Water is a national resource and the non-river basin states also have an interest in the inter-state rivers;
- The river resource planning will be for hydrological units and not on the basis of state-wise territories; and
- Conjunctive use of surface and ground water resources, i.e. the combined operation of both ground and surface water.

With regard to sanitation, municipal authorities are responsible for keeping a clean environment within their jurisdiction. Nowadays, the municipalities are implementing centralised sanitation schemes. For example, in Calcutta, the World Bank has funded a centralised sanitation scheme under the Calcutta Urban Development Programme III. The importance of such a programme is that most of the communicable diseases are water-borne, and therefore, for the purpose of public sanitation and public health care, such a scheme is an absolute necessity (see Box 1.14).

Box 1.14: Water Handling and Cholera

According to a Bulletin of the World Health Organisation, the majority of those infected with the cholera vibrio are not seriously ill, and many are symptom-less carriers. As germs spread rapidly in over crowded or slum conditions, person-to-person transmission through contamination of domestic food and water gets facilitated. A study carried out in Calcutta found that carriers of *V. Cholerae* were contaminating domestic water stored in wide-mouthed vessels, such as buckets, with their dirty fingers.

Two methods were used to see if transmission of infection could be reduced: chlorination of stored water, and the use of a narrow-necked earthenware vessel (called *surai*) for water storage. These were tried out in similar population groups in east Calcutta. The results of the study showed that exposure of infection outside the home was relatively less important than transmission within the home. The *surai* has the additional advantage of being cheap and acceptable to the local community. Its narrow neck prevents the introduction of infected hands and germs into the stored water.

Furthermore, the government has also taken up a scheme called the low cost sanitation programme. Under this programme, both small and medium towns, fringe areas of the cities and the rural areas of the country have been given highest priority.

Under the low cost sanitation programme, individual and community latrines are constructed according to their needs, and at present eight agencies are involved (directly or indirectly) in the implementation of this programme and in the rehabilitation of scavengers in the country. The following are the agencies involved in the programme and their area of work:

- The Ministry of Urban Development is in-charge of the integrated development of small and medium towns;
- HUDCO (Housing and Urban Development Corporation) for basic sanitation schemes;
- Central Ganga Authority for Ganga Action Plan;
- the Department of Rural Development is in-charge of centrally sponsored Rural Sanitation Project (CRSP);
- CAPART through NGOs for low cost sanitation projects in rural areas;
- The Ministry of Welfare is in-charge of rehabilitation of scavengers;
- The World Bank/UNICEF assisted schemes under the control of the Ministry of Urban Development and the Department of Rural Development; and
- Sanitation programmes of State governments under the state plans.

1.5.5 Problems of implementation

The major problem of implementation is related to financing. Given the exorbitant demand (need) for safe drinking water and sanitation, the funding available is too small. For example, during the Eighth Five Year Plan, the percentage earmarked for water supply out of the total public sector outlay was 3.85 (Table 1.8).

Table 1.8: Outlay for Water Supply Sector	
<i>Unit: In Percent</i>	
Five Year Plan	Percentage
First Plan	0.18
Second Plan	0.42
Third Plan	0.19
Fourth Plan	0.98
Fifth Plan	1.22
Sixth Plan	2.34
Seventh Plan	3.04
Annual Plans (90-92)	3.23
Eighth Plan	3.85
<i>Source: Water for All, Ministry of Information and Broadcasting, Government of India, 1993</i>	

Financial constraint is the most important obstacle in providing drinking water facilities and sanitation both in the urban and rural areas. As per the Ninth Five Year Plan, the investment requirement for urban and rural water supply is about Rs. 66,300 crores. It means that on a yearly basis the investment requirement is about Rs. 13,260 crores. For rural areas this works out to be about Rs. 8,000 crores per annum. However, looking at the progress in the past years, it is unlikely that such a target will be met in the future (Table 1.9).

The sanitation programme seems to be much more problematic. For example, the Eighth Plan provision of Rs. 150 crore in the Central Plan was only about 25 percent of the required assistance to meet the objective of conversion of all existing dry latrines in the urban areas of the country, numbering 50 lakh units, into low cost pour-flush-sanitary latrines.

Apart from the macro problem of financing the supply of safe drinking water and sanitation to all, the micro level problems are related to wastage, corruption, delay in implementation etc.

The wastage is mainly due to the existence of the non-exclusion principle while supplying drinking water. The free supply does not motivate people to use water diligently, and this leads to unsustainable use of water.

Another problem is with respect to access to safe drinking water, particularly for the Scheduled Castes, Scheduled Tribes and other weaker sections of the population, and in the water scarcity areas such as deserts. For example, the Government of Rajasthan had started a programme of installation of hand pumps for the supply of safe drinking water in the desert areas, especially for the benefit of the weaker sections of the population. However, the programme is suffering from the following limitations with respect to installation:

- *wrong selection of sites*: the sites for hand pump installation were identified on the recommendation of the village heads who normally belong to the higher castes. Thus, the depressed and the downtrodden were neglected and ignored; and
- *lack of community involvement*: since the district authorities select sites in consultation with the village heads and other influential people and install the pumps absolutely free of cost, the government scheme has no community participation/involvement.

Table 1.9: Financial Progress Under ARWSP and MNP <i>Unit: Rs crores</i>		
Year	ARWSP Release/ Expenditures	MNP Expenditures
1990-91	410.54	572.28
1991-92	644.51	692.07
1992-93	459.00	799.19
1993-94	737.02	786.16
1994-95	809.97	914.24
1995-96	1039.73	1124.47
1996-97	1093.02	1325.59
1997-98	864.12	1312.92
1998-99	643.36	882.32
1999-00*	1097.91	926.62
<i>* As on 10th January, 2000</i> <i>Source: Annual Reports, Ministry of Rural Development, Govt. of India, Various issues</i>		

Regarding the proper maintenance of the installed pumps, the government scheme has the following problems:

- *lack of infrastructure at the grass root level*: for ensuring regular and sufficient water supply, proper attention to the repair and maintenance of the hand pumps is very important. The government department has established a three-tier system to look after this job: an unpaid caretaker with only two spanners at the village level, a trained mechanic at the block level, and a mobile team of trained mechanics at the district level. The result is a total lack of co-ordination and commitment to the job;
- *lack of community participation*: since the block level mechanic carries out his job with the help of outside labour, there is hardly any community involvement; and
- *shortage of spare parts*: this is an inherent weakness of the multi-tier system of maintenance.

The state governments undertook comprehensive surveys during 1991-94, which reflected the gravity of the problem. As in April 1994, there were 1.41 lakh not-covered (NC) villages/habitations and 4.30 lakhs partially covered (PC) villages/habitations, apart from 1.51 lakh villages/habitations suffering from acute water quality problems (QP).

During the Eighth Plan, rural water supply programmes have covered 3.40 lakh villages/habitations. The tasks for the Ninth Plan would be to cover 0.88 lakhs NC, 3.91 lakhs PC and 1.40 lakhs QP villages/habitations. But looking at the past progress, more particularly the data of 1998-99, it is doubtful whether the government will be able to meet its targets (Table 1.10).

As for the sanitation programme, the achievement has been dismal. As per WHO (quoted in World Development Report, 1999), only four percent of the rural population had proper sanitation facilities in 1995. As on 1998-99, against a target of constructing about 1.6 million sanitary latrines, only about 58 thousand latrines were constructed (about 36.3 percent).

With respect to the low cost sanitation programmes, the following problems of implementation are to be noted (Datta, 1989)

- Latrine is considered as synonymous with sanitation, but in reality, it is only one aspect of sanitation;
- The non-availability of correct solutions of sanitation problems in rural and urban areas;
- Relationship between ground water quality and on-site sanitation;
- Women have little voice in the decision making process of low cost sanitation programmes;
- Viability of community latrines in rural areas;

- Lack of availability of space in urban areas; and
- Lack of sense of involvement and urgency at all levels.

Table 1.10: Coverage of Habitations Under Rural Water Supply									
Year	Target (Nos.)			Achievement (Nos.)			% Coverage		
	NC	PC	Total	NC	PC	Total	NC	PC	Total
1997-98	30552	69061	99613	20672	62339	83011	67.7	90.2	83.3
1998-99	31935	73967	105902	10967	45953	56920	34.3	62.1	53.7
1999-00*		90061	-	-	37445	-	-	35.3	
<p>* As on January, 2000 NC: Not Covered; PC: Partially covered Source: Ministry of Rural Areas & Employment, Annual Reports, 1998-99, 1997-98 Ministry of Rural Development website for the year 1999-00</p>									

1.5.6 How to improve the situation?

In order to solve the problems associated with the poor state of supply of drinking water and sanitation, it is necessary to make a comprehensive plan with the broad objective of the consumer's right to safe drinking water and sanitation. What is necessary is not only the decentralisation of various schemes to provide better access to safe drinking water and sanitation facilities, but also a decentralised financing mechanism.

Thus, the imperative is to pull the people out of their web of inertia and make them equally responsible for the availability of and access to safe drinking water and sanitation.

In this respect, the following points are to be noted for efficient management, operation and maintenance of the decentralised system:

- Develop an effective information management system so that the physical and financial progress of water supply facilities can be monitored periodically;
- To ensure proper maintenance of the assets created, involvement of the community is necessary (see Box 1.15 & 1.16);
- Implementation of the maintenance system in States with village level, block level and district level planning; and
- To involve women in the selection and maintenance of the water supply systems.

Box 1.15: Conservation of Rain Water to Overcome Scarcity
<p>Experts mooted that the age-old method of saving water in brick tanks and mud ponds could help India to overcome the problem of growing water shortage.</p> <p>Indians consume 19bn cubic metres of the available water every year, even as about two-thirds of the 4000bn cubic metres of annual rainfall flows down the drain. "It is time to rediscover old ways of water management—rain water harvesting being one of them", said Iqbal Malik, Director, <i>Vatavaran</i>, an NGO.</p> <p>In this regard, the Central Ground Water Board, Chandigarh, has started a pilot project in the Jawaharlal Nehru University, New Delhi, to recharge ground water levels.</p>

Box 1.16: Community Based Models for O & M of Hand Pumps

As regards Operation & Maintenance of handpumps, community based models have been developed in some states, particularly in Betul district of Madhya Pradesh, Banda and Barabanki districts of Uttar Pradesh and Midnapore district of West Bengal.

The Midnapore model has been recognised as a good system and is being emulated and adopted by other states.

In this model, a water committee is established in each village, two women from the community are trained as caretakers, the beneficiaries raise Rs. 500 per handpump as the initial fund for maintenance and each family contributes 50 paise per month towards maintenance. This has resulted in an optimum level of functional handpumps on a wholly self-sustaining basis with the active participation of the community and the local NGOs.

Therefore, on the basis of the points made above, it is necessary to introduce a community-based water management system for equitable distribution of drinking water among the population of rural India, especially for the socially and economically weaker sections.

As a complement to the system of decentralised planning, health and water educators have a positive role to play in spreading information related not only to prevention of waterborne diseases and water pollution, but also to water economics. In villages or urban slums, the possibilities of sanitary planning for recycling unfiltered water could also be explored.

With respect to the proper implementation of the low cost sanitation programme, the imperative is for proper evaluation of the technical, financial, socio-cultural and other aspects of the programme.

1.5.7 Conclusions

The issue of drinking water and sanitation cannot be discussed in isolation. The issue of “health for all” has to be tackled along with the issue of the quality and quantity of drinking water and proper sanitation facilities.

The right to safe drinking water and sanitation is a fundamental right of citizens (consumers) in order to lead a dignified life, and also a fundamental imperative for people to take part effectively in the development process.

In India, though there are legislations covering this right, they are fuzzy in nature. On paper they are good and are based on objectives keeping decentralisation in mind. However, when it comes to implementation, the problems begin.

The problems are not only related to delay in implementation or corruption, but also with respect to the effective participation of the community in maintaining and using available water resources and sanitation facilities.

1.6 RIGHT TO SHELTER

1.6.1 A brief overview

Apart from food and clothing, shelter is equally fundamental for dignified living. In India the right to shelter is not covered under any particular Fundamental Right. However, under the 20-point programme (adopted in the mid-1970s), the right to shelter was recognised as one for which the government is responsible.

All said and done, the scenario has not changed much since then. In reality, it is getting worse day by day. With the growing rate of urbanisation, lack of housing is increasingly becoming a social problem, apart from the economic stress associated with it. It has been estimated that by the year 2000, some 400mn people will be living in India's urban areas.

According to the 1991 census, the urban population of India touched the figure of 232mn; an increase of about 72mn in a decade (4.5 % growth rate per annum). By and large, the increase in the growth rate of urban population has taken place by an expansion of the existing cities and the associated factor of rural-urban migration. The 1991 census figures also revealed that there are 23 cities in India with a population of more than one million, and in about 600 cities the population strength varies between 50,000 to 500,000.

Such a scenario has a telling effect on housing. For example, according to housing census data, in 1991, there was a housing shortage of 18.5mn units (13.7mn in rural and 4.8mn in urban areas). Furthermore, these figures had shot up to over 21mn units in 1996 (13.66mn units in rural areas and 7.57mn units in urban areas). Going by this trend, the national housing backlog by the year 2001 may go up to over 41mn units.

1.6.2 Definition and objectives

The right to shelter can be defined as that right which enables people to live in a dignified and sustainable manner.

The Istanbul Declaration on Human Settlements endorsed the universal goal of ensuring adequate shelter for all and for making human settlements safer, healthier, more livable, equitable, sustainable and more productive.

Two major themes of the Istanbul Declaration—adequate shelter for all and sustainable human settlements’ development in an urbanising world—have their genesis in the Charter of the United Nations that aimed at reaffirming existing and forging new partnerships for action at the international, national and local levels to improve our living environment.

Thus, the objective of right to shelter represents opportunities and challenges for the development process, as well as risks and uncertainties.

In short, the objectives can be summarised as follows:

- Improve the living conditions in human settlements in ways that are in consonance with local needs and realities;
- As rural and urban developments are interdependent, adequate infrastructure and public services are to be built up in rural areas;
- Develop an integrated network of settlements;
- Minimise rural-urban migration;
- Special focus to be given to medium and small-sized towns;
- Ensure legal security of tenure;
- Protection from discrimination and adequate access to affordable and adequate housing for all persons and their families; and
- Recognise the particular needs of women, children and youth for safe, healthy and secure living conditions.

1.6.3 Present situation in India

Presently the housing scenario is such that between 25 to 50 percent of the urban population is living in makeshift shelters, squatter settlements or slums. The situation is even worse in rural areas, where 75 percent of the constructions are classified as that of a semi-permanent nature.

The picture is more problematic in the fringe areas of the metropolitan cities. The need for housing has become so great that all lands in the periphery of towns and cities are under the threat of becoming slums for construction works.

According to Joshi (1989), historical chronicles of urbanisation at the turn of the century reveal that whereas the urban population increased by 500 percent, the number of settlements grew only by 77 percent.

This poses the important issue of accommodating additional populations in the existing settlements, and thus creating a problem of density as well as over-loading of the urban system.

Another major problem is the mushrooming growth of slums in and around big cities. The estimated growth of slum dwellers in the four metropolitan cities is presented in Table 1.11.

Table 1.11: Estimates of Growth of Slum Dwellers in Metropolitan Cities						
<i>Unit: In lakh</i>						
Variable		Bombay	Calcutta	Delhi	Madras	Total
Slum dwellers (population)	1981*	28.31	30.28	18.00	13.63	90.22
	1989	53.78	57.53	34.20	25.90	171.41
		(11.24)	(11.16)	(11.25)	(11.25)	(11.24)
	1995*	70.77	75.70	45.00	34.03	225.50
		(5.26)	(5.26)	(5.26)	(5.23)	(5.25)
No. of Slum Housing Units (@ 6 persons per family)	1989	8.96	9.59	5.70	4.32	28.57
	1995	11.80	12.61	7.50	5.67	37.58
No. of Acres Required (@ 40 sq. Mt. per housing) for Slum Unit	1989	8854	9476	5632	4269	28231
	1995	11660	12460	7411	5603	37134
<p><i>Note:</i> Figures in parentheses are per annum percent rate of growth; * Estimated by assuming 10 percent average annual growth rate</p> <p><i>Source:</i> Elumalai (1989)</p>						

1.6.4 Government policy

Article 21 under the Chapter on Fundamental Rights deals with the right to life and personal liberty. The Supreme Court of India, in its judgement on Francis Coralie vs. the Union Territory of Delhi, AIR 1981, SC 746, deliberated that the right to life and personal liberty includes the right to live with human dignity and all that goes with it, namely, the bare necessities of life, such as adequate nutrition, clothing and *shelter*. [emphasis added]

Again, in another Supreme Court judgement, there was a dictum that shelter is one of our fundamental rights (Prabhakaran Nair vs. the State of Tamil Nadu).

The National Housing Policy in 1988 did not pay enough attention to the serious problems of high land costs in urban areas, degrading slum conditions and more importantly, the drift towards urbanisation. As per the 1994 Housing policy, the Government shifted its role from that of a builder to that of a facilitator.

The Central Government has prepared a new housing policy titled “National Housing and Habitat Policy (NHHP), 1998”. Two main points in this policy are worth noting. The first is to forge partnerships between private, public and cooperative sectors for enhancing the capacity of the construction industry to participate in housing. The second is to empower the Panchayati Raj Institutions (PRI) and village cooperatives to mobilise credit for rural housing.

Under the NHHP the Central Government has set a target of construction of 2mn houses every year with emphasis on the poor and the deprived. Out of this 0.7 million houses shall be constructed in the urban areas. The government is encouraging private investment in housing through various means such as providing 100 percent foreign equity in housing, real estate development and urban infrastructure sectors.

The policy recognises the role of NGOs and community-based organisations in assisting the under-privileged sections of society to secure adequate and affordable shelter.

On the related matter of tenancy, the 75th Constitution Amendment Act, 1994, has enabled the State Governments to establish State-level rent tribunals for expeditious disposal of tenancy litigation. The Urban Land Ceiling and Regulation Act (ULCRA) has also been repealed by an ordinance to allow market forces to operate in the housing sector, a step that is believed to increase the housing stock in the country.

In 1998, the government proposed to set up a network of 1,000 rural building centres at a cost of Rs. 65 crore (Rs. 650mn). According to the National Institute of Rural Development, the nodal agency for executing this programme, “This network would aid in technology transfer, information dissemination, skill upgradation and production of cost-effective and environment-friendly materials for housing.”

Furthermore, the Ministry of Rural Areas and Employment also plans to establish a National Centre on Habitat Management for conducting research on different aspects of rural housing.

1.6.5 Implementation

In India, the implementation measures relating to the demand for and supply of housing are handled by the Housing and Urban Development Corporation (HUDCO) Ltd., and its subsidiary, the National Housing Bank (NHB). Whereas the NHB is responsible for financing of housing schemes, the planning and actual implementation is being done by HUDCO. The NHB was created in 1989 with the principal objective of promoting a healthy housing finance system and providing adequate finance to the housing sector.

In urban areas, HUDCO mainly builds three types of houses—for higher income, middle income and lower income groups. However, HUDCO is not responsible for slum development. The Ministry of Social Welfare has to develop low cost and sustainable houses in slums under its slum development scheme.

“Housing for All” has been identified as a priority area in the agenda of the Government as per the Budget 2000 speech of the Union Finance Minister. He had stated that 25 lakh dwelling units would be provided in the rural areas. 12 lakh houses for people below the poverty line are proposed under the Indira Awas Yojana. An amount of Rs. 1,501 crore has been provided in the budget.

The Union Government has proposed a new scheme to assist the States and Union Territories by way of a matching allocation for rural housing schemes meant specifically for weaker sections and the poor.

The objective is to encourage the States to increase their efforts and resource allocations for rural households under the minimum needs programme. There will be flexible Central support to the States to enable them to continue with their existing programmes, which have hitherto been suffering for want of adequate resources.

1.6.6 Drawbacks of the system

As per the census data, the urban population grew at a rate of 3.64 percent per annum during 1981-91. On the other hand, the housing shortage was estimated to grow at 1.76 percent per annum during the same period. In other words, the gap between the demand and supply seems to have come down.

Another interesting fact is that though the urban households grew at a rate higher than the rural households (3.77 percent compared to 2.12 percent), the urban housing stock has kept pace with the increasing demand for housing. In fact, it has outpaced the growth in urban households. Taking urban and rural areas together, total housing stock increased by 3.18 percent per annum during 1981-91, compared to 2.74 percent per annum growth in the number of households.

The major reason influencing shortage is the decreasing level of investment in this sector, particularly in plan allocations. A quick perusal of plan allocation data revealed that governments are increasingly relying on the private sector to deal with the responsibility of providing shelter to the growing population.

During the past plans, the public sector, in spite of its public housing supply development paradigm, was able to contribute only 10.2 percent of the total investment made in the sector. The share of public investment has fallen from 34 percent in the first plan to eight percent in the eighth plan.

The Ninth Plan has estimated that an investment of Rs. 1,21,371 crores at 1997 prices will be needed to meet the requirement of 16.76mn units in the urban areas alone during the Ninth Plan period (1997-2002). Out of this, only Rs. 52,000 crore (28 percent) could be met by the formal sector.

Another major drawback of the system is that the government has not given construction activities the status of an industry, thus denying the sector all benefits available to an industry.

Furthermore, with respect to housing finance, the policy is biased in favour of the higher income groups, and has not paid enough attention to the needs of the rural poor. In the metropolitan cities, the continuous decrease in purchasing power of the rupee and sky rocketing rates of houses/flats has rendered the dream of owning a house beyond realisation. On the other hand, the NHB scheme for housing loans is open to the rural population, but these are to be disbursed through scheduled commercial banks. Besides, the viability of the scheme in the rural area is severely limited by the savings pattern, behaviour and capacity of the rural population and more so due to poor service area coverage by the rural branches of scheduled commercial banks.

1.6.7 How to improve the situation?

Private sector initiative in the housing sector is the need of the hour and both the government and the private sector have to join hands for the growth of this sector. For effective participation of the private sector, the “commercialisation principle” has to become a reality.

However, for consumer satisfaction, it is also necessary to have an effective regulatory mechanism. The strategy should be based on the removal of all supply side constraints in land development and production and delivery of housing. The following points are important for the formulation of an integrated and enabling strategy for housing:

- To declare that providing shelter to the homeless is a basic human right, and thus all efforts need to be made to prevent eviction of poor people from their existing dwellings, along with the construction of new houses;
- Establishment of a regulatory mechanism for a proper mix of public and private sector initiatives; Construction needs to be given the status of an industry;
- Fiscal incentives and development of institutional mechanisms for housing finance need to be facilitated in a better way;
- Research in and development of low-cost materials and technology has to be adequately funded;
- Capacity building and institutional reforms at the local body level have to be carried out; and
- Community participation in the production and management of real estate assets has to be encouraged.

With respect to housing finance, the following steps are to be taken;

- The housing finance scheme (its loan structure etc.) under the NHB is to be suitably adapted to the needs of the common population;
- Institutional finance in the rural housing sector should be strengthened since presently there is virtually no institutional finance in this sector;
- The central and state governments’ schemes for housing should be implemented jointly.

It should be made mandatory that a certain percentage of the profits earned through housing finance by various institutions should be devoted to financing the housing for the very poor at a negligible rate of interest.

1.6.8 Conclusions

The need for proper shelter is increasingly becoming a national problem. One reason for the problem is unsustainable substitution of land space between housing and other immediate needs.

This situation has led to an unsustainable development of housing facilities in a few areas whereas the vast majority of the country is without proper shelter.

The problem is further aggravated by large-scale rural-urban migration, and the result is proliferation of urban slums without any basic amenities for dignified living.

This brings out the imperative need for an integrated, enabling and holistic housing policy at the national level. In this era of globalisation and liberalisation, the present policy is biased against the poor.

To rectify this, policy formulation should be based on both macro and micro aspects of the problem. Micro level planning is vital because it takes into account what consumers actually need regarding the right to shelter, whereas the formation of macro objectives are important for the viability of the system.

1.7 RIGHT TO EDUCATION

1.7.1 A brief overview

“Learning is excellence of wealth that none destroy; To man naught else affords reality of joy”—Poet Valluvar in *Tirukkural*.

In a similar vein, the Report of the United Nations Committee of Development Planning, 1990, has stated: “The process of economic development is becoming increasingly to be understood as a process of expanding the capabilities of the people”.

Education is one of the key factors for improving the capabilities of the people to take part in the development process.

In this sense, literacy is one of the basic tools of self defence in a society where social interaction often involves the written media. For example, an illiterate/preliterate person is less equipped to defend herself/himself in court, to compete for secure employment, to take part in political activities and so on. In other words, basic education is a must to participate successfully in the democratic process within civil society.

The contrast between different states in India points to the fact that basic education is a catalyst for social change and economic development. The example of Kerala shows how the spread of basic education helps to overcome traditional social rigidities. The opposite extreme is the educationally backward states of India, where the existence of social rigidities is hindering human and economic development.

The importance of education in economic development can be gauged by several factors with externalities being one of them. The most important aspect of the external benefit of education lies in the change in the social and cultural climate, incident to the widening of horizons, which education entails. At the same time, this benefit is not an automatic consequence of education at large, but only if the education is relevant and of a certain quality. This is because of the fact that the supply of professional people who cannot be absorbed into appropriate positions may readily become an external diseconomy and source of instability.

This observation raises the issue: what is the type of education that should be emphasised, to what degree, and how soon. Some economists have criticised (from the viewpoint of economic, not moral or social values) the policy of mass education or the extensive system of higher education in developing countries like India. According to them, these countries do not possess the ability to generate an effective demand for a large number of educated workforce, and would take a considerable time to raise their presently limited absorptive capacity for educated persons. These economists have based their notion on the rate of return on education, which equals the ratio of the present value of wages or earnings due to education, to the cost of providing that education.

On the basis of this, it has been argued that from the standpoint of accelerating development, the immediate requirements may call for an emphasis on vocational and technical training and on adult education, rather than on a greatly expanded system of formal education.

However, the above argument is not entirely true for India, as the rate of return on education here is quite high. In general, not only does an educated person earn more than an uneducated person, but the cost of higher education is also low in India. The second argument in favour of universalisation of basic education has been put forward because of the benefits that this will provide to the overlapping generations. In simple words, the neglect of basic education to one generation will have a perpetual impact on future generations. Therefore it is not prudent to neglect the importance of vocational training and adult education.

The right to basic education is the fundamental right under which a person can effectively take part in the development process. In other words, we are talking of education as an item of consumption which people not only need but should also demand. On the other hand, it is the responsibility of the state to ensure the steady supply of the 'service' called education.

1.7.2 Definition and objectives

The United Nations Guidelines for Consumer Protection, 1985, define the right to consumer education as: "Governments should develop or encourage the development of general consumer education and information programmes, bearing in mind the cultural traditions of the people concerned. The aim of such programmes should be to enable people to act as discriminating consumers, capable of making an informed choice of goods and services, and conscious of their rights and responsibilities. In developing such programmes, special attention should be given to people in general, and civil society in particular."

Given the imperatives for basic education, the objectives of the right to education can be spelt out by taking into account the role that education plays in empowering people in general and the civil society in particular. Dreze and Sen (1995) spell out the following gains that accrue to an individual due to basic education:

- Being educated is a valuable achievement in itself, and it gives the consumers the effective freedom and power to choose between 'good' and 'bad';
- Education has an instrumental personal role. An educated consumer can make more effective use of available opportunities;
- Better education and greater literacy can improve public discussion on consumer needs and encourage informed collective demands; and
- Greater educational achievements of disadvantaged groups can increase their ability to get a fairer deal. Thus, basic education reduces consumer-based inequalities.

In short, though the UN Guidelines have laid stress on consumer education, the underlying principle is basic education. Therefore, the right to basic education is an all-encompassing right covering different aspects of human development.

1.7.3 Present situation in India

At the time of independence, the education facilities in India were dismal. India had a very low literacy rate, particularly in the case of female literacy. Over the last fifty years, progress has been made in the field of education; e.g. the expansion of schooling facilities. According to the Sixth All India Education Survey, about 83.4 percent of the rural habitations in the country had a primary education facility within one kilometre of walking distance. In middle school education, 76.2 cent of the habitations had this facility within the habitation or within a walking disatance of 3 km. However, when a 'habitation' rather than a village was used as the relevant unit, almost 49 percent of the 979,000 rural habitations (in 1986) did not have a primary school within their habitation (Visaria, 1992). As per the Ninth Five-Year Plan, the habitations without primary schools/sections as per the norm of 1km walking distance is as high as 1.76 lakh.

Apart from the input-oriented data presented above, the result-oriented data also shows a faster rise in literacy in 1991 compared to that in the previous decade (1971-81). The rise was more pronounced in the case of female literacy. However, there is a wide disparity among the different states of India. A comparative set of figures is presented in Table 1.12.

Table 1.12: Basic Education in India: Achievements and Diversities				
Description		India	U. P.	Kerala
Literacy Rates (Age7+) for Selected Groups (1991):	Female	39	25	86
	Male	64	36	96
Literacy Rates Among Children Aged 7-14 (1993-94):				
Rural:	Female	32	22	83
	Male	57	52	89
Urban:	Female	65	53	93
	Male	82	74	93
Proportion of Rural Children Attending School (1993-94 (%):				
Age 5-14:	Female	55	44	94
	Male	70	67	93
Percentage of Drop-outs in the 5-14 Age Group (1993-94):				
Including those who have never attended school (%)				
Rural:	Female	45	55	6
	Male	30	33	7
Urban:	Female	20	32	7
	Male	16	23	6
<i>Source: National Sample Survey Organisation (NSSO), 47th Round</i>				

One of the main reasons for this inter-state disparity in educational achievements was the very low enrolment of children in the educationally backward states of India (Table 1.13).

Table 1.13: Gross Attendance Ratio by Sex in General Education by Age Groups, 1995-96				
State	Boys (years)		Girls (years)	
	6-11	11-14	6-11	11-14
Rural Areas:				
Bihar	61	60	39	28
Madhya Pradesh	90	66	69	40
Rajasthan	91	68	45	24
Uttar Pradesh	90	67	65	30
India	90	70	72	47
Urban Areas:				
Bihar	83	81	72	73
Madhya Pradesh	105	92	99	90
Rajasthan	107	81	91	76
Uttar Pradesh	91	74	89	60
India	102	87	98	80
<i>Source: National Sample Survey Organisation, 52nd Round (July 1995-June 1996, August, 1998)</i> <i>Courtesy: Institute of Applied Manpower Research, New Delhi</i>				

Certain interesting facts can be discerned from the data displayed above:

- Enrolment in the age group of 6-11 is more than 100 percent in certain regions (including the urban areas for India as a whole). The main reason is that because of various socio-economic constraints, the learning process of children starts late. Besides that, there are many students who may not have been promoted to the next class;
- The difference between the all India figures and the state figures was more pronounced for girls than for boys; and
- The disparity was more in rural areas than in urban areas.

Another important fact is that there is a high female-male literacy disparity in terms of educational achievements. It may be that it is very difficult to overcome the historical disadvantages, both structural and more so socio-cultural, with respect to literacy, unless substantial and sustained state intervention is made in favour of the educationally backward BIMARU states. A grassroots example will clearly show the imperative for state intervention.

In 1997, the CUTS Centre for Human Development, Chittorgarh, did a survey on the empowerment aspects of rural women in five blocks of the Chittorgarh district of Rajasthan (CUTS, 1997). The survey results showed contrasting responses. For example, in more than 87 percent of the villages surveyed, people said that they do discriminate between the male and female child with respect to education, yet in 83.7 percent of the villages the respondents agreed to the importance of female education. The following are some of the reasons cited by the respondents for not sending girls to school:

- The most important reason was that educated girls would take up jobs, an idea that the villagers did not like;
- The villagers feared that educated girls would revolt against age-old social customs and traditions;
- In some villages the people did not send their girls to school because the facility was not available in the village, and hence they were worried about the safety of their daughters;
- Daughters are sure to get married sooner or later, therefore investing in their education was considered as a 'waste';
- Poor economic conditions also played an important role in discouraging parents from sending their daughters to school and;
- Girls are required to manage the household right from an early age;

In order to give an impetus to adult education programmes, the government launched the National Literacy Mission in 1988. The objective of the mission is to impart functional literacy to 80mn adults in the age group of 15-35. In this context, the government has adopted a two-fold strategy to achieve the target. Firstly, certain areas have been selected to form part of the global strategy to be applied all over the country. Secondly, forty technology demonstration (TD) districts have been selected for intensive inputs so that the findings of technological and scientific research in a controlled environment (mainly keeping the Kerala experience in mind) could be feasibly replicated.

Among the districts selected, one half were well endowed (WE) districts and the other half were under-endowed (UE). Under this programme, these districts were provided techno-pedagogic inputs such as improved blackboards, better slates and learning aids like charts, globes, models etc., and reading material in the local language and dialect was developed. Table 1.14 shows the comparative data (on 1981 and 1991) on literacy rates for these districts, for the years 1981 and 1991, along with the overall data of the concerned states.

Table 1.14: Literacy Rates in Technology Demonstration Districts			
Unit: In percentage			
State/District	1981	1991	Change
Andhra Pradesh	29.94	37.46	7.52
Hyderabad (WE)	58.33	55.03	-3.30
Adilabad (UE)	18.79	27.79	9.00
Bihar	26.20	31.10	4.90
Ranchi (WE)	31.41	41.69	10.28
Madhubani (UE)	21.75	26.96	5.21
Gujarat	43.70	51.65	7.95
Ahmedabad (WE)	56.08	63.09	7.01
Panchmahal (UE)	28.10	36.17	8.07
Haryana	36.14	45.54	9.40
Rohtak (WE)	42.55	53.68	11.13
Sirsa (UE)	29.87	38.16	9.29
Karnataka	38.46	47.02	8.56
Dakshin Kannada (WE)	53.47	65.50	12.03
Raichur (UE)	24.72	28.77	4.05
Madhya Pradesh	27.87	35.52	7.65
Indore (WE)	49.00	55.44	6.44
Jhabua (UE)	11.15	14.17	3.02
Maharashtra	47.18	54.38	7.20
Nagpur (WE)	54.56	63.05	8.49
Osmanabad (UE)	29.78	44.29	14.51
Orissa	34.23	40.97	6.74
Cuttack (WE)	45.43	53.36	7.93
Kalahandi (UE)	19.42	25.32	5.90
Punjab	40.86	49.29	8.43
Ludhiana (WE)	50.60	57.62	7.02
Bhatinda (UE)	27.72	35.92	8.20
Rajasthan	24.38	31.03	6.65
Bikaner (WE)	28.20	33.35	5.15
Sikar (UE)	25.43	33.07	7.64
Tamilnadu	46.76	54.61	7.85
Coimbatore (WE)	53.80	60.80	7.00
Salem (UE)	39.29	47.59	8.30
Uttar Pradesh	27.16	33.78	6.62
Aligarh (WE)	31.35	35.96	4.61
Mirzapur (UE)	23.98	31.28	7.30
West Bengal	40.94	48.13	7.19
24 Parganas (North) (WE)	46.17	55.58	9.41
Murshidabad (UE)	24.89	30.50	5.61
Source: Premi, (1991)			

The following inferences can be drawn from the data presented in Table 1.14:

- Out of the twenty-six districts, only thirteen showed comparatively better improvement in the literacy rates. The other thirteen districts had lower improvement in the literacy rates compared to the state average, indicating only marginal impact of improved inputs on the adult literacy programme;
- Out of the thirteen districts that showed better performance, seven were under-endowed. This means that certain critical minimum inputs can make a substantial contribution to the improvement of

literacy, and at the same time some additional inputs into the well-endowed districts may not make much of an impact on improving literacy;

- Most importantly, the data revealed that the Kerala experience could not be replicated elsewhere in India, thereby contradicting the Dreze-Sen hypothesis of learning *by India from India* (at least with respect to the adult literacy programme).

1.7.4 Government policy

As on this day, the right to education is not a Fundamental Right in India. However, in one case the apex court ruled that primary education is a fundamental right. Furthermore, with respect to education, there are three related Fundamental Rights.

Under the Chapter on Fundamental Rights, Articles 28-30 deal with education. Article 28 Cl. (1) states that no religious instruction shall be provided in any educational institution that is wholly maintained with state funds.

Article 29 Cl. (2) states that no citizen shall be denied admission into any educational institution maintained by the State, or receiving aid from state funds, on grounds of religion, race, caste or language.

Article 30 Cl. (2) states that the state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

A careful perusal of these Fundamental Rights shows that these rights are related to education, and not to the right to education.

The right to education is mentioned in the Chapter on Directive Principles of State Policy, which aim to achieve the goal of a welfare state. This chapter is complimentary to the Chapter on Fundamental Rights. And education is certainly a pillar to achieve the goal of a welfare state.

Part IV of the Indian Constitution deals with the right to education under Articles 41, 45 and 46.

Article 41 spells out the right to work, to education and to public assistance in certain cases. “The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to education.” In a related, significant judgement, the Supreme Court argued that the Court should so interpret an Act as to advance Article 41 (Jacob vs. Kerala Education Authority).

Article 45 states the provision for free and compulsory education for children. The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

In 1993, the Supreme Court, in one of its judgements, argued for education as a fundamental right (J. P. Unnikrishnan vs. State of Andhra Pradesh). The Bench interpreted Articles 21, 38, 39 (a) and (f), 41 and 45 of the Constitution as follows:

- The framers of the Constitution have made it obligatory for the state to provide education for its citizens;
- The objectives set forth in the Preamble to the Constitution cannot be achieved unless education is provided to the citizens of this country;
- The Preamble also assures the dignity of the individual. Without education, dignity of the individual cannot be assured;
- Parts III and IV of the Constitution are supplementary to each other. Unless the “right to education” mentioned in Article 41 is made a reality, the Fundamental Rights in Part III will remain beyond the reach of the illiterate majority; and

- Article 21 has been interpreted by this Court to include the right to live with human dignity and all that goes along with it. *The right to education flows directly from the right to life and personal liberty.* [emphasis added]

However, the reality is that except in a few states like Kerala, Tamil Nadu and West Bengal, basic education is neither free nor compulsory. Over the years, the goal of providing free and compulsory education until the age of 14 has been regularly reiterated. The National Policy on Education, 1986, had in fact declared that by 1995 all children will be provided free and compulsory education up to 14 years of age.

The Revised Education Policy, 1992, has reiterated that it is imperative to adopt an array of meticulously formulated strategies based on micro-planning to ensure children's retention in school. The policy further states, "a warm, welcoming and encouraging approach, in which all concerned share a solicitude for the needs of the child, is the best motivation for the child to attend school and learn".

1.7.5 Implementation

The economics of education with high investments and low returns (to the provider and not to the user) ensures that the state continues to play a dominant role. One thing is common between the developed and the developing countries and that is the fact that the education sector is heavily concentrated in the hands of the governments. Only in countries where the government is pre-occupied with other tasks is the private spending in education higher.

In India, the government dominates the education sector and more than 85 percent of the spending is done by the governments at the Central, State and local levels, while spending by the private sector is small. Of the total plan funds earmarked for education in the period between 1955 and 1996, funds allocated to elementary education have been around 35 percent. Recently, the government appeared to be focused on the universalisation of elementary education as the crux of its education policy. The aim was to provide compulsory education to the children in the age group of 6 to 11 years through formal schooling (Table 1.15).

The Government of India recently created a new Department of Elementary Education and Literacy under the Ministry of Human Resources Development to give a new thrust and focus to these efforts. Some new initiatives including a scheme for universalisation of elementary education have been initiated, beginning with some states. On the literacy front the National Literacy Mission would be revamped so that the literacy rate could be raised to 75 percent by the year 2005.

Table 1.15: Sectoral Outlays for Education (percentage)		
Sector	1995-96	1996-97
Elementary	66.8	35.6
Secondary	11.3	21.7
Higher	7.0	13.4
Adult	6.6	12.8
Technical	7.5	13.9
Others	0.8	2.6
<i>Source: The Economic Times, 13.07.1997.</i>		

1.7.6 Problems of implementation

Since independence, the education policy of India has suffered from a great deal of confusion and inconsistency. It has been an inconsistency between the ends and the means to achieve those ends. Dreze and Sen (1995), point towards the following inconsistencies and contradictions:

- A confusion of objectives;
- Inconsistencies between stated goals and objectives; and
- A specific contradiction between stated goals and resource allocations.

The successive versions of the National Policy on Education 'resolved' to raise the proportion of plan allocation to education to 6 percent per annum, but this target has never been achieved till date. However, it has been felt that the failure of the education policies of the Government, more particularly in meeting the objective of increased literacy, is not merely because of the lower outlay, but mainly because of the problems related to implementation. India spends about 3.8 percent of its GNP on education and 46 percent of its population, aged 15 years and above, is illiterate, while China spends only 2.6 percent of its GNP on education but only 22 percent of its population aged 15 years and above is illiterate.

Another big problem faced by the Central Government while allocating funds to the States has been the very poor utilisation of previously sanctioned funds. This is true for the education sector also. According to the HRD Ministry's sources, Bihar, which was sanctioned Rs. 600 mn over the past three years for Operation Blackboard, could utilise only about Rs. 90 mn. The respective data for Gujarat is Rs. 520 mn and Rs. 50 mn, that for MP it is Rs. 380 mn and Rs. 80 mn. Tamil Nadu could utilise only Rs. 7.3 mn out of a sanctioned amount of Rs. 70 mn.

The decline in capital expenditure on education increased the pupil-teacher ratio in the 1980s. Furthermore, since education is primarily a state subject, there is large-scale inter-state variation in sectoral allocations on education. Another form of imbalance is the neglect of elementary education.

Even within the elementary education system, there is a good deal of elitism in India. For the disadvantaged groups, the official policy is to encourage the non-formal system of education. This two-track approach has the danger of institutionalising rather than eliminating the elitist feature of elementary education and with it the large disparity in education (Table 16). For example, the government recently thought of including elementary education as a fundamental right, however, the Bill was not to guarantee universal education or free education for everyone up to the age of 14 years.

1.7.7 How to improve the situation?

One way of solving the problems associated with the education sector in India is to increase the plan allocation. However, problems are not related to resources alone. The priority should be to ensure that every village in the country has a free, functioning, well-staffed and well-attended primary school.

The requirement is to provide adequate educational facilities within the basic framework of a village school. Two essential steps in that direction are to increase the number of teachers and to ensure that they teach.

An imperative is to improve teachers' performance, not by the government vigilance department but through the "vigilance of parents". For example, in Tamil Nadu, close monitoring by a politically conscious community is the essential factor for the success of primary education in that state.

However, compulsory education on its own is not an adequate programme of public action for the promotion of basic education. A more exacting issue is the need for a substantial improvement of the schooling system. Only then can the country make the right to education a fundamental right.

To sum up, in order to raise the standard of education in India, urgent steps are required to get rid of the following:

- The present outdated methods of teaching;
- Adverse student-teacher ratio;
- Poor laboratory facilities;
- Uninspiring curriculum;
- Disproportionate subject syllabus; and
- The absence of innovative teaching.

Therefore, the educational system of the 21st century should be capable of making the students aware of socio-economic problems by integrating them with society, and by inspiring creativity and competence among individuals. Finally, it should be humanistic in approach.

In this context, it has been pointed out that the visual media must play an important role in formal as well as non-formal education in the coming years, in order to achieve a greater reach. According to Bhattacharya (1992), the following steps should be taken to make the schools in backward areas aware of modern society and present-day progress in the various fields of knowledge:

- Preparation of relevant education software adopting the specific occupational, geographical, economic and cultural needs of different regions; and
- Preparation of a new community of communicator-educationists.

Besides the above, the involvement of the local community, particularly for primary level education, will help a great deal. In this connection the role of grass root NGOs in educating the rural people, more particularly the parents of the children, would be very important.

The attainment of universalisation of primary education may remain a distant dream if coordinated efforts are not made by the various ministries like education, health, rural development, agriculture (food), water & sanitation etc, both at the Centre and in the states. It will not be possible to segregate the need for food, clothes, shelter, and better health & sanitation facilities from the need for education. The large percentage of drop outs at the primary level, (54 percent in 1997-98 for the classes I to VIII), which means that only about 46 percent of the children who enter class I reach the secondary level, is mainly because of the economic necessity of the children to help their parents by working.

1.7.8 Conclusions

The universalisation of education is an important pillar for making people (consumers) aware about their rights and responsibilities.

The state of universal education is dismal in India, to say the least. Therefore education should be made a fundamental right, and not necessarily just a consumer right, and more particularly for the primary and middle levels.

The education problem in India is not due to poor allocation of funds *per se*. Even when there are funds, education suffers due to lack of planning and proper implementation mechanisms.

In sum, the right to education and its proper implementation is necessary to achieve the goal of participatory economic development at large, and in particular to achieve the citizens' (consumers') satisfaction.

1.8 RIGHT TO ENERGY

1.8.1 A brief overview

“The critical problem today lies in increasing the efficiency in the use of resources. The inefficiencies in the use of created capacities have undermined the financial viabilities of energy sector units. Public sector units seem to be unable to deal in a commercial manner with users with political clout. Reforms, therefore, have to involve institutional arrangements.”—Parikh and Parikh (1992).

Energy is an essential input for our day-to-day activities, and plays a critical role in all production and many consumption activities. Rapid economic development is not likely to happen unless we have a steady supply of energy. Cutting across the difference in the level of development between different countries, a positive correlation between economic growth and demand for energy has been observed by a number of researchers. This is true for India also. For example, between 1953-54 and 1992-93, the rate of growth of the Indian economy was 3.8 percent per annum, and that of energy demand was 4.6 percent per annum.

Per capita consumption of energy is very low (287 Kilogram of oil equivalent during 1998-99) as compared to other developed and developing countries (South Korea 2863 Kgoe). The average per capita consumption of electricity taking the world as a whole is about 1470 Kilogram of oil equivalent. In India, about 40 percent of energy consumption comes from non-commercial energy sources. Firewood and chips including dung cakes account for the major consumption of energy, more particularly in rural areas. However, the use of commercial energy has been showing an increase over the years though consumption of non-commercial energy has remained more or less constant.

The use of non-commercial energy still plays a prominent role in the rural areas. This has serious implications on the future sustainable development of the Indian economy. Further, the pattern of commercial energy consumption shows quite a high degree of dependence on oil, i.e. about 48 percent of total commercial energy consumption in 1998-99. Thus, it is not unrealistic to comment that the economic crisis of the early 1990s was ‘fuelled’ by the energy crisis. The reasons for the crisis were as follows:

- Increase in world oil prices and hence the consequent pressure on domestic prices;
- Growing oil import bill, and hence the consequent pressure on balance of payments; and
- Demand and supply imbalances in all commercial fuels.

However, despite the problems mentioned above, energy is one of the basic needs for a minimum acceptable standard of living. And the right to, and not just the need for energy, is fundamental to consumer satisfaction.

1.8.2 Definition and objectives

The right to energy can be defined as that right without which it is difficult to participate in the process of economic development.

The United Nations Guidelines for Consumer Protection, 1985, did not say anything on the right to energy under its section on the right to basic needs. However, without this right it is difficult to ascertain other rights as enshrined in the UN Guidelines (food, safety, healthy environment etc.).

The de-centralised nature of energy consumption coupled with environmental concerns poses a great dilemma while formulating an appropriate energy policy. In other words, the right to energy is inter-linked with the responsibility pertaining to energy consumption. Therefore, both from the point of view of sustainable development, and for consumer satisfaction and need, the right to energy is fundamental. Thus, the objective of the right to energy can be gauged from the following inter-linkage (see Box 1.17) between production and consumption of energy with its different end-uses under different socio-economic systems (adopted from Parikh and Parikh, 1992).

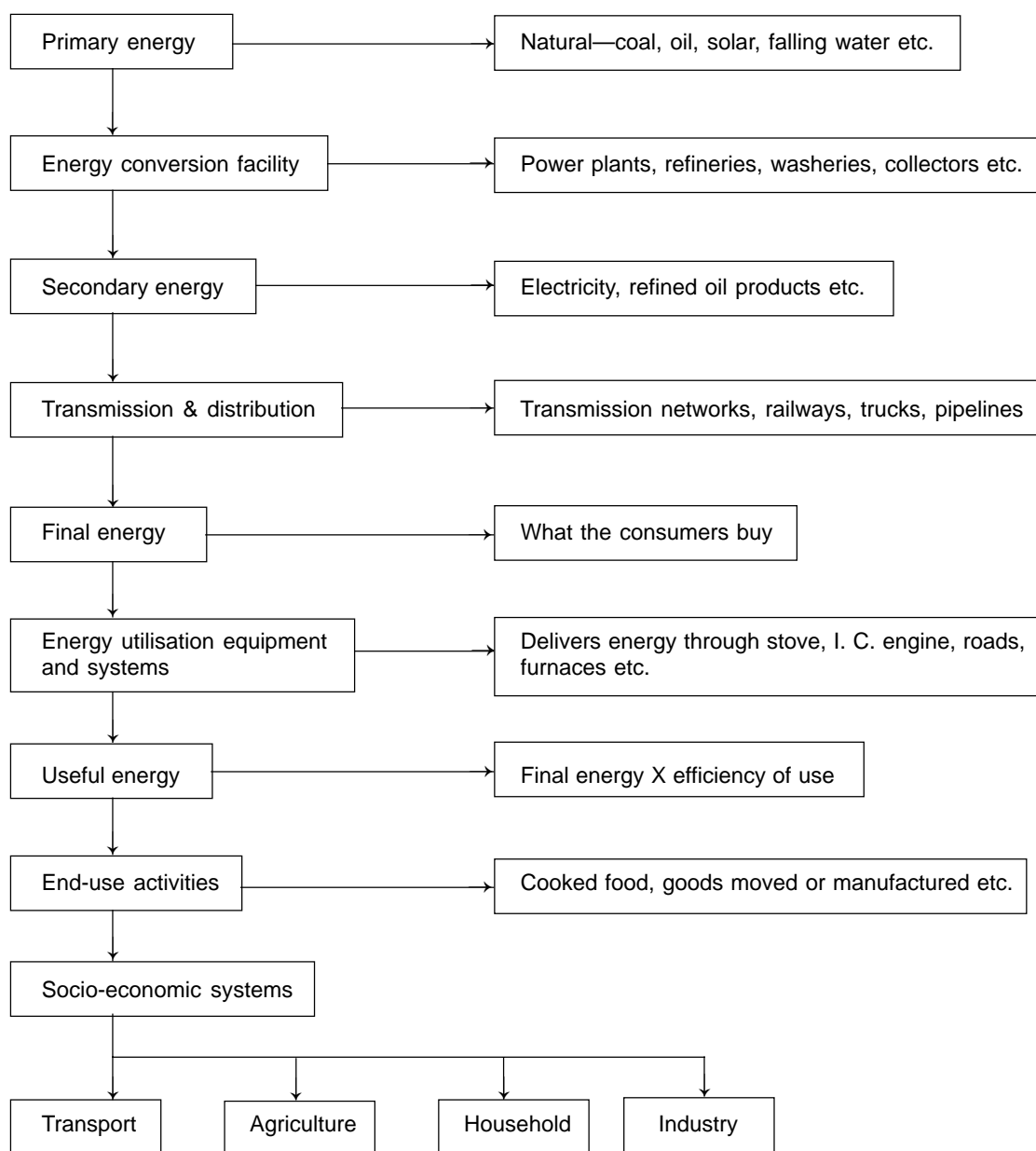
1.8.3 Present situation in India

India faced the first major energy crisis in 1973. In that year, the Organisation of Petroleum Exporting Countries (OPEC) hiked crude oil prices by more than four times. From the point of view of India's economic development, the moot question is whether the country can cope with a sudden increase in world oil prices? The issue is important, given an increasing dependence on imported oil to meet our growing energy demands.

In terms of availability, coal is the most important source of domestic energy. The estimated coal reserve is 85,444mn tonnes. On the other hand, the recoverable oil reserve is estimated at 709mn tonnes, and that of gas at 477mn tonnes of oil equivalent. Furthermore, according to a survey by the Central Electricity Authority, the hydro-electric potential of the country is equivalent to about 84,044 MW at 60 percent plant load factor. As on January 1999, about 22 thousand mw of hydro electricity had been developed. At 60 percent plant load factor the exploitation of hydro electricity to the potential works out to only about 16 percent. Apparently, it is felt that India is not likely to face a major energy crisis in the near future. Table 1.16 provides the state-wise and prime mover-wise data on installed generating capacity.

Table 1.16: Installed Generating Capacity (as on January, 1999) in MW						
State	Hydro	Thermal	Total	Hydro Share (%)	Thermal Share (%)	Total of India (%)
Andhra Pradesh	2657	3551	6208	42.8	57.2	6.8
Assam	2	620	622	0.3	99.7	0.7
Bihar	175	1814	1989	8.8	91.2	2.2
Gujarat	547	6492	7039	7.8	92.2	7.7
Haryana	884	896	1780	49.7	50.3	2.0
Himachal Pradesh	299	0	299	100.0	0.0	0.3
Jammu & Kashmir	184	182	366	50.3	49.7	0.4
Karnataka	2556	1327	3883	65.8	34.2	4.3
Kerala	1700	102	1802	94.3	5.7	2.0
Madhya Pradesh	846	3030	3876	21.8	78.2	4.3
Mahrashtra	1801	8747	10548	17.1	82.9	11.6
Orissa	1272	421	1693	75.1	24.9	1.9
Punjab	1799	2130	3929	45.8	54.2	4.3
Rajasthan	971	1264	2235	43.4	56.6	2.5
Tamil Nadu	1956	3907	5863	33.4	66.6	6.4
Uttar Pradesh	1508	4664	6172	24.4	75.6	6.8
West Bengal	142	3749	3891	3.6	96.4	4.3
Central Sector	2509	25247	27756	9.0	91.0	30.5
Other States	275	840	1115	24.7	75.3	1.2
Total (India)	22083	68983	91066	24.2	75.8	100.0
<p><i>Note: Thermal Capacity includes Nuclear as well as wind energy the capacity of which is 2225 MW and 968 MW respectively at all India level and constitute 2.4 and 1.1 percent of the total capacity.</i></p> <p><i>Source: Ministry of Power (from the website)</i></p>						

Box 1.17: Flow of Energy from Production to Consumption and Its Transformation



However, the issue is not the reserves of energy resources in the macro sense and the extent of exploitation (installed capacity) that has taken place. The larger issue is the consumption of commercial energy so that the future economic development is broad-based as well as sustainable. Table 1.17 shows the state-wise estimate of commercial energy consumption as on March, 1999.

Table 1.17: Estimates of Consumption of Commercial Energy as on March 1999				
State	Share in Total Energy (%)			Per Capita Consumption (kgoe)
	Petroleum	Coal	Electricity	
Andhra Pradesh	32.9	18.8	48.3	268
Assam	47.2	8.6	44.2	110
Bihar	24.5	58.3	17.2	407
Gujarart	31.9	10.6	57.5	438
Haryana	23.4	18.8	57.8	492
Karnataka	36.8	12.7	50.5	218
Kerala	37.9	12.8	49.3	148
Madhya Pradesh	22.0	33.1	44.9	241
Maharashtra	39.1	9.7	51.2	415
Orissa	14.8	55.2	30.0	278
Punjab	30.8	5.4	63.8	489
Rajasthan	30.2	5.8	64.0	194
Tamil Nadu	43.0	4.8	52.2	272
Uttar Pradesh	23.5	15.6	60.9	171
West Bengal	27.6	34.0	38.4	161
All India	34.1	12.6	53.3	287
<i>Source: Statistical Outline in India, CMIE, March, 2000</i>				

Certain interesting inferences can be drawn from Tables 1.16 and 1.17 taken together:

- The distribution of installed capacity is skewed mostly towards thermal power generation in most of the states.
- Hydro electricity has not been exploited to the extent it should have been. This may be mainly because of environmental issues and long gestation period.
- Per capita consumption of energy does not necessarily depend on the share of electricity consumption in total energy consumption (the correlation between the two variables is 0.22, and is thus insignificant).

The power situation in India has to be seen with regard to the requirement vis-à-vis its availability. Recent figures show that there has been a shortage of power to the extent of about 9 to 10 percent on an average (Table 1.18). When it is observed from the point of view of peak demand, it is seen that shortage is quite substantial. Only recently there has been some improvement since the shortage has come down to about 11 percent as against 18 percent during earlier years (Table 1.19).

Table 1.18: Average Energy Requirement and Availability (MU net)				
Year	Requirement	Availability	Shortage	Total (%)
1993-94	323252	299494	23758	7.3
1994-95	352260	327281	24979	7.1
1995-96	389721	354045	35676	9.2
1996-97	413490	365900	47590	11.5
1997-98	424505	390330	34175	8.1
1998-99	368046	347900	20146	5.5

Table 1.19: Shortage in Peak Demand of Power in India (MW)				
Year	Peak Demand	Peak Met	Deficit	Shortage (%)
1993-94	54875	44830	10045	18.3
1994-95	57530	48066	9464	16.5
1995-96	60981	49836	11145	18.3
1996-97	63853	52376	11477	18.0
1997-98	65435	58042	7393	11.3
1998-99	65956	58636	7320	11.1

The share of electricity consumption does not in any way affect the overall per capita consumption of energy. However, as the economy grows, the dependence on electricity is going to increase in order to meet the requirements of energy in the future. The trend also shows that the average growth rate of per capita consumption is significant and the value is 9.85, whereas that of population per power consumer is insignificant, the value of which is -4.07. Table 1.20 shows the state-wise trend data on per capita power consumption and population per power consumer.

Table 1.20: Per Capita Power Consumption and Population Per Power Consumer							
Unit: In kwh and in persons							
State	Per Capita Consumption			Population/Power Consumer			Coverage Index
	1980-81	1985-86	1992-93	1980-81	1985-86	1992-93 *	
Andhra Pradesh	95.0	172.6	365.1	22.1 (4.9)	14.5	10.4 (4.8)	0.46
Assam	33.5	47.2	91.0	101.7 (—)	65.7	48.5 (5.8)	0.12
Bihar	53.7	71.6	60.7	76.8 (6.0)	71.0	61.7 (6.2)	0.10
Gujarat	222.0	276.4	622.4	10.6 (5.7)	8.4	7.4 (5.5)	0.74
Haryana	197.8	232.6	672.9	10.6 (6.5)	8.4	7.0 (6.3)	0.90
Karnataka	139.1	174.9	356.8	15.9 (5.8)	10.8	8.8 (5.5)	0.62
Kerala	108.3	138.3	254.9	16.0 (5.7)	11.1	9.0 (5.3)	0.59
Madhya Pradesh	87.5	151.6	312.4	28.9 (5.8)	18.4	12.5 (5.6)	0.45
Maharashtra	223.6	298.5	524.3	12.3 (5.4)	9.4	8.1 (5.1)	0.63
Orissa	94.0	114.5	226.0	50.6 (5.3)	37.0	33.9 (5.3)	0.16
Punjab	297.7	418.4	863.1	7.8 (6.1)	6.0	5.3 (5.9)	1.00
Rajasthan	85.7	125.3	320.0	25.1 (5.9)	18.6	15.4 (6.0)	0.39
Tamilnadu	177.6	213.0	430.7	12.2 (4.7)	8.1	7.1 (4.5)	0.63
Uttar Pradesh	70.8	93.7	209.3	51.1 (5.8)	45.0	35.7 (6.2)	0.17
West Bengal	104.0	120.4	164.5	42.2 (5.6)	39.4	28.7 (5.4)	0.19
India	120.5	162.6	320.6	21.0 (5.7)	15.7	13.0 (5.6)	0.43
Note: Figures in parentheses are average size of the household in 1981 and 1991; * Figures for 1989-90 are used due to data limitations Source: As in Table 2.							

In order to capture a concrete picture on the fulfillment of the right to energy is to look at the coverage index (Table 1.20). This index is calculated as a ratio of average size of household to population per power consumer. The overall coverage index in India was found to be 0.43. Out of the fifteen major states, eight show an index value of less than 0.50.

The range of coverage index value may vary between zero to unity (Punjab is an exception, probably because of the data anomaly as explained in the footnote of Table 1.20). The greater this value, the higher is the coverage on electricity, i.e. the higher is the number of people enjoying the right to energy (though the right to energy has components other than electricity, but electricity is one of the major components).

More important from the view point of energy coverage would have been to examine the extent of rural electrification. Data limitations are severe in this respect. The data are given in terms of percentage of villages electrified and from that the data on percentage of population covered are interpolated. However, even if a village is electrified, that does not mean that the whole population in the village is enjoying the right to electricity. Many states in India have claimed 100 percent electrification of villages. But the difference between population per power-consumer and the average size of the household seems to be quite high. This reflects that large percentage of rural population is still devoid of electricity.

1.8.4 Government policy

In India, there is no overarching policy covering the right to energy. A close approximation is the right to life and personal liberty (Article 21). Various judgements by the law courts interpreted the right to life and personal liberty in many ways. However, nothing has been said about the right to energy, which is crucial for right to life and personal liberty, as it encompasses each and every aspect of life (Box 1.14).

The importance of a sound energy policy has been recognised by the Government from time to time. Administrative measures with respect to supply of energy are spelt out under various reports of the different agencies of the Government of India.

In early 1980s, the Planning Commission, after admitting the danger of excessive oil-dependent-energy generation, spelt out: “Apart from the heavy strain this (oil dependency) will cast on the country’s balance of payments, even the physical availability of oil in the international markets will pose a problem in the years to come. This means that if India’s plans of economic growth are not to be hampered by inadequacies of energy supply, reduced dependence on imported oil has to be a key element in our development strategy” (Government of India, 1991).

The deterioration of financial health of the SEBs in India including the low plant load factor of the thermal plants along with the liberalisation policy of the Government led to the formulation of power sector reforms. The Government of India in the Ministry of Power have enacted Electricity Regulatory Commissions Act, 1998. Under this provision, the Central Government has since constituted Central Electricity Regulation Commission (CERC) at the National level.

Several State Governments also have initiated reforms in the power sectors. The reform process in the Orissa has gone the furthest with privatisation of distribution as well. Many states in India have either constituted or notified the constitution of State Electricity Regulation Commission (SERC). SEBs of some of the states like Orissa, Haryana, Andhra Pradesh, Uttar Pradesh, etc. have been unbundled/corporatised.

As for the institutional reform, the functions of Central Electricity Authority (CEA) have been progressively reduced. CEA continues to advice Government in planning and technological support. Since, 1995, the investment limit for thermal generations, below which the projects do not require the techno-economic clearance of CEA, has been progressively raised from Rs. 100 crores to Rs. 5000 crores.

Transmission activity has been given an independent status and the concept of Central and State transmission utilities (TU) has been introduced after the recent amendment in Electricity Laws. It is mandated in the Act that CTU and STU would be Government companies. The participation of Private

Sector in the area of transmission is proposed to be limited to construction and maintenance of transmission lines for operation under the supervision and control of CTU/STU.

A proposal has been also formulated for enactment of a legislation on energy conservation giving the state and the central governments the requisite powers for promoting and enforcing energy conservation measures in the country.

1.8.5 Problems of implementation

According to Parikh and Parikh (1992), problems of implementation of energy policy are as follows.

Power sector

- Given the resource crunch and fiscal discipline, investments in the power sector are likely to be small;
- Capacity utilisation of power systems continue to remain unsatisfactory. The plant load factor was only 54 percent in 1990-91 (This has gone up in recent years to about 65 percent);
- The State Electricity Boards are grossly over staffed and hardly have financial surplus;
- Transmission and distribution losses continue to be high, ranging from 16 to 25 percent in different States; and
- There is no national electric grid, even the regional grids are not integrated.

Table 1.21 provides state and year-wise data related to problems faced by the power sector: transmission and distribution loss, plant load factor, and deficit as percent of total requirement.

Table 1.21: Problems Faced by the Power Sector									
State	T & D Losses [@]			Plant Load Factor(%)			Deficit [*]		
	84-85	90-91	96-97	84-85	90-91	96-97	84-85	90-91	96-97
Andhra Pradesh	20.7	22.4	18.8	54.4	58.3	78.3	+6.6	7.9	22.1
Assam	22.3	24.1	25.9	29.6	27.7	27.1	—	—	10.2
Bihar	22.8	21.1	25.0	30.5	24.0	15.3	39.4	28.7	27.5
Gujarat	24.1	23.7	18.0	54.0	58.7	64.8	1.7	4.1	8.1
Haryana	22.2	27.5	29.5	34.7	34.6	47.7	28.9	2.9	5.9
Karnataka	23.7	20.1	18.5	—	76.3	70.2	7.2	22.9	27.1
Kerala	24.3	21.7	19.0	—	—	—	2.4	0.5	22.7
Madhya Pradesh	20.3	24.9	19.0	51.7	57.4	62.3	+4.3	2.5	12.0
Maharashtra	14.5	18.1	15.2	46.6	57.4	68.7	4.0	3.9	5.6
Orissa	18.1	25.3	42.3	32.2	34.0	69.4	16.5	22.0	3.0
Punjab	19.3	19.0	18.1	64.3	53.0	65.7	19.2	1.1	1.6
Rajasthan	24.8	25.9	22.0	57.2	42.8	75.6	10.2	2.1	7.4
Tamilnadu	19.3	18.7	17.0	49.0	63.0	72.3	+1.4	6.4	13.8
Uttar Pradesh	21.7	26.9	22.0	31.6	58.3	49.1	13.2	10.6	13.9
West Bengal	23.9	21.8	19.1	36.5	43.8	39.2	2.2	9.2	2.9
India	21.5	22.9	21.2	52.4	53.8	64.4	6.7	7.9	11.5
<p>Note: @ As percentage of availability. The PLF data are for the State Electricity Boards only; * Deficit as percentage of total requirement, and + signs are indicating power surplus</p> <p>Source: As in Table 2 Ministry of Power (website)</p>									

Oil sector

- Domestic oil production has stagnated. The index of self-reliance in oil products has come down from 70 percent in 1984-85 to about 50 percent in 1997-98; and
- Given the heavy presence of crude oil in our import basket, the economy is highly vulnerable to changes in world market prices of oil.

Natural gas sector

- Our natural gas policy continues to generate enormous wastes. Since 1980, more than 20bn cubic metres of gas have been flared (gone up in flames) in Bombay High alone;
- The waste of resources is due to a mismatch between the creation of infrastructure and downstream user facilities; and
- The price of gas and its allocation principle are grossly inconsistent.

Coal sector

- Coal, which supplies 60 percent of India's energy requirements, continues to be under the public sector. The public sector Coal India Ltd. produced about 256 mn tons constituting about 90% of the country's coal. Though it is a monopoly, its performance in terms of profitability etc. has been quite dismal;
- The poor quality of coal (that having a higher percentage of ash content) now accounts for about 55 percent of production as compared to 18 percent in 1980-81, and this has a serious impact on the plant load factor of the coal based thermal power plants and hence on electricity generation.
- The increased share of poor quality coal in domestic production has led to an increase in the import of higher grade coal, particularly after the eighties. The share of coal in total energy imports has increased from (-) 5.02 percent in 1953-54 (net exporter) to about 2.8 percent in 1996-97 (net importer).
- The value of this resource has been going down as coal emits more carbon dioxide per unit of energy than oil and gas.

Non-commercial energy

- Though the share of non-commercial energy has come down over the years, i.e. from about 72 percent during 1953-54 to about 34 percent, it still plays a significant role. This has an adverse effect on ecology;
- The policy response with respect to non-commercial energy is inadequate. For example, against an estimated potential of about 12 mn family bio-gas plants, only 2.7 mn units have been installed till 1998.
- Efforts to use non-conventional energy like solar energy, biogas power plants, wind energy, small hydro power plants etc are not adequate. As against the potential of 20,000 MW of wind energy, only about 968 MW of generation capacity has been installed as on January 1999. The potential of small hydro power plants is 10,000 MW, against which only 450 MW has been installed or is under construction.

Policy co-ordination

- Energy sector policies are not consistent. The principle of efficiency is not followed in the pricing of various fuels;

- Freight rates are not equalised for coal. This policy has resulted in inefficient and unsustainable consumption of energy; and
- While formulating energy policy, even the equity principle is not followed. For example, the cost of LPG consumption is less than the consumption cost of other fuels.

1.8.6 How to improve the situation?

Since independence, political economy considerations have deterred the public sector units from running their activities in a commercially viable manner. Therefore, energy policy reforms must involve institutional reforms with the holistic objective of improving efficiency as well as equity. In this context, energy being a utility sector, the role and function of an independent regulatory authority is important to ensure that the consumers are able to acquire energy at fair prices.

In the context of the problems mentioned above, and the need for the fulfillment of the right to energy, the approach of the Eighth Plan, with respect to the energy sector, was different. The strategy laid emphasis on the imperative of long-term integrated planning with particular stress on an efficient strategy for long term energy supply as well as energy end use. One way of improving the current scenario is to narrow down the gap in realisation from supply cost. This gap is mainly due to the huge subsidies given to the agriculture and domestic sectors in the purchase of power from the State Electricity Boards (SEBs). During 1998-99, the uncovered subsidy accounted for about Rs. 15,616 crores, which is likely to increase to about Rs. 23,023 crores during 1999-2000.

The energy strategy for the future as per the Ninth Plan has been divided into short-term, medium-term and long-term strategies.

Short/medium-term strategies:

- Restructuring of SEBs, including rationalisation of tariff structure so that they run on commercial lines.
- Dismantling of the Administrative Pricing Mechanism (APM) in a short time frame.
- Strengthening of the institutional reforms that had been initiated during the Eighth Five-year Plan, e.g. deregulation.
- To initiate action to reduce energy intensity by adopting energy-efficient technologies in major energy-intensive industries like iron, steel, chemicals, petroleum, pulp & paper and cement.
- Establishing or enhancing as appropriate, labeling programmes for products, in co-operation with the private sector, to provide decision-makers and consumers with information about opportunities for energy efficiency.
- Promoting energy efficiency in accordance with national socio-economic and environmental priorities.

Medium/long-term strategies:

In order to reduce the energy intensity of the economy, some of the measures that may be taken are:

- Demand management through greater conservation of energy, optimum fuel mix, an appropriate modal mix in the transport sector, greater reliance on co-generation, recycling etc;
- Need to shift to less energy-intensive modes of transport, including the use of CNG and synthetic fuels etc;
- Greater emphasis on exploitation of hydro-electric power, particularly for meeting peak level demands;
- To promote R&D efforts on decentralised energy technologies based on renewable resources;

1.8.7 Conclusions

The right to energy is fundamental for the sustainable development of both the production and consumption sectors.

In India, there is no overarching policy covering this fundamental consumer right. Much of India's problems regarding inefficient use of existing energy resources are related to the non-existence of this right. The reason for the absence of this right is because it is intrinsically related to responsibility, so that a balance can be maintained.

Therefore, institutional and organisational reforms are needed in the energy sector in the near future. The aim of such reforms should be a proper mix of different energy resources for consumption, and efforts at reaching out to the vast majority of the Indian population.

1.9 RIGHT TO TRANSPORTATION

1.9.1 A brief overview

Besides energy, transport is the other basic infrastructural requirement for the satisfaction of consumers' basic needs and for economic development. The reason is that transport provides the vital link between the production centres, distribution units and consumers. In the coming years commuting would become an extremely important factor for the survival of the consumer in terms of travelling to work, for pleasure or for societal needs.

Given the socio-economic structure, the majority of people in India use road, rail or water transport, or a combination of the three. For road and water transport, people use both public as well as private services.

However, the rail service reaches only three percent of the total villages. Therefore, it is the bus service that increases the reach of the poor, especially of those living in remote and inaccessible villages. The rationale and imperative behind the inclusion of the right to transportation as one of the basic needs is to bring these 'distanced' masses into the mainstream of socio-economic progress.

1.9.2 Definition and objectives

The right to transportation is taken as a part of the basic consumer rights because without it one cannot take part effectively in the socio-economic development of the country. Broadly speaking, the right to transportation enhances society's capability to participate in the process of economic development.

It would be difficult to give an objective definition of the right to transportation, however, it can be defined indirectly by approaching the issue from the demand as well as the supply side.

On the demand side it takes into account the availability of, the access to, and the ability to use or pay for effective modes of transport. On the other hand the supply side is concerned with the transport policy.

Holistically, a proper harmonisation between the different dimensions of the issue as stated above, will fulfil the objective of participatory economic development.

1.9.3 Present situation in India

With respect to the availability of and access to cheap modes of transportation, the situation in India is not very satisfactory. For this purpose, it would be better to analyse the issue of transportation sector-wise—rail, road, and water transport sectors. The analysis deliberately ignores air transport as it is beyond the reach of the vast majority of the Indian population.

The Indian railways are one of the largest railway systems in the world with an extensive network spread over 62,809 km. Of these, 44,216 km. are accounted for by broad gauge, 15,178 km are accounted

for by metre gauge and 3,415 km are accounted for by narrow gauge. During the last fifty years the Indian railways have extended their route length by only about 17 percent. On the other hand, freight in tons per km has increased six-fold, while the number of passengers per km has grown by five times during the same period.

As compared to railways, road transport has the following advantages:

- In a large number of places, particularly in the interiors of the country side and hilly regions, the only means of travelling is road transport;
- Road transport is more flexible than the railways as it can provide services to the people according to their requirements and convenience;
- Road transport is basically complementary to rail transport as it provides feeder services to goods arriving at the railway stations;
- Road transport is less costly than rail transport, particularly for short distances as the probability of delay, damage or loss is less, because frequent loading and unloading of goods is not required;
- It is a better means to transport perishable and less bulky goods; and
- As compared to rail transport, road transport does not require heavy capital expenditure.

In India, roads are classified into the following categories:

- National highways: these are the roads of national importance that connect large cities and big industrial centres;
- State highways: they link all the important centres of industry, trade and commerce of the state to the national highways;
- District roads: they connect the different parts of a district and important market centres and usually lead to local railway stations, state highways and national highways;
- Rural roads: they are mostly found in the villages and are of two types—surfaced and un-surfaced.

Road transport in India is classified into two modes: traditional and modern. The classification is done in terms of the level of mechanisation of the vehicles used for transportation.

Non-mechanised means of transportation still play an important role in India. Their importance can be gauged by the fact that they cater to the needs of transportation of the rural population. Even as late as in the early 1990s, about 25 percent of inland trade was carried out through non-mechanised modes of transportation, and it provided employment to two crore (20mn) people.

On the other hand, it is also true that the development of the mechanised mode of transportation can no longer be ignored. Between 1975-76 and 1997-98, the number of registered motor vehicles has increased from about 2.6mn to about 3.8mn.

Table 1.22 provides the state-wise trend data on the transport sector of India. The data on railway routes is presented in km per 1,000 sq. km of area; that of road length is presented as surfaced roads as a percent of total road length; and that of passenger buses is presented as the average number of passenger buses under nationalised transport undertakings per thousand of population.

Furthermore, a composite and weighted transport index is constructed by assuming the following weights: railways—0.6, road length—0.2, and passenger buses—0.2. The value of the index ranges between zero to countable infinity. The idea is to compare the relative position of different states with respect to the availability of basic modes of transport, and to compare changes over a period of time.

The data in Table 1.22 shows that there has not been much improvement in the transportation index during the last two decades. The indexes have shown only marginal increase in most of the states, while some states like Bihar, Rajasthan and Orissa have not shown any improvement. The only state that has

shown a significant decline in the index is Assam. A higher growth of this index can be observed in the case of Tamil Nadu, Maharashtra and Kerala.

The third important mode of transport is inland water transport. The importance of inland water transport has declined over the years following the development of rail and road transport. In a few states like Kerala, West Bengal and Goa, and in parts of North East India, inland water transport is used in an organised manner for the transportation of goods and passengers. Despite its decreased importance, inland water transport has the following important objectives:

- To develop inland water transport in the regions where it enjoys a natural advantage;
- For feasibility and viability of this sector, it is necessary to improve the productivity of assets; and
- To modernise the vessels and country crafts to suit the local conditions.

Table 1.22: Transportation Indicators of India								
	Railway Route (KM per thousand sq. KM area)		Road Length (surface road as % of total road length)		Passenger Buses (No. of buses per * thousand population)		Index	
State	81-82	98-99	82-83	98-99	1980	1998-99	1st	2nd
Andhra Pradesh	17.39	18.38	50.1	55.2	0.13	0.35	20.5	21.7
Assam	27.58	31.04	24.4	15.2	0.04	0.33	21.4	18.9
Bihar	30.82	30.22	34.7	36.1	0.02	0.02	25.5	25.4
Gujarat	28.73	27.15	76.9	84.8	0.21	0.23	32.6	33.3
Haryana	34.09	34.22	87.1	89.6	0.18	0.41	37.9	38.5
Karnataka	15.70	16.11	59.7	61.8	0.20	0.32	21.4	22.1
Kerala	23.49	27.02	23.3	27.1	0.12	0.17	18.8	21.7
Madhya Pradesh	12.95	13.29	51.5	60.3	0.05	0.04	18.1	20.0
Maharashtra	17.32	18.05	50.3	61.4	0.19	0.25	20.5	23.2
Orissa	12.71	14.06	14.0	10.8	0.04	0.12	10.4	10.6
Punjab	42.78	42.45	77.6	80.9	0.17	0.17	41.2	41.7
Rajasthan	16.42	17.21	56.0	53.2	0.06	0.08	21.1	21.0
Tamilnadu	29.96	30.75	56.3	63.4	0.12	0.45	29.3	31.2
Uttar Pradesh	30.20	30.27	47.0	48.9	0.05	0.16	27.5	28.0
West Bengal	41.85	42.46	44.4	46.8	0.03	0.04	34.0	34.8
India	18.63	19.08	47.0	53.0	0.09	0.20	20.6	22.1
*Note: Relates to Nationalised transport in the state.								
Source: 1) Basic Statistics Relating to Indian Economy, Centre for Monitoring Indian Economy, 1994								
2) Statistical Outline of Infrastructure in India, CMIE, December, 1999								

1.9.4 Government policy

The government policy with respect to the right to transportation can be broadly divided into two parts: constitutional measures and administrative measures.

In India, the right to transportation is not spelt out directly in the Constitution. However, certain provisions under the Chapters on Fundamental Rights and the Directive Principles of State Policy are related to this right.

Under Article 19 (known as the fundamental rights), the Constitution provides the citizens of India certain liberties. Article 19 (b) declares the citizen's right to move freely throughout India. The freedom of movement guaranteed under clause (b) of Article 19 is in addition to right to life and personal liberty guaranteed under Article 21. Thus, a combined reading of Article 19 (1) (b) and Article 21 has led to the proposition that the residents of hilly areas have a right to be provided access to roads, where access is

necessary for the proper exercise of the right to life and personal liberty (Umed vs. the State of Himachal Pradesh 1986, 2 SCC 68).

On the other hand, Article 38 (2) states that the state shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. Therefore, the right to transportation is directly related to the provisions of Article 38 (2).

Again, Article 246 (the Seventh Schedule) divides the responsibilities between the Union and the State Governments with respect to various modes of transportation. They are as follows:

- List I—Union List:
 - ♦ Entry 22—Railways,
 - ♦ Entry 23—Highways declared by or under law made by Parliament to be national highways, and
 - ♦ Entry 29—Airways
- List II—State List:
 - ♦ Entry 13—Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I.

The legislative measures are spelt out under the Road Transport Corporations Act, 1950, Indian Railways Act, 1989, and Inland Water Authority of India Act, 1985.

1.9.5 Implementation

In India, transportation is provided by a combination of public and private operators. Before independence private operators mainly provided these services. However, the private sector's failure and inefficiency paved the way for government intervention in transport operations. By the 1960s the public sector was able to provide better buses and better coverage to consumers and fairer wages to workers.

The 1956 amendment of the Motor Vehicles Act, and active encouragement by the Planning Commission resulted in the formation of several State Transport Undertakings (STUs) all over the country.

At the same time, there were attempts by the government to reform bus operations in the private sector. The government encouraged the formation of co-operative bodies for smooth functioning.

However, due to lack of professionalism and the fragmented nature of the service, not much progress has been made. This failure has convinced the government about the need for legislative and administrative preference for State Transport Undertakings.

However, the State Transport Undertakings failed to achieve the desired goals due to various reasons. One of the main reasons was financial shortage.

This has led the government to adopt a judicious mix of public and private services to provide for the consumers' rights to transportation. On the other hand, in the case of rail transport, it is entirely under the jurisdiction of the Union Government. Over the past decades, the Railway Ministry has defined various policy measures to reach out to the remote corners of the country as far as possible.

1.9.6 Problems of Implementation

As stated above, one of the major drawbacks in implementing consumers' right to transportation is inadequate finance. Initially, the STUs provided superior services, both in terms of quality and quantity, but they got into trouble because of their financially unsound but socially necessary operations.

The policy of cross-subsidisation (surpluses made on high-density routes absorbing the losses sustained in backward regions) did not succeed. At the same time government-controlled fares could not match the

rising costs of operation. A Planning Commission survey has reported that wages constitute about 55 percent of the operating costs of the STUs. However, it is also true that the cost of operation has been inflated by inefficient operations.

The factors responsible for making the STUs loss-making units are increasing road taxes, bad roads, high wages, stagnant fares, over employment and uneconomic but socially necessary bus operations. Another problem is that the large tracts of unsurfaced rural roads cannot be used for plying heavy vehicles and are virtually unusable during the rainy season. These factors often led the STUs to defer replacement of buses, resulting in inadequate maintenance. Their ability to augment bus services has become extremely poor.

The second major problem is that of financing. The transport sector has been progressively neglected in the successive Five-year Plans—from 22 percent of the total public sector outlay in the First Plan to 13 percent in the Eighth Plan. Out of the shrinking transport allocations, roads were getting only 3 percent of the total plan outlay.

On the other hand, according to the Status Paper of the Ministry of Railways, Indian Railways are faced with the following problems:

- The existing technology of both electric and diesel locomotives is almost three decades old and thus fuel inefficient, leading to cost escalation;
- The railways services are inadequate vis-à-vis the requirements of the economy;
- There is a wide gap between need-based requirements and actual plan allocations;
- The pattern of railway financing is such that the entire capital is provided by the general revenue through budgetary support as capital-at-large. Therefore, the dividends are payable on the capital-at-large, irrespective of financial performance of the year concerned, thus leading to net capital outflow;
- The policy of “tariff restraint” causes the railways to suffer heavy losses on passenger and other coaching services and on low-rated commodities; and
- The capital constraint factor and the larger interests of the economy have been the reasons for greater preference being given to freight traffic to avoid bottlenecks in the development process. Thus, passenger traffic is suffering.

Another drawback of the system is the lack of any integrated transport policy. A serious weakness of the Indian transportation system is the lack of co-ordination between the rail and road systems in the country. This is reflected in the increasing share of freight traffic of the road transport sector over the years. While in the freight traffic the share of the road transport has been estimated to have increased from 11 percent in 1951 to 60 percent in 1996, in passenger traffic the share has gone up from 32 percent to 80 percent during the same period. This shows that instead of being *complementary*, the road and rail transports have become *competitive* with each other.

1.9.7 How to improve the situation?

One way of improving the existing scenario is through organisational restructuring of the public sector road transport system. In terms of organisational efficiency, the imbalances between different STUs are alarming. The question remains a puzzle—why should one organisation achieve a utilisation of 600kms per bus per day, while the other stagnates at barely 200?

It would be unjust to get away simply by blaming the trade unions and the government. The organisational restructuring must involve bridging the gap between services, ensuring punctuality and reliability, and plugging leakages. In other words, it is necessary to adopt a passenger-centred approach.

On financial matters, according to a study of the All India Motor Transport Congress, important decisions are to be taken with respect to the funding of roads, expressways, other highways and rural roads. A useful mode of funding is through privatisation of investment in roads. The government has taken a right decision by adopting the built-operate-lease-transfer (BOLT) policy for private investment in the road sector.

In sum, following are some of the suggestions for the improvement of the road transport sector:

- A proper policy guideline is required to arrive at the optimum combination of public as well as private operations in road transport;
- Integrated transport policy will have to address the issue of inefficiency, both in the context of vehicle productivity (on an average it was only 278kms per bus per day in 1996-97) as well as workers' productivity (40.5kms per worker per day in 1996-97). For this, the necessary steps are proper maintenance, upgradation of the existing technology and on-the-job training of workers;
- Restructuring the tariff policy of the State Transport Undertakings; and
- In order to raise the necessary capital, the road transport sector should be declared a priority sector, and the financial institutions should be encouraged to lend for the modernisation of the sector.

However, it is to be kept in mind that privatisation of transport services would certainly result in fragmentation of operations. Such fragmentation could have a bad impact on operations and maintenance. Therefore, the government must take care of this factor while taking a decision. At the same time, there should be effective competition so that consumers do not pay more.

On the other hand, regarding the railway service, the following (as stated in the above mentioned Status Paper) points are to be noted:

- In a situation of limited resources, significant savings in investments and in costs of operations, along with improvement in quality of services can be realised through induction of modern technology. Thus, it is necessary to build a technology base;
- Further development of the railway network has to be done in a selective manner (as recommended by the Committee for Expansion of Railway Network), through a combination of new lines and gauge conversions, and should be aimed solely at capacity generation;
- The conventional methods of increasing the net revenue, like upward revision of tariffs, expenditure control etc. are inadequate for generating the levels of investment required. Therefore, there is a need to devise some unorthodox methods for improving the internal resource generation and for raising external resources;
- On capital restructuring, capital-at-large should be split into debt and equity on an appropriate basis;
- The loss in tariffs to meet social responsibilities should be compensated by restructuring the existing tariff policy. One way of doing that is to introduce two-part tariffs with respect to passenger traffic; and
- For improvements in overall passenger services and freight movement, more emphasis should be given to increase the efficiency of the system—like greater capacity utilisation of wagons, prevention of on-line failure of equipment etc.—so that the railways are able to nullify the saying, “quasi-paralysis of corridor”.

1. 9. 8 Conclusions

The Indian Constitution has guaranteed its citizens the freedom of movement. Certainly, mobility is an indicator of socio-economic progress, in the horizontal as well as in the vertical sense.

Given the vast size of the country, for those living in remote areas, bus services are the only mode of transport. If the states deny them this access, then it is the progress and the capability of the people to take part in developmental activities that will be denied.

Therefore, it must be realised that investments in road construction and maintenance and road transport will determine the future course of rural and urban development.

Privatisation of road transport is a much-needed step keeping in view the historical fact that government intervention in the transport sector was mainly due to the failure of the private sector.

Therefore, a judicious mix of public and private sector services is the need for providing this vital utility service. Otherwise, the consumers' right to transportation as one of the basic needs of life cannot be fulfilled.

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2

Right to Safety

2.1 INTRODUCTION

2.1.1 Consumer safety

Consumers have a right to purchase goods and services that are safe and of good quality. In developing countries like India, products that are of poor quality or even hazardous to health, can enter the market because of doubtful but widespread practices like dumping, planned obsolescence and outright fraud.

Therefore, consumer safety is related to consumer products, and has many interesting facets. A substantial part of the issue is the general concept of standards and safety, and compliance with these standards. However, some other interesting dimensions of the issue of safety can, but should not be ignored. And they are critical because they are not generally well understood.

2.1.2 The United Nations Guidelines for Consumer Protection

The UN Guidelines clearly mention the right to safety as one of the inalienable rights of the consumer. The Guidelines provide a framework for Governments, particularly those of developing countries, to use in elaborating and strengthening consumer protection policies and legislation. They also intend to encourage international co-operation in this field.

2.1.3 Provisions under the UN Guidelines

The following provisions are mentioned in the UN Guidelines with respect to the right to safety:

- Adopt food safety measures, including safety criteria, food standards and dietary requirements, effective monitoring, inspection and evaluation mechanisms;
- Adopt food standards of FAO, WHO CODEX Alimentarius or those of generally accepted international food standards;
- Measures and standards to ensure safety and quality of goods and services;
- Facilities for testing and certification of essential goods and services; and
- Policies to ensure that manufacturers compensate for defective or hazardous products.

2.2 DEFINITION AND OBJECTIVES

The right to safety means the right to protection against products, production processes and services which are hazardous to health or life. It includes concern for the long-term interests of consumers as well as their immediate requirements.

The UN Guidelines on the right to safety have the following objectives:

- Governments should adopt or encourage the adoption of appropriate measures including legal systems, safety regulations, national or international standards, voluntary standards and the maintenance of safety records to ensure that products are safe for either intended or normally foreseeable use;
- Appropriate policies should ensure that goods produced by manufacturers are safe for intended or normally foreseeable use. Those exporters, importers, retailers and the like (hereinafter referred to as ‘distributors’), should ensure that while in their care these goods are not rendered unsafe or become hazardous through improper handling or storage. Consumers should be instructed in the proper use of goods and should be informed of the risks involved in intended or normally foreseeable use. Vital safety information should be conveyed to consumers by internationally recognised symbols wherever possible;
- Appropriate policies should ensure that if manufacturers or distributors become aware of unforeseen hazards after products are placed on the market, they should notify the relevant authorities and the public without delay. Governments should also consider ways of ensuring that consumers are properly informed of such hazards; and
- Governments should, where appropriate, adopt policies under which, if a product is found to be seriously defective and/or constitutes a substantial and severe hazard even when properly used, manufacturers and/or distributors should recall, replace or modify it, or even substitute another product for it. If it is not possible to do this within a reasonable period of time, the consumer should be adequately compensated.

Under the head “standards for the safety and quality of consumer goods and services”, the Guidelines say:

- Governments should, as appropriate, formulate or promote the elaboration and implementation of standards, voluntary and other, at the national and international levels for the safety and quality of goods and services and give them appropriate publicity. National standards and regulations for product safety and quality should be reviewed from time to time, in order to ensure that they conform, where possible, to generally accepted international standards;
- Where a standard lower than the generally accepted international standard is being applied, because of local economic conditions, every effort should be made to raise that standard as soon as possible; and
- Governments should encourage and ensure the availability of facilities to test and certify the safety, quality and performance of essential consumer goods and services.

2.3 GOVERNMENT POLICY

In India, the Government policy with respect to various measures to safeguard the right to safety can be analysed under different heads: constitutional, and other legal measures/framework.

2.3.1 Constitutional provisions

Constitutional provisions regarding the right to safety are under three Chapters: on Fundamental Rights, on Directive Principles of State Policy, and on Fundamental Duties. And the State has the responsibility to adhere to and implement these provisions, except the Fundamental Duties. These are to be practiced by citizens.

Fundamental Rights

Consumers should be aware of certain fundamental rights which have a direct or indirect relation to the right to safety. Such rights are:

- Article 21—Protection of life and personal liberty; and
- Article 24—Prohibition of employment in factories etc. or engagement in any hazardous employment, of children below the age of 14 years.

Article 32 of the Constitution provides for enforcement of such rights. A citizen has the right to move the Supreme Court by appropriate proceedings and the Supreme Court has the power to issue directions or writs for enforcement of these rights. Under Article 226 of the Constitution, the High Courts enjoy similar powers to issue writs in cases of violation of Fundamental Rights.

Directive Principles

Although the Directive Principles are not enforceable by law like the Fundamental Rights, the principles laid down therein are fundamental for *good* governance and it is the duty of the State to apply these principles in making laws (see Box 2.1). The State is required, in particular, to direct its policy towards securing:

- The health and strength of workers, both men and women, prevention of child abuse and employment of citizens in vocations unsuited to their age or strength because of economic necessity. [Article 39(e)].

Box 2.1: Supreme Court on Enforceability of Directive Principles

While discussing the importance of Fundamental Rights vis-à-vis Directive Principles of State Policy, in *Akhil Bhartiya Shoshit Sangha vs. the Union of India* [AIR 1981, SC 298] the Supreme Court observed: "However it is also evident that Directive Principles cannot in the very nature of things be enforced in a Court of Law, but it does not mean that Directive Principles are less important than Fundamental Rights or that they are not binding on the various organs of the State."

2.3.2 Legal framework/provisions

The legal framework under which various measures and standards are ensured to provide safety and quality of goods and services can be broadly classified under two heads: legislative and administrative. Of these, some are already in place while others need to be installed at the earliest.

Legislative provisions

Among the legislative provisions, the following are important:

- standardisation, regulation and enforcement;
- mandatory standards and regulation systems for hazardous goods and services;
- safety parameters in all legislation governing services like electricity, transportation etc.;
- standardisation body for certification; and
- adoption of food standards of FAO, WHO CODEX Alimentarius or generally accepted international food standards;
- legislation governing not only compensation, but product liability, product recall and replacement.

Administrative arrangements

With the above mentioned legislative measures, the corresponding administrative arrangements are necessary facilitators:

- international and regional standards for ensuring safety standards which are implementable across different cultures;
- availability of easy facilities for consumers to check adulteration and sub-standard goods;
- comparative testing to be done by consumer organisations; they should be adequately protected against libel/defamation; and
- participation of both government officials and industry in the deliberations pertaining to consumer viewpoints on standards.

2.4 IMPLEMENTATION

In India safety measures are implemented through various Acts passed by the Parliament from time to time. The important point is to analyse the administrative aspects of such Acts.

2.4.1 Standards—important for safety

Standards form the reference detailing the totality of characteristics of products or services and have a bearing on providing satisfaction and safety to the user of the product. Standards come into play whenever there is a transaction from production to consumption, since it establishes a link between the two.

The experience of advanced countries and even our own limited experience of trying to come out of the *license-permit-quota raj* (command and control economy) shows that the quality of products improves with competition and market pressure coupled with aware consumers seeking quality, thereby making the players in the market look at and implement the “rules of the game” available through standards for products, processes, testing methods, code of ethics etc.

Objectives of the Indian Standards Institution

The Indian Standards Institution (ISI) was established in 1947, with the following objectives:

- to prepare and promote the general adoption of standards on a national and international basis relating to structures, commodities, materials, practices, operations etc.;
- to co-ordinate the efforts of producers and users for the improvement of materials, products, appliances, processes and methods; and
- to provide the registration of certification marks applicable to products, commodities etc.

ISI and voluntary standards

In line with practices followed by national standardisation bodies of progressive countries like UK, Germany, France, Japan etc., Indian industries were encouraged to become subscribing members of ISI.

The constitution of ISI required that standards formulating committees should have representation from all interests with a predominance of consumer interests. The importance of ISI as an organisation and its responsibilities towards the future are aptly summed up in the publication *Twenty Five Years of ISI 1947-1972*:

“In any democratic set-up, standards by and large are not mandatory. Under these circumstances only voluntary agreed standards could be voluntarily implemented. ISI’s significant success with the consensus

principle which examines and tries to accommodate all justifiable and legitimate viewpoints to arrive at a conclusion that is commonly acceptable is a tribute to the patience and calibre of thousands of specialists who have been involved in the task, and is a vindication of the institution's philosophy. Standards emerging from such a broad base automatically acquire authority. No single organisation or group, governmental, industrial or private, has ever biased ISI on any matter and this independence of status has earned it the respect, recognition and willing co-operation of all concerned."

Quality standards and safety standards

The success of standardisation implies that standards fulfil the interests of both producers and consumers. This has given rise to more or less universal procedures of formulating standards through intensive consultation. Standardisation of quality must take into account what is required for the intended use of the product and what the industry is capable of producing.

Safety standards are fixed on an entirely different basis. They are the minimum levels that offer necessary safeguards. There is no justification to permit production below safety standards once they are fixed objectively and on firm technological grounds.

It is this inherent difference between quality and safety standards that makes one suitable for voluntary implementation and the other for mandatory enforcement. When this distinction is disregarded and quality standards are enforced, national standards degenerate into enforcement of the lowest level of performance of the industry and kill the incentive to improvement.

The products covered by Indian Standards include many items connected with quality, and with the safety of consumers. Up to 1996, the Bureau of Indian Standards (earlier called Indian Standards Institution) had formulated about 14,000 standards; 8,000 standards for products, and 6,000 on test methods and procedures. However, this is not to ignore the fact that the markets are flooded with non-ISI products, and that the poor, backward and disadvantaged consumers can hardly access ISI products—cost-wise or availability-wise—in remote rural areas. The UN Guidelines lay special emphasis on the "needs of disadvantaged consumers, low income consumers", and this aspect needs proper attention as it concerns the health and safety of the teeming millions.

In the mid-1990s a new "Advisory Committee for Consumer Affairs" was set up to consider, among other things, the stipulation of safety/health parameters and grades in Indian Standards.

These cover items like building materials, builders' hardware, medical equipment and instruments, domestic refrigerators, LPG stoves, oil pressure stoves, hurricane lanterns, gas cylinders and valves, domestic electrical appliances, GLS lamps, electrical switches and sockets etc.

Mechanisms for implementation of standards

It is a matter of satisfaction that in India, right from 1956, a number of Indian Standards of interest to the consumers in the areas of quality and safety have been implemented through the following mechanisms:

- ISI Certification Mark Scheme voluntarily adopted by manufacturers; examples are biscuits, refrigerators, pressure cookers etc.; and
- ISI Certification Mark Scheme made mandatory through various acts, rules, regulations etc; examples are food additives, cement, LPG cylinders, oil pressure stoves, electric irons, plugs and sockets etc.

Legislations for enforcing the ISI Mark Scheme

The legislations making the use of ISI Mark mandatory on consumer products are:

- Prevention of Food Adulteration (PFA) Act, 1954,
- Essential Commodities Act, 1955,

- Electrical Appliances Quality Control Order, 1987, and
- Gas Cylinder Rules, 1981.

The growing acceptance of the ISI Mark Scheme by consumers, and the fact that consumer associations in India propagate the Mark among consumers, and their interest in monitoring the operation of the scheme are indications of its usefulness.

2.4.2 From ISI to BIS

In 1986, when Parliament passed the Consumer Protection Act, it was thought necessary by the concerned Ministry to pass another Act, namely, the Bureau of Indian Standards (BIS) Act by which the ISI was converted to the BIS which virtually became a department of the Central Government, answerable to the Ministry of Food & Civil Supplies for its operations.

It lost its autonomy for no apparent reason. Fortunately this has not, so far, seriously affected its functioning (possibly due to the culture and momentum of the excellent systems developed by the then dynamic ISI), but the response of the BIS to situations is bureaucratic. In the committees dealing with consumer products the BIS gives representation to consumer groups. It has a system of reviewing as and when needed (but at least once every five years) the Indian Standards to take into account changing local conditions and also to align with the international standards of ISO and IEC wherever possible.

2.4.3 Bureau of Indian Standards Act, 1986

Basically standardisation is a voluntary act. It is up to the producer to decide whether to opt for conformity with standards or to obtain certification marks or not.

One of the most important features of the right to safety is the guarantee that the goods purchased will be reasonably safe to use. Increasing affluence and a range of complex products have led to a situation in which unsafe products flow into the market. Thus there is the need for certain standards to be prescribed for the composition, content, design etc., leading to standardisation, marking and quality certification of goods.

For this purpose the Bureau of Indian Standards Act, 1986, was enacted by Parliament. The Indian Standards Institution, which had been performing the function so long, was made a statutory body and was renamed the Bureau of Indian Standards with the enactment of the Bureau of Indian Standards (BIS) Act, 1986.

2.4.3.1 Important provisions

The following are the important provisions under the BIS Act, 1986:

- it is provided under the Act that if the Central Government, in consultation with the BIS, thinks it necessary in public interest, it may:
 - notify any article or process to conform to Indian Standards, and
 - direct the use of standard mark under license as compulsory on such an article/process

[Section 14 of the BIS Act];

The voluntary character of standardisation has exceptions where products are for mass consumption or where the issue of health-hazards is concerned. In such cases standards have been made statutory and certification has been made compulsory. These products are:

- food, additives (food grade),
- milk products like milk powders,

- miners' accessories like: leather footwear, safety helmets, davy lamps, batteries, flame-proof electrical equipment, wires, ropes etc.,
- cement—ordinary and Portland,
- LPG cylinders,
- steel tubes for water wells,
- *vanaspati*, *vanaspati* containers,
- pressure stoves, burners, and
- dry cell batteries, electrical lamps, electrical appliances like iron, immersion water heaters, radiators, stoves, switches for domestic and other purposes, 2-ampere switches, three-pin plugs and socket outlets, etc.
- The BIS also evolves the standards for test methods and procedures and testing equipment. Research for the formulation of Indian standards in the interest of the safety of consumers is also taken up under this Act.
- The BIS provides services to manufacturers and consumers of articles or processes on such terms and conditions as may be mutually agreed upon;
- The BIS co-ordinates activities of manufacturers and associations of manufacturers or consumers engaged in standardisation and in improvement of the quality of any article/process or in the implementation of any quality control activities;
- The BIS does not offer laboratory services to consumers for testing products against which there are complaints. The BIS also does not evaluate the product for the purpose of consumer education. It also does not undertake comparative testing, ranking and evaluation; but in view of the importance of safety in household electrical appliances, the Government of India introduced an enactment whereby manufacture or sale of domestic electric appliances not conforming to the BIS standards was prohibited. Certification of such appliances is now mandatory.

Complaints handling

In case there is any complaint against a product with a standard mark, it can be addressed to:

The Director General,
Bureau of Indian Standards,
Manak Bhavan,
9, Bahadur Shah Zafar Marg,
New Delhi 110 002.

In case of a genuine complaint, a replacement will be made or the defect will be rectified.

2.4.4 Organisations other than the BIS

There are also organisations other than the BIS which formulate standards at the all India level. Some of these also deal with products and services of interest to consumers. A list of such organisations, the fields covered and the applicable regulations are given in Annexure-1.

However, unlike the ISI/BIS, the standards formulated by these organisations may not be easily available to the public, and because of the very system of formulation of standards by the government departments concerned, they may not be considered as voluntary, consensus standards formulated in a transparent manner, as the Indian Standards are perceived to be.

2.4.5 Laboratories for testing

In order to carry out tests as per Indian Standards, there are a number of recognised laboratories in India, both in the public and private sectors. The BIS also has a chain of laboratories at its regional and branch offices, primarily to test products connected with the ISI Certification Scheme. For carrying out comparative testing of consumer products, the Consumer Education and Research Centre in Ahmedabad has set up a laboratory known as TORCH.

The TORCH laboratory has facilities for carrying out tests in the area of food, domestic electrical appliances and pharmaceuticals. The laboratory has tested ISI marked electric bulbs as per the Indian Standards and has also published the results of failures. The BIS has been given the authority to reprimand producers for producing goods below suggested standards.

Other consumer organisations like the Consumer Guidance Society of India, Bombay, and the Voluntary Organisation in the Interest of Consumer Education (VOICE) also carry out comparative testing programmes relying upon external laboratories for doing the testing.

2.4.6 Standards for services

According to the International Standards (thereby also affecting India), pertaining to the management of services, IS/ISO 9004-2: 1994 Quality Management and Quality System Elements (Part 2, Guidelines for Services), the requirements of a service need to be clearly defined in terms of characteristics that are observable and subject to customer evaluation.

The process that delivers a service needs to be defined in terms of characteristics that may not always be observable by the customer, but directly affect service performance. Both types of characteristics may be defined by standards of acceptability.

Examples of characteristics that might be defined by standards include: waiting time, delivery time, process time, hygiene, safety, responsiveness, competence, dependability, accuracy, completeness, state-of-the-art, credibility and effective communication.

Examples of services are banking, insurance, catering, hotels, airlines, railways, road transport, water supply, waste management, electricity supply, telephones and other utility services. For most of these elements, quality standards have to be laid down, not nationally, but by the provider of the service by making use of recognised standards, wherever available for the process (for example, use of reliable electrical equipment and cables for generation, transmission, distribution etc., computerisation for rail reservations, supply of drinking water conforming to national standards etc.).

2.4.6.1 Standards for safety of services

When it comes to safety, regulations apart, there should be effective systems backed by education and training to enforce relevant standards. Some services like airlines and railways have some systems to enforce safety standards. When it comes to road safety, due to non-observance of various rules and regulations by all concerned, India has the dubious distinction of becoming a country where people are killed on roads as if on battle fields, and some cities even display in prominent locations the latest accident statistics every month.

Let us now review some of the important Acts that have a direct as well as indirect bearing on the safety of the consumers.

2.4.7 The Prevention of Food Adulteration Act, 1954

This Act is to be approached in tandem with the Essential Commodities Act, 1955. The salient features of this Act show that it is concerned with the health and safety of life of the consumer (see Box 2.2):

- it intends to prevent adulteration and misbranding of food;
- secures purity of food to maintain public health;
- cautions producers or manufacturers of food to ensure safety;
- ensures that food which the public buys is, *inter alia*, prepared, packed and stored under sanitary conditions so as not to be injurious to the health of the people consuming it; and
- provides for adequate punishment of the adulterators.

Box 2.2: Adulteration is a National Problem

The then Prime Minister, P V Narasimha Rao, at the 10th meeting of the Central Consumer Protection Council held at New Delhi on 22nd August 1991, stoically noted: “If there is no one to tell what is adulterated, what is not adulterated, what is a good thing, what is a bad thing, no amount of officialdom will be able to do this. I know something about adulteration laws. I had occasion to deal with them in the State (Andhra Pradesh). Not one person could be convicted with all the laws, with all the honest officers that we had at our disposal, because the court would say how do you prove that this and that have been mixed. It may have been due to some other reasons. There was a doubt created and the benefit of doubt was given to the accused in all cases.”

Let’s also take a look at what the court observed in two different cases:

- In *Food Inspector, Palghat Municipality vs. Seetha Ram Rice & Oil Mills* (1974, KLT 685), Justice K Bhaskar observed: “The people of India are confronted with a national problem, which in recent time has assumed serious dimensions arising out of the practice of food adulteration that spread unabated like an epidemic. The survival of the society at the present stage appears to depend to a very large extent upon the right and attractive enforcement both in letter and spirit, of the provisions of the Prevention of Food Adulteration Act, and the taking of other measures to arrest the evil of the adulteration mania, so prevalent among the anti-social elements in the community.
- In *Ganesh Mal Jashraj vs. Government of Gujarat* (AIR 1980, SC 264,) the Supreme Court has lamented over the functioning of the Food Inspection Department. The regretful note of Justice P N Bhagwati merits quotation: “The small tradesmen who even put a precarious existence living almost from hand to mouth are sent to jail for selling food stuff which is often enough not adulterated by them, and the wholesalers and manufacturers who really adulterate the food stuff and fatten themselves on the misery of others, escape the arm of the law.”

What is food adulteration?

Adulterating food means the mixing of superior and inferior quality of a food item and selling it off as one of superior quality. Among others, the following are some of the ways of adulterating food items:

- removing vital constituents from the food item, say fat from milk;
- mixing inferior or non-edible items, say coloured saw dust in tea;
- using harmful colours not allowed under law, say Sudan red;
- using harmful ingredients, say washing soda, triorthocresyl phosphate (see Box 2.3); and
- selling spurious items.

Box 2.3: Behala Oil Tragedy!

In 1987, more than 1,600 people had fallen ill seriously and 18 had died after eating food cooked in rape seed oil sold by a ration shop in Calcutta's Behala area. Out of these sick people, 592 were ultimately registered by the State Government as oil adulteration victims. These people have complained of ailments that have severely affected them physically and mentally. They have had to cope with repercussions that have meant loss of income, physical handicaps etc.

The poison responsible for this tragedy was triorthocresyl phosphate (TCP) which is used as a plasticiser in the plastic industry. TCP was mixed with the oil to give it the flavour of mustard oil. This was the second such tragedy to hit Calcutta. In 1973, exactly the same kind of adulteration scandal had taken place in the northern suburb of Dum Dum.

In the present case, a "Class Action" petition filed by the Consumer Unity & Trust Society (CUTS), under the Consumer Protection Act, before the National Commission, succeeded partially. The petition was filed against the West Bengal Food and Supplies Department and Health Department and the Calcutta Municipal Corporation.

This case also exhibited the kind of bureaucratic bungling that takes place in such vital matters. Under the PFA Act the Calcutta Municipal Corporation was notified as the Local Health Authority. In its affidavit, the Corporation stated that since the ration shop was under the control of the Food and Supplies Department, it could not have inspected it.

The ration shop owners received life imprisonment, while about 250 people out of the registered 592, were crippled for life.

2.4.7.2 Important provisions

Some of the important provisions of the Prevention of Food Adulteration Act (PFA) are:

- as PFA is meant to be a law of strict liability it is not necessary for the complainant to prove the intention or guilt of the adulterator. It is sufficient to show that he has acted in contravention of the provisions of the law. Food has been defined to mean any food or drink. However, it does not include drugs;
- the law defines adulterated food to mean any food that is not of the quality demanded by the consumer or claimed by the supplier. If it contains something that affects the quality of the food or is stored in conditions that have affected its quality, then also the food is said to be adulterated. Adulterated food is defined at length and more or less precisely in the PFA Act;
- it is an offence to sell or offer for sale or expose for sale or manufacture for sale, any food which is below the standard prescribed by the rules under the Act. For example, oil of standards that was below the standards prescribed, was held to be adulterated in *Karnidan Sarada vs. Emperor*, AIR, 1935 Patna HC, 521); and
- another interesting clause says that if there exists no statutory standard of purity the only reasonable inference can be that the article of absolute purity has to be sold. After certain amendments the law now gives consumer organisations the power to have food samples analysed. Previously only Food Inspectors and purchasers were authorised to take samples of food alleged to be adulterated by sellers or by anybody else and to get them analysed by the Public Analyst. However, the consumer organisation or the purchaser has to inform the seller his/her intention of having the food analysed.

Methods of adulteration

The Act has also cited possible methods of adulteration of food and food products. These include, among others, addition of inferior substances, substitution of whole or part, removal of constituents, processing techniques and packaging (see Box 2.4).

Box 2.4: A Case Law on Adulterated Milk

In the State of Rajasthan vs. Chattar Singh [AIR 1968, Rajasthan HC 233], the proportion in which two kinds of milk, viz. cows milk and buffaloes milk were mixed was not known but it was clear from the Public Analyst's report that in the milk in question, the fat content was 4 percent and solid non-fats 7.29 percent and there was 19 percent of added water. It was held that the milk in question was not of the standard prescribed even for cows milk and consequently it was held to be adulterated.

Prohibitions under the Act

Some of the actions prohibited under the Act include:

- sale of admixture of milk containing a substance not found in milk;
- admixture of one or more oils as an edible oil except otherwise permitted;
- sale of *khesari* pulses and/or its products in any form;
- use of carbide gas in ripening of fruits;
- sale of coated-food-colours except with ISI marks; and
- use of certain packaging materials except those with ISI marks.

Restrictions under the Act

There are several activities that are restricted under the Act. Principal among these are the act of selling any food without a licence under the PFA Act, and the sale of *ghee* having less Reichard value than that specified for the area in which it is sold without the 'AGMARK' sign.

Complaint mechanisms

In cases of adulteration, complaints can be made to the the Food Inspector of the district, the State Health Authority or the Local Health Authority, or the Director of Health Services, Government of India.

On receiving a complaint, it is the duty of the Food Inspector to investigate, inquire or inspect as many samples as necessary. If samples are required to be taken, he is to procure them and send for analysis. It is obligatory on the part of the Public Analyst to deliver a report to the health authority, who in turn sends the report to the person who has taken the sample. The person can then make an application to the Magistrate.

A court inferior to that of the Metropolitan Magistrate/Judicial Magistrate cannot try offences under the PFA Act [Section 20(2) of the PFA Act].

2.4.8 Agricultural Produce (Grading and Marketing) Act, 1937

This Act provides various provisions and specifications with respect to the safety of food and food products. Specifications popularly known as 'AGMARK' standards, which signify "agricultural marketing standards for a statutory seal ensuring quality and purity", are provided for.

Under the Act, not only are grades and grade standards prescribed and the quality of each grade-designation defined, but the manner in which the produce is to be packed, sealed and marked has also been specified.

Other provisions

Various other provisions relating to safety measures of agricultural produce are:

- before framing 'AGMARK' grade standards for a commodity, detailed information is collected on its various aspects. Among these are the product varieties available, purity standards as per the PFA Act, statutory regulations and quality regulations of importing countries etc;
- many commodities like food grains and allied products, fruits and vegetables, livestock products etc. have been given grade specifications;
- labels carrying the appropriate grade designation marks are affixed with 'AGMARK', a statutory seal for ensuring quality and purity. 'AGMARK' standards are periodically reviewed and suitably revised with a view to keeping pace with the change in production, improvements in variety and shift in consumer preferences; and
- detailed instructions regarding inspection, methods of sampling, analysis and procedures for referring disputes to the advisory panels are issued by the Agricultural Marketing Adviser.

Complaint mechanism

In case a complaint against agricultural products like butter, *ghee*, honey, chilli, black pepper etc. with 'AGMARK' insignia has to be made, it should be addressed with details to:

The Agricultural Marketing Adviser,
Government of India,
Central Government Office Building,
Faridabad, Haryana

Testing facilities and enforcement of quality

The Central 'AGMARK' Laboratory, an apex laboratory with a network of 'AGMARK' laboratories functioning in a number of cities of India, provides testing facilities. On the basis of test reports, if quality is not as per prescribed standard, enforcement measures are taken and then the matter is taken to the court.

Technical guidance in testing methods

The Central 'AGMARK' Laboratory at Nagpur provides technical guidance in testing methods and also in the methodology of drawing samples. The Central and other 'AGMARK' laboratories also conduct research on analytical testing of various commodities.

Help to small enterprises

The primary responsibility of maintaining the quality of produce lies with the manufacturer and/or packer. However, small manufacturers/packers cannot afford to have their own laboratories. For them, some state governments and a few co-operative societies have set up laboratories where they can inspect the production and processing and collect samples for analysis at low cost. They can even test their goods at any private laboratory (see Box 2.5).

Box 2.5: Grading of produce by private laboratories should be proper

Where an option is available to a packer either to have his own laboratory or to use any other approved laboratory, the packer's request to go to a private approved laboratory cannot be rejected unless the grading of the private analytical laboratory is not up to the mark. Furthermore, Section 4 of the 'AGMARK' law does not contravene Article 14 of the Constitution of India [AIR 1959, Calcutta HC, 32(34)].

Checking and certification

Random checking of packed and labelled packages can be done by senior officials both at the packer's premises and at the retail points. And only those traders who willingly adhere to the prescribed procedures and regulations are given "Certificates of Authorisation" and thus become authorised packers.

2.4.9 The Fruit Products Order, 1955

A corollary to the Agmark Act, 1937, is the Fruit Products Order, 1955, notified under the Essential Commodities Act. Important provisions under this Regulation are as follows:

- production and sale of fruit and vegetable products, namely syrups and *sherbets*, vinegar and a host of similar products are covered under this order (Section 2(d) of the FPO). Manufacturing licences for these fruit and vegetable products is a must (Section 4 of the FPO);
- the manufacturer has to comply with the conditions laid down for labelling, packing and marking. Conditions laid down for quality and compositions also have to be followed. These are specified in the second schedule of this order; and
- furthermore, sanitary conditions and approximate standards of quality and composition for manufacturing fruit products have been laid down in the Second Schedule of the FPO.

Administrative arrangements

The Fruit Products Order provides for the establishment of a high powered committee to be called the Central Fruit Products Advisory Committee, consisting of subject (technical) experts, representatives of fruit products manufacturers, the Director General of the Central Food Technological Research Institute, representative of the Indian Standards Institute and the Agriculture Commissioner to the Government of India etc. The function of the Committee is to advise the Department of Food Processing of the Government of India on any matter pertaining to the fruit preservation industry.

2.4.10 Laws relating to some health-care goods and facilities

Since drugs and cosmetics constitute important items of human consumption and application, various laws have been passed to regulate their production, supply and distribution. The legislations in this field are: the Drugs and Cosmetics Act, 1940, the Drug (Control) Act, 1950, the Dangerous Drugs Act, 1930 and the Narcotic Drugs and Psychotropic Substances Act, 1985.

2.4.11 Drugs and Cosmetics Act, 1940

The provisions regarding the safety of consumers are as follows:

- the Act covers allopathic, homoeopathic and indigenous systems of *Ayurvedic* and *Unani* medicine;
- in the Act a drug is defined as substances that includes all medicines and substances for internal or external use of human beings or animals for diagnosis, treatment, mitigation or prevention of diseases or those affecting the structure or functions of the body;
- similarly, it defines a cosmetic as an article used for cleansing, beautifying, promoting attractiveness or for altering appearance;
- further, a person can be charged of misbranding under the Act if the drug found from his possession purports to be the product of a place or country of which it is not truly a product (see Box 2.6); and
- standards of quality for drugs are elaborated in this Act and moreover, importing of misbranded, spurious and adulterated drugs are prohibited (see Box 2.7).

Box 2.6: Manufacture of Spurious Drugs is an Anti-social Activity

In a case where large quantities of spurious drugs were manufactured by a person and passed off as goods manufactured by a firm of repute, the Court was of the view that such an act was an anti-social act of a very serious nature and the punishment had to be severe and not lenient [Chimanlal Jagjivandas vs. State of Maharashtra, AIR, 1963, SC 665].

Box 2.7: Banned drugs

Delivering judgement on a writ petition under the Drugs and Cosmetics Act, a high court ruled that a drug that has been declared harmful or irrational by technical bodies cannot be purchased or prescribed by any government authority. This is irrespective of the fact that a court might have stayed the orders of the government prohibiting manufacture and sale of the drug. Prohibiting the manufacture and sale of a drug and directing all government doctors not to prescribe a drug that has been found to be harmful are two different consequences that flow from the decisions of the Drugs Consultative Committee and the Drugs Technical Advisory Board.

An interesting observation that was made by the Court during the hearing was that a stay order by one high court is not automatically binding on another high court.

Evidence has been produced before the court that drugs that have been banned are still being purchased, prescribed and reimbursed by the health authorities. The case is still pending before the court.

Administrative arrangements

Under the Act, a Drugs Consultation Committee has been formed which advises the Central Government, State Governments and the Drug Technical Advisory Board [Section 7, DC Act].

A complainant can have drugs or cosmetics analysed on payment at the Central Drug Laboratory. The report of the Government analyst is conclusive evidence but this does not prevent a complainant from getting it privately tested and attaching the report to a petition before a court.

Complaints mechanism

The following procedures are specified to handle complaints:

- the Drug Controller of India and the Directorates of Health Services in each state are appropriate authorities for redressal of grievances—individual or public; and
- it is the duty of the Drug Controller along with his team to:
 - supervise drugs and other medical supplies;
 - seize spurious, harmful or expired drugs and destroy them;
 - issue public statements informing consumers about the names of drugs, their manufacturers, their licence and batch numbers; and
 - to receive and act upon complaints made by the public.

Flaws in the Drugs and Cosmetics Act, 1940

The law recognises practices like *Ayurveda* but chooses to be silent on the difficulties of testing the claims regarding constituents of *Ayurvedic* drugs. It does not comment on the difficulties of testing the

veracity of claims regarding constituents of such drugs nor does it say anything of the utter absence of procedures to check whether such medicines are manufactured following the original texts.

Unscrupulous elements make use of such loopholes in the law and run successful businesses in *Ayurvedic* medicines. We today even hear of our country exporting shiploads of medicines of such questionable origin to Africa!

2.4.12 Indian Medical Council Act, 1956 and the Medical Degrees Act

These two Acts are among the basic laws in India governing the conduct of medical practitioners and include provisions for the safety of patients.

Provisions of these two Acts have been invoked through the State Medical Council to prevent advertisement by doctors, professional misconduct and use of unrecognised or fake degrees by doctors. The State Medical Council must be made to do its duty to regulate and supervise the professional conduct of doctors registered with it and to ensure the standards of medical practice.

Under the Indian Medical Council Act, some of the important duties imposed on medical practitioners with a view to governing the safety of consumers (patients) are:

- duty to exercise a reasonable degree of skill and knowledge as a medical practitioner;
- duty to attend to the case as long as it requires attention and to withdraw only after giving reasonable notice;
- duty to give proper and suitable medicines; and
- duty to give proper and complete directions to patients and/or their attendants regarding use of medicines and diet.

Administrative arrangements

The Medical Council may itself initiate an inquiry against a doctor for misconduct or it may do so when a complaint is received from any one regarding such misconduct by the medical practitioner. Such complaints are to be submitted to the President of the Medical Council through the Registrar of the Council.

Complaint procedure

The following procedures are maintained with respect to the complaints under the Indian Medical Council Act, 1956:

- Every State Medical Council has a Disciplinary Committee. This Committee investigates complaints filed by consumers who have any grievance. It also takes legal advice. If no prima facie case is made out, the complainant is informed;
- If an inquiry is directed, a notice is issued to the professional concerned to respond in writing or to appear before the committee on a fixed date. During the hearing both the complainant and the respondent can appear with lawyers; and
- After collecting evidence, a vote is taken and the judgement awarded. If the doctor or professional is found guilty, a second vote is taken or she/he is reprimanded.

2.4.13 Dangerous Machines (Regulation) Act, 1983

This Act provides for the regulation of trade and commerce in the production, supply, distribution and use of the product of any industry producing dangerous machines, with a view to securing the welfare of the labour operating any such machine, and for payment of compensation for the death or bodily injury

suffered by any worker while operating any such machine, and for matters connected therewith or incidental thereto.

In this Act, unless the context otherwise requires, ‘Controller’ means the person appointed by the State Government to give effect to the provisions of this Act, and includes every Additional, Deputy or Assistant Controller who may be authorised by the Controller under Sub-section (3) of Section 5 to exercise any power under this Act.

Administration of the Act

The State Government shall, by notification in the Official Gazette, appoint a Controller for carrying out the provisions of this Act, and may also by the same or subsequent notification appoint such number of Additional, Deputy or Assistant Controllers as it may deem fit.

However, inquiries reveal that most of the State Governments have not appointed a Controller to “give effect to the provisions of this Act”.

The result is that hundreds of farm labourers (Sawai Man Singh Hospital, Jaipur, receives over 250 cases every year) get their hands mutilated and chopped while operating threshers and hay-chopping (*katti*) machines, and dozens of women get disabled because of their long hair getting entangled in the machine.

2.4.14 Atomic Energy Act, 1962

Radiation safety in the use of radiation generating plants is governed by Section 17 of the Atomic Energy Act, 1962.

Pursuant to the provisions of the Act, the Central Government had promulgated the Radiation Protection Rules, 1971, which stipulate basic safety standards for all types of radiation applications in medicine, industry, research etc.

In November 1983, the Government of India constituted the Atomic Energy Regulation Board (AERB) and entrusted it with the responsibility of developing and implementing appropriate regulatory measures aimed at ensuring radiation safety in all applications involving ionising radiation. Before the constitution of AERB, the Division of Radiological Protection of the Bhabha Atomic Research Centre and the Safety Review Committee of the Department of Atomic Energy were responsible for the implementation of safety provisions envisaged in the Atomic Energy Act, 1962.

The State Government is required to appoint an appropriate Radiation Protection Committee to monitor and supervise the functioning of diagnostic X-ray units in the state. There has to be a Radiation Safety Officer (RSO) for every diagnostic X-ray unit under the mandatory provisions of the Radiation Protection Rules, 1971. The AERB Safety Code lays down the qualifications, certifications, duties and responsibilities of the RSO.

However, alarmingly, no radiation protection committee has been constituted in any State or Union Territory and nor does there exist any concrete mechanism to implement the provisions of the Act. The result is that with the proliferation of diagnostic X-ray units, hundreds of thousands of individuals receive unnecessary radiation and as a consequence thousands suffer from radiation-induced cancers and congenital anomalies, besides other deleterious effects.

The Atomic Energy Regulation Board constituted by the Central Government under the provisions of the Act has codified the mandatory safety provisions for diagnostic X-ray units.

The safety code lays down in specific details the mandatory measures that have to be adopted to prevent unnecessary radiation to patients and to the public at large. For instance, appointment of a Safety Officer approved by the AERB, appropriate covering of the body parts not being X-rayed, prohibiting

presence of unprotected people during the procedure and lead lining of the doors to prevent scattered X-rays from going out of the room are all stated in the rules.

2.4.15 Indian Electricity Act, 1910

To incorporate the provisions relating to the safety of consumers, Indian Electricity Rules, 1956, were framed under the Indian Electricity Act, 1910. Furthermore, for consumers' safety a corollary to the Act called Electrical Appliances Quality Control Order, 1987, under the Bureau of Indian Standard Act, was also notified.

The Rules contain provisions regarding general safety requirements. They lay down the guidelines on how electrical installations are to be made and what quality of materials is to be used. It is mandatory under the Act that materials used conform to specifications laid down by the BIS. Also, the clauses of this Act dwell on the necessity to put up danger signals, warning notices etc. in certain cases. Handling of electrical equipment is also discussed and the precautions that should be taken for the same.

Administrative arrangements

Rule 46 of the Electricity Supply Rules specifies that at intervals not exceeding five years, the customers' installations must be inspected and tested by the electricity supplier. However, this rule is generally not complied with.

2.4.16 Indian Railways Act, 1989

The Indian Railways Act, 1989, deals with various provisions relating to consumer safety.

The Railway administration has the power to refuse to carry a person suffering from an infectious disease for the safety of the rest of the passengers. In case permission is given, the infected person has to be taken separately.

Again, for the safety of female passengers travelling alone, an exclusive compartment or adequate number of berths according to requirements, may be provided in every train. Also, the Act prohibits carrying of dangerous or offensive goods without notice.

What is noteworthy is that the Act provides for the appointment of a Chief Commissioner of Railway Safety and other Commissioners to:

- inspect all new lines before opening,
- make periodical inspections of any railways stock/stores,
- conduct inquiries in cases of train accidents,
- report to the government regarding any condition which may endanger the safety of the public, and
- make recommendations to the government.

Administrative arrangements

In case of any accident causing loss of human life or serious injury, and in cases of collision between trains, derailment of train etc., the railway employee in charge of the section is duty bound to give information (notice) about the accident to the District Magistrate/State government and the Superintendent/Commissioner of Police. Thereafter an inquiry is to be conducted by the concerned authority (Sections 113, 114, 115).

In this context it is to be noted that the Railway Safety Commissioner is under the Department of Civil Aviation to bring in that necessary degree of impartiality into the system. For if this important office was under the same Department then the possibility of partiality could creep in and the chances of commuters getting a fair deal would diminish.

Very recently, the railways have set up an accident grievance remedial cell to ensure speedy dispensation of compensations in the case of an accident (see Box 2.8).

Box 9: Compensation—A Knotty Affair

Not many people know that in the event of an accident, it is not the Indian Railways that ends up bearing the cost but the General Insurance Corporation of India (GIC). The Railways insures every passenger for Rs 2 lakh, and pays the premium annually on the number expected to use the railway services in a given year. Full compensation of Rs 2 lakh is given in case of death. For serious and minor injuries compensation amounts vary between Rs 5,000 and Rs 50,000.

There is a proposal from the railways to raise the compensation amount to Rs 4 lakh. Going by the track record, it takes a year before the sum is handed over to the injured or the next of kin. The announcement of *ex-gratia* grants by ministers at the accident site is a political gimmick. The railway minister does not have a relief fund out of which payments can be immediately made. It has to come from sundry expenditure, which is a small fraction of the total budget.

The GIC, on its part, takes its own time to establish the identity of the deceased, as well as that of the relative. It is estimated that more than 50 percent of the cases are rejected on the ground that the claimants are 'bogus' because they cannot produce satisfactory proof of kinship.

Complaints regarding railway accidents etc.

In case of an accident involving the railways, complaints or information about accidents should be sent to the Station Master of the station nearest to the place at which the accident or derailment has occurred, or where there is no Station Master, the railway personnel in charge of that section of the railway where the accident has taken place. Further, the railways are liable to pay damages also (see Box 2.9). Simultaneously, one copy of the complaint or letter of information should be forwarded to the officer-in-charge of the concerned police station, and another copy to the District Superintendent of Police within whose jurisdiction the accident/derailment has occurred.

Box 2.9: Railways Liable to Pay Damages in a Motor Accident

An accident occurred on 9 May, 1979, at an unmanned level crossing in Akaparamao, near Kalady in Kerala, where a hired bus was hit by the Jayanti Janata Express. Forty passengers in the bus and the driver were killed while some other passengers sustained injuries. In one batch of cases filed by dependants of the deceased and injured persons, the Motor Accidents Claims Tribunal, Ernakulum, held that the driver of the bus was negligent and made awards against the owner of the bus and the insurance company, but dismissed the claim against the railways on the ground that there was no negligence on the part of the driver of the train or the railway administration.

On appeals by the insurance company, cross objections were preferred by the claimants in some cases. The appeals and cross objections filed were partly allowed by the Kerala High Court, making the railways also liable. In two other cases decided in an earlier judgement the same tribunal had held that the railway administration was also liable on account of its negligence. In both judgements it was held that under Sections 110(1) and 110B an award could be made against the railways also, a view that was confirmed by the High Court.

2.4.17 Municipal and conservancy services

Some of the most important functions, duties and powers of the Municipal Bodies relate to promotion of public health, sanitation, safety and convenience.

The important primary functions of the Municipal Bodies that impinge upon the safety of citizens are:

- lighting, water, cleaning and maintaining public streets, public places, sewers and buildings;
- removing noxious vegetation, public nuisance, filth, rubbish, night soil or odour or any other noxious/offensive matters from latrines, urinals, or other places of common receptacle (see Box 2.10);
- extinguishing fires and protecting life and property when fire occurs; It is also the duty of the municipality to regulate offensive/dangerous trades or practices;
- removing obstructions and dangerous buildings in public places, constructing and maintaining public streets, markets, slaughter houses, drains, washing places, drinking fountains, tanks, wells, public latrines etc. It is also necessary that additional supply of water be obtained for preventing danger to the health of inhabitants; and
- arranging for public vaccinations.

Box 2.10: Public Action Forces Municipality to Do Its Duty

Residents of a locality at Ratlam moved the Sub-Divisional Judicial Magistrate to take action to remove the nuisance of stench and stink caused by open drains and public excretion by slum dwellers. They wanted orders to the municipality to construct drain pipes with adequate flow of water to wash the filth and stop the stench.

The directions sought were given by the magistrate and were confirmed by the High Court and the Supreme Court. It was held to be the duty of the municipality to remove dirt, filth etc. and clear the city. Paucity of funds, staff etc. could not be an excuse for failing to perform their primary duties.

The Court that was dealing with the duty of the municipality to remove dirt, filth etc. and to clear the city, said: "It is not the duty of the court to see whether the funds are available or not and it is the duty of the administrator, municipal council, to see that the primary duties of the municipality are fulfilled. The municipality cannot say that because of paucity of funds or staff they are not in a position to perform their primary duties."

Secondary duties

Important secondary duties pertaining to safety are:

- constructing and maintaining suitable sanitary houses for the habitation of the poor, providing accommodation for servants;
- planting trees and maintaining pavements and road sides; and
- supplying, constructing and maintaining equipment/appliances (pipes etc.), for receiving and conducting sewage into sewers under the control of the board, and establishing a factory for sewage disposal.

Special duties

There are some special duties assigned to the municipal bodies. These provide for special medical care for the sick during outbreaks of dangerous diseases, and preventing further spread of the same. These laws also comment upon the nuisance of open drains and bar the municipal council from granting permission to construct any permanent structure in the middle of a road. Further, the special duties also make it

obligatory for the Municipal Commissioner to take immediate action if a building becomes unsafe and there is no time to issue any notice.

Drawbacks in the municipal system

Among the obligatory functions of the municipal corporations are arrangements to provide civic services including water supply, sewerage and drainage, solid waste management etc. Absence (or faulty provision) of these services constitutes a serious dilution of consumers' right to safety.

The Calcutta Municipal Corporation Act, for example, states:

“The Corporation shall, *having regard to the available resources*, provide civic services, including water supply, sewerage and drainage, solid waste management, and construction and maintenance of streets, and shall enforce the provision of this Act.” [Emphasis added].

2.5 OVERALL DRAWBACKS OF THE SYSTEM

Other than the omnipresent sloth of the litigation process in India that takes the teeth out of many a useful legislation, some other drawbacks in the overall arrangements add to the consumers' woes. Though the laws are more or less comprehensive, when it comes to implementation the situation is dismal (see Box 2.11). Corruption eats into the efficacy and dynamic nature of the system. Train accidents, often resulting from human error, are increasing in number. The culprits whose irresponsibility results in the loss of innocent lives often go scot-free. Therefore, accountability needs to be impressed at all levels.

2.5.1 Preventive actions: Investigations and R&D

With the growing complexity of products/services, and the need to effectively deal with consumer safety problems, resources for making use of the infrastructure for investigation and R&D should be available to consumer groups. In the USA, CPSC provides this service for consumer goods. There are similar bodies for other areas too, like the National Highways and Transportation Safety Administration for governing automobile safety.

In India, there is a chain of laboratories of the Council for Scientific and Industrial Research (CSIR), and other laboratories that carry out some investigations connected with product safety, at the instance of the BIS committees that formulate standards. In this connection the following statement (*The Hindu*, 13.06.1996), made by Dr R A Mashelkar, Director General, CSIR, and Secretary, Department of Scientific and Industrial Research, is significant, appropriate and timely:

“As the mission of the CSIR is to provide scientific industrial research and development that maximises the economic, environmental and social benefits of the people of India, it is essential to build credibility in the minds of the user industries by working together to become globally competitive.”

Therefore, in order to have effective preventive actions, consumer groups should take the initiative in making use of the data based on product/service related accidents/deaths, and organise investigations and research.

Box 2.11: Maybe Tomorrow Another Uphaar Cinema Tragedy—Who will be Responsible?

Uphaar Grand is not alone. Delhi's licensing system has virtually collapsed. Most of the cinema halls did not have any permanent license during recent checks—all other theatres violate some safety laws. A final license is issued by the Delhi Police only after 'No Objection Certificates' (NOCs) are obtained from the Public Works Department, Department of Health, Fire, Electricity and the Sub-Divisional Magistrate.

Despite these supposedly tight laws, many halls have oil-laden transformers in their basements. Some have generators running on diesel. Bombs just waiting to go off! Some like Rivoli and Gagan simply don't have a licence. No theatre has ever run a fire safety drill. Ushers asked to operate a fire extinguisher during recent checks failed miserably. The Delhi Fire Service has no power to seal any building for fire safety violations.

In India's capital city, the agencies involved in granting NOCs to the theatres are controlled by the final licensing authority, the Delhi Police, which is under the Union Home Ministry. A post-disaster sweep of Delhi's theatres in August 1997 has now revealed just how rotten the theatre licensing system has become, a fact that the administration should have known and acted on in the first place. The report, submitted to the Chief Minister by the Revenue Secretary D S Negi, says that only two of Delhi's 66 cinema halls could provide a permanent license.

As it is said, justice delayed is justice denied. Now, nearly four years after 59 people lost their lives in the fire that broke out in the Uphaar cinema hall in New Delhi, the trial of owners of the theatre and 12 others began on May 23, 2001, with a court recording the evidence of two witnesses. The court of the Additional Sessions Judge had framed charges against them taking a prima facie view of their complicity in the alleged crime. Three of the accused had challenged the lower court order against them in the Delhi High Court.

With the beginning of this trial, hope finally resurfaced for the families whose kith and kin died in the fire, though they did not consider it as their victory as it was only the first step taken "in the right direction". For the families the wait was agonising as it took nearly four years to cross the first hurdle to get justice. The delay has exposed the inept handling of the case by the investigating agencies, starting from the South District police to the Crime Branch of Delhi Police and finally the Central Bureau of Investigation. They could not even file the chargesheet within the stipulated period of 90 days because of which the accused were able to procure bail.

2.6 HOW TO IMPROVE THE SITUATION?

In spite of the existence of a number of agencies and Government Departments for formulation of standards, regulations to enforce some of the standards connected with consumer safety and regulatory bodies to monitor enforcement, the fact remains that in India product/service related accidents and deaths continue unabated.

2.6.1 Safety policy

Presently there is no body in India to comprehensively look at the consumer problems in the area of safety from time to time. There should be an evolving National Consumer Safety Policy Statement which could provide the direction for looking at the activities of various bodies/Government Departments engaged in the formulation of standards/rules and their enforcement and suggest remedial actions (see Box 2.12).

No doubt there are a large number of active consumer groups/associations in our country but they lack the resources for building knowledge-based professional infrastructure matching the manufacturing and service organisations whose products/services may have a serious impact on consumer safety.

Box 2.12: Why an Independent Consumer Safety Commission?

Two major orders given by India's apex consumer court in 1997 centred on safety, or to be more precise, lack of it. In one case, the absence of even reasonable care and caution while treating a small child resulted in permanent damage to his brain cells. In another case, the lack of safety measures at a boat club led to the drowning of four persons during a boat ride.

These (and other) tragedies could easily have been averted, if only some basic safety measures were in place. This led to the demand for the formation of an independent Safety Commission. The functions of the Commission are to look at safety in public places, investigate into safety aspects of all common services, including civic services, draw up comprehensive guidelines and ensure their enforcement. Similarly, there could be a product safety commission to investigate into complaints of product-related accidents and order recall of those goods found to be unsafe.

2.6.2 Need for effective implementation

Standards and regulations alone do not lead to consumer safety. Following are some instances of ineffective implementation:

- allowing sale of unhygienic and adulterated street food in spite of the Prevention of Food Adulteration Act;
- production and marketing of unsafe electrical appliances like irons and stoves and accessories like plugs and sockets in spite of the Electrical Appliances Quality Control Order, 1987, making the BIS mark mandatory for such items;
- increasing deaths on our roads in spite of several rules and regulations (over 70,000 lives were lost in road accidents during 1997); and

These are just a few illustrations to show the need for making the enforcement machinery effective and professional. However, the need for education and training towards inculcating self-discipline in individuals cannot be forgotten.

2.6.3 Monitoring implementation

The following are essential steps needed for effective implementation:

- promote adequate safety standards for goods and services, including food and environmental safety;
- encourage the development of systems of regulation and self-regulation to protect consumers' interests; and
- advocate transparency and public accountability in decision-making.

The Government may direct the National Informatics Centre to collect, from all relevant sources, data on product/service related accidents/deaths, and make available the same to all concerned organisations dealing with preventive actions.

An apex body for monitoring implementation should make use of the data on product/ service related accidents/deaths, and organise, with the monetary resources available, surveys, investigations and research by making use of relevant organisations and research institutions in the private and public sectors. The outcome of such activities should be made use of for formulating/revising standards, improving enforcement activities, educating consumers towards self-regulation etc. (see Box 2.13).

The watchdog body for monitoring implementation should produce short educational films and printed material on the ill effects of certain products (e.g. cigarette smoking).

It should periodically review data obtained from the National Informatics Centre relating to product/service related accidents/deaths in specific areas, and also other case studies where certain preventive actions were taken, with a view to find out the extent to which the National Consumer Safety Policy Statement was being implemented.

Box 2.13: Watch Out or You'll Burn Yourself!

A little known but interesting fact is that most domestic irons used in households do not conform to the ISI/BIS standards (although it is compulsory), and are actually a potential threat to consumers. The electric iron needs to conform to the ISI/BIS standards supervised by the State Government. The details of a report from the Consumer Education and Research Centre (CERC), Ahmedabad, reveals that seven such ISI brands are unsafe for use.

Out of the 17 brands tested, ten carried the ISI mark. The brands included well-known names such as Spherehot, Khaitan, Bajaj, Singer, Philips, Crompton Greaves, Usha Sriram etc. They were subjected to 20 safety tests and eight performance tests as specified by the Bureau of Indian Standards (BIS). The only brands to pass all the tests were Khaitan, Bajaj and Singer.

2.6.4 In short...

In short, with respect to consumers' right to safety, consumer laws should take into account the following:

- Establishing a general duty of safety upon suppliers;
- Banning the supply of unsafe goods;
- Prescribing safety and information standards with which goods or services must comply;
- Establishing procedures to examine products and services alleged to be unsafe;
- Monitoring the market place for unsafe goods and services;
- Establishing procedures to collect and disseminate information on particular goods and services identified as being unsafe;
- Establishing procedures for the notification to authorities by consumers of allegedly hazardous goods and services;
- Requiring suppliers who become aware that their goods or services are unsafe to publicise any dangers;
- Requiring any manufacturer who recalls goods for safety reasons to notify relevant authorities of the recall;
- Establishing procedures for the monitoring of voluntary recalls to ensure they are effective;
- Allowing relevant authorities to order a manufacturer to recall goods, and to specify how those goods are to be recalled; and
- Giving relevant authorities the power to investigate the actions of manufacturers to determine whether they have complied with laws relating to recalls.

2.7 CONCLUSIONS

This brings to a close the discussion on the status of implementation of the consumers' right to safety in the country. The above mentioned discussion has revealed that as far as the UN Guidelines on the consumers' right to safety are concerned, the consumers in the country have no reason to think they are on cloud nine. However, the position of the consumers is not too bad either.

The laws in many avenues need to be strengthened or made more forward-looking. Though in no way can one say that India has come to achieve standards comparable to those envisaged in the Guidelines, the country does have wide ranging safety related legislations. Though somewhat disorganised (as these impinge on many different areas), they can be effectively used for making life safer for consumers. The problem lies with improper implementation. The existing legislations need to be implemented in such a way that they translate into a safer existence for Indian consumers.

Therefore there is a need for an effective and vigilant role by consumer organisations and their coalitions for effective lobbying and advocacy to ensure:

- Formulation and revision of safety standards towards the levels of strict international standards, in the field of consumer products, vehicular pollution and services;
- Effective enactment of new laws, such as the Product Liability Act, or amendments to the existing laws providing for strict liability;
- Creation of effective and functioning regulatory authorities, such as the Consumer Product Safety Commission, the Occupational Safety and Health Administration, the Food and Drugs Administration, Environment Protection Agencies, and the setting up of Environment Tribunals under the new Act passed by Parliament, Highway Safety Commission and Civil Aviation Commission, with the participation of consumer groups, in both consultative and quasi-judicial capacities; and
- Revision of Indian Pharmacopoeia to bring it at par with British and US Pharmacopoeia, amendments to the Drugs and Cosmetics Act to include non-allopathic systems of medicine such as *ayurved*, *unani*, homeopathy etc, that are to be regulated by the Act to provide effective information and care labelling, on food products and drugs, to provide for effective reporting of adverse impact of drugs, timely voluntary withdrawal and statutory recall of unsafe medicines.

This chapter has been researched and written with inputs from Mr. M Raghupathy of MR Quality Services (P) Ltd., Chennai.

Annexure-1

Organisations Other Than the BIS, Concerned with Standards

1. Directorate of Marketing & Inspection
Agricultural Marketing Advisor to Government of India
Ministry of Agriculture, CGO Building
NH 4, Faridabad 121 001, Haryana

Field:

Raw & semi-processed agricultural commodities, and
Meat & meat products

Regulation:

Agricultural Produce (Grading and Marking) Act, 1937,
'Agmark' Scheme, and
Meat Products Order, 1973.

2. Central Committee for Food Standards (CCFS)
Directorate General of Health Services
Ministry of Health and Family Welfare
Nirman Bhavan, New Delhi 110 011

Field:

Food products

Regulation:

Prevention of Food Adulteration Act, 1954

3. Chief Controller of Explosives (CCE)
Department of Explosives
Ministry of Industry
Old High Court Building, Nagpur, Maharashtra

Field:

Gas cylinders

Regulation:

Gas Cylinder Rules, 1981

4. Department of Transport
Ministry of Surface Transport
Parivahan Bhavan
1 Sansad Marg, New Delhi 110 001

Field:

Road transport

Regulation:

Motor Vehicles Act, 1988

5. Directorate General of Civil Aviation
Department of Civil Aviation
Ministry of Civil Aviation and Tourism
East Block II & III
R K Puram, New Delhi 110 066

Field:
Civil Aviation
Regulation:

6. Directorate General of Health Services
Ministry of Health and Family Welfare
Nirman Bhavan, New Delhi 110 011

Field:
Drugs & Cosmetics
Regulation:
Drugs & Cosmetics Act, 1940

7. Directorate of Vanaspati, Vegetable Oil and Fats
Department of Edible Oils and Sugar
Ministry of Food and Consumer Affairs
Block 2, CGO Complex
Lodhi Road, New Delhi 110 003

Field:
Vanaspati and vegetable oils
Regulation:
Vegetable Products Control Order, 1947
Vegetable Oil Products (Standards of Quality) Order, 1975

8. Research, Design and Standards Organisation (RDSO)
Ministry of Railways
Manak Nagar, Lucknow 226 011, Uttar Pradesh

Field:
Items used in railways

9. Central Electricity Board
Department of Power
Ministry of Energy
Shastri Bhavan, New Delhi 110 001

Field:
Electric power generation/transmission/distribution
Regulation:
Indian Electricity Act, 1910
Indian Electricity Rules, 1965

Annexure-2

The Right to Safety with an International Focus

That the safety of products is an important issue is beyond any kind of doubt. It is more or less a fundamental part of consumer welfare. Many governments have been keen to concentrate on this right. However, what is of greater importance is to observe if an appropriate market response can be generated. There is also a necessity to set up worldwide standards for safe goods. Throughout the world various standards organisations are active. However, as reiterated time and again in this chapter, there is a necessity for appropriate guidance in many more areas through appropriate standards.

In many countries recall systems have been developed. However, continuous improvement in this area is warranted. In the arena of international business, where trade in safe goods is concerned, mutual recognition of good systems is needed. International standards could be harmonised through umbrella organisations like the ISO. However, certification and other standards for safety should not become a barrier to competition. The optimum solution has to be found.

Again, in many countries, it is felt that product liability laws should be strengthened or enacted (if they are non-existent) to protect the consumer against defective and potentially harmful products.

In the US, any consumer can call the US Consumer Product Safety Commission (CPSC) on a toll-free hot line and get information about any specific area of safety. The CPSC provides the caller with facts and figures on accidents/deaths in the specific area, caused by defective products/ services, and suggests remedial measures. The CPSC was established in 1973 to:

- protect the public from unreasonable risk of injury caused by consumer products;
- to assist consumers in comparing the safety of various items;
- to develop uniform safety standards; and
- to promote research about the causes and prevention of product-related deaths, illnesses, and injuries.

Apart from holding manufacturers liable for damage or injury caused by defective products, there is also a new European Union (EU) directive that spells out what product liability rests on the manufacturers. This is the general product safety directive, and these regulations which apply throughout the EU, implement the provisions of Council Directive (No 92/59/EEC) on general product safety and require that no producer shall place a product in the market unless the product is safe. Breach of this regulation is a punishable offence.

1 Shah, Manubhai, *The Right to Safety: Paramount Importance to Consumers in Consumers in the Global Age*, Proceedings of International Conference on Consumer Protection, New Delhi, India, January 1997.

3

Right to Choice

3.1 INTRODUCTION

3.1.1 An overview of the issue

The right to choice lies at the centre of the idea of consumerism. It is hard to stand back from the notion of choice. Choice is inextricably linked up with morality, notions of right and wrong, good and evil. Even those who set out to take morality out of the study of choice, back into it themselves. Others who deride choice as a mere bourgeois illusion would be up in arms if their choice of newspapers, television channels or books was restricted. Choice is something one gets used to, which is why it is a sensitive issue. As individuals everyone likes to believe that they have choices, even if they may not be exercising those choices. The last thing people will surrender, when everything else is lost, is the right to make choices.

However, choice by itself does not mean anything and it needs to be accompanied by several other things to make it meaningful. Firstly, choice without information is not a real choice. More importantly, what sort of information is appropriate, how much and given by whom, are crucial questions. Secondly, choice that is limited only to those with resources undermines the advantages of choice for all. Unfortunately, if choice is unevenly distributed across product ranges, it is infinitely more unequally distributed across sections of population, indeed across the globe. While some consumers may deliberate over a dozen brands of breakfast cereal, other consumers' face a different predicament – hunger!

3.1.4 Global view

Globalisation and liberalisation policies in the last ten years have changed the contours of consumer demand for goods and services. The consumer now expects the domestic producers to supply him/her quality goods and services at 'globally competitive prices'.

During the last few years trade liberalisation in the area of consumer goods has opened a window that allows the consumer the power to exert his/her right to choose. But while exerting the right to choose the consumer cannot afford to ignore the relevance of having a sustainable domestic industrial base. This implies that the right to choose has an implicit built in responsibility. It is being experienced in recent years that consumer goods imports are flooding the Indian markets, and the Indian manufactures producing similar goods have either had to close down or have had to sell their ownership rights. This kind of situation could give rise to a possible oligopolistic market in the future wherein the consumer might be stripped off his right to choose or would have the opportunity to honour his right but under the dictated price structures of the producers.

In 1980, the UN Centre for Transnational Corporations (UNCTC), published a study of the world food and beverage industries, identifying 180 companies that dominated the highly segmented markets at that time. Today, at least half of these companies retain roughly the same market power – and the UNCTC is

extinct. In the early 1980s the top 20 pharmaceutical companies held about 5 percent of the world prescription drug market while today the top 10 companies control 40 percent of the market. Sixty-five agrochemical companies were competitors in the world market in the beginning of the 1980s. Today, nine companies account for approximately 90 percent of global pesticide sales. Thus, ensuring consumers' right to choice in the age of globalisation has become a real challenge.

Therefore, in a growing borderless world, the following could be viewed as major issues affecting the consumers right to choose:

- information asymmetry (wrong advertisements being telecast to entice consumers to buy);
- emergence of monopolistic structures because of mergers and acquisitions;
- restrictive business practices etc.

3.2 DEFINITION AND OBJECTIVES

3.2.1 Curtain raiser

The Guidelines do not address the issue directly. They deal with its economic aspects only under the section on promotion and protection of consumers' economic interests.

The broad objective of protecting consumers' economic interests is to provide an enabling framework under which consumers can obtain optimum benefits from their available economic and other resources. Another major objective is to ensure that the providers of goods and services adhere to established laws and mandatory standards so that consumers' economic interests are not violated. Most importantly, they state that "Government should encourage fair and effective competition in order to provide the consumers with the greatest range of choice among products and services, at the lowest cost".

In specific terms, the Guidelines refer to the following provisions with respect to the right to choice:

- Control of restrictive business practices;
- Goods that meet the standards of durability, utility and reliability and fulfil their purpose; availability of reliable after sales service and spare parts;
- Protection of consumers from unfair contracts and regulation of promotional markets and sales; and
- Regular review of legislation and enforcement of weights and measures;

The provisions reveal that the Guidelines approach the issue of the right to choice from the viewpoint of consumer protection and not from that of promotion of consumers' interests with respect to the right to choice.

Furthermore, the Guidelines deal with only one aspect of the right to choice, and that is the economic aspect. However, this right also transgresses the social and political dimension of the issue.

3.2.2 What is right to choice?

Assuming that the UN Guidelines (with respect to the right to choice) are acceptable to all concerned parties and they decide to implement it, the following could be the possible definition of the "right to choice":

"An assurance, wherever possible, of availability, ability and access to a variety of goods and services at competitive prices, and to consume them in a sustainable manner."

Apart from this, the right to choice is also important with respect to the provision of commodities and services where competition is not possible, and government regulation is supreme. In this case, the right to

choice means assurance of satisfactory quality, and at fair price; for example, utility services like electricity, telephones, railways etc.

In strict economic terms, the right to choice is justified by the equity principle. However, this right is also related to the efficiency principle. Unless there are efficient production and distribution systems, consumers will have little or no access to choose between alternatives.

Box 3.1: Examples of Restrictive Business Practices
<p>Horizontal restraints:</p> <ul style="list-style-type: none"> • Price fixing—competing suppliers entering into co-operative agreements regarding prices and sales conditions; • Output restraint—competing suppliers entering into agreements regarding output and product quality; • Market allocation—competing suppliers allocating customers and/or territories among themselves, thereby depriving consumers of the benefits of free and fair competition; and • Collusive tendering—competing suppliers exchanging commercially sensitive information on bids and agreeing to take turns as to who will make the most competitive offer. <p>Vertical restraints:</p> <ul style="list-style-type: none"> • Exclusive dealing—a producer supplies to one set of distributors and guarantees not to supply the same goods or services to other distributors in the given region; • Refusal to deal—a supplier refuses to sell to parties wishing to buy; • Territorial restraint—a supplier sells to distributors only on the condition that the distributor does not market the product outside a specified territory; and • Tied selling—producers/sellers force consumers to buy goods they do not want as a pre-condition to sell them those goods that they do want; they force re-sellers or wholesalers to hold more goods than they wish to or need.

3.2.3 Consumers' welfare and the right to choice

One may be tempted to say that the right to choice is the basis of laissez-faire (free market) economics. The answer to this query can be both negative as well as affirmative.

According to Basu (1992), the ambiguity arises from the erroneous interpretation of the fundamental theorem of welfare economics: “provided that an economy satisfies certain conditions, if every individual maximises his own selfish utility then society automatically attains optimality”.

On the basis of this theorem, people often equate ‘free market’ with the freedom of individuals to do anything they please. For example, some individuals oppose the curb on carrying a gun in public. Such a fallacious line of thinking overlooks the fact that one individual’s freedom to carry a gun may severely curtail the freedom of others to possess their wallets.

The correct interpretation of the fundamental theorem lies in its assumptions. The most fundamental assumption is that individuals are to act within certain societal norms and regulations. Consumers’ welfare needs to be maximised within the boundaries of such norms and regulations. In the context of the right to choice, such norms and regulations are provided in the UN Guidelines, *albeit* in a reactive sense.

3.2.4 Why regulations?

The discussion above provides the rationale behind the anti-trust legislation to curb the monopolistic power of any industry. Anti-trust laws certainly curb the monopoly house’s freedom, however, at the same time they curtail the monopoly house’s freedom to curb consumers’ freedom (Basu, 1992). This argument

shows the rationale behind adopting a comprehensive and holistic law to adhere to the notion of consumers' right to choice.

Two issues are fundamental in this respect. The first is that the right to choice depends on the inter-personal comparison of utility (satisfaction). A consumer's satisfaction depends not only on what she/he consumes but also on what others consume, and usually in a negative sense. Thus there is enough potential for a conflict of interests. The second issue, that of regulations, stems from the first—the right to choice is not only related to the free operation of the economy (within which there is inter-personal comparison of utility), but is also related to an effective structure of norms and legal institutions.

Therefore, the problem with the right to choice is not related to whether the market is free or not *per se*, but whether the freedom is in the right direction or not. On the other hand, there exists the problem of reducing corruption, i.e., buying out the system.

3.2.5 The UN Guidelines—Objectives

The UN Guidelines have made some effort to fit one aspect of the issue of the right to choice by clarifying the role of the government.

The Guidelines, under the section on protection of consumers' economic interests, have stated the objectives behind the right to choice. The objectives are:

- Government policies should seek to enable consumers to obtain optimum benefit from their economic resources. They should also seek to achieve the goals of satisfactory production and performance standards, adequate distribution methods, fair business practices, informative marketing and effective protection against practices which could adversely affect the economic interests of consumers and the exercise of choice in the market;
- Governments should intensify their efforts to prevent practices which are damaging to the economic interests of consumers through ensuring that manufacturers, distributors and others involved in the provision of goods and services adhere to established laws and mandatory standards. Consumer organisations should be encouraged to monitor adverse practices, such as the adulteration of foods, false and misleading claims in marketing and service frauds;
- Governments should develop, strengthen or maintain, as the case may be, measures relating to the control of restrictive and other abusive business practices, which may be harmful to consumers, including means for the enforcement of such measures;
- Governments should encourage fair and effective competition in order to provide consumers with the greatest range of choice among products and services at lowest costs;
- Governments should, where appropriate, see to it that manufacturers and/or retailers ensure adequate availability of reliable after-sales services and spare parts;
- Promotional marketing and sales practices should be guided by the principle of fair treatment of consumers and should meet legal requirements;
- Governments should encourage all concerned to participate in the free flow of accurate information on all aspects of consumer products; and
- Governments should regularly review legislation pertaining to weights and measures and assess the adequacy of the machinery for its enforcement.

3.3 GOVERNMENT POLICY

3.3.1 Type of policy

In India, the Government's policy with respect to the right to choice can be divided into two broad parts. Firstly, the Constitution's various provisions directly and indirectly relate to the objective of the right to choice. Secondly, various Acts (and related administrative measures), are enacted by both the Central and the State Governments.

The right to choice inherently relates to secure and protect the welfare of the people, as very often development is also referred to as enlarging people's choices. In other words, this right is one of the basic pillars of a democratic State.

In the context of government policy for the fulfillment of consumers' right to choice (including economic interests), it would be appropriate to recall the speech made by the former Minister for Food and Civil Supplies, A K Anthony, at the National Convention on Consumer Protection (09.12.1993):

"There is the question of monopolies, be it in the private or in the public sector. It was with a view to ensure quality services from the public sector monopolies, in the last meeting of the General Council, we adopted a report on Public Utility Commissions. We are trying to expedite inter-ministerial consultations and I am sure that something useful will come out of this report.

"In the meanwhile, it is necessary that the public utility services—be the telephones, electricity, road transport or banking—be systematic and responsive to consumer needs and grievances. Therefore, self-regulation on the part of industry to ensure basic minimum standards of quality and appropriate pricing is of utmost importance. Total commitment to the consumer cause and improvement of social responsiveness to consumer needs should proceed in a harmonious manner so that our society becomes a better place for all of us to live in."

3.3.2 Legislative provisions

The Preamble of the Indian Constitution adopts, enacts and promises to secure for all its citizens social, economic and political justice and also liberty of thought and expression. The right to choice cannot be maintained unless there are justice and liberty, i.e. the adherence to norms and regulations.

Under the Chapter on Directive Principles of State Policy (Chapter IV), Article 38(1), it is the duty of the State to promote the welfare of the people by securing and protecting as effectively as it can, a social order in which justice shall govern all the institutions of national life.

3.3.3 Administrative measures

Apart from these legislative (though non-justifiable in a Court of Law) provisions, certain Acts have been passed by the Union Government to secure, protect and enable consumers to exercise their right to choice.

Such Acts/laws can be broadly divided into three sections—those regulating business, those relating to compensation/redress, and the general civil laws.

3.3.3.1 Essential Commodities Act (ECA), 1955

This Act primarily controls production, supply and distribution of essential commodities, and further endows the concerned authorities with the powers of confiscation and acquisition. A corollary of the ECA, 1955 is the Prevention of Black Marketing and Maintenance of Essential Commodities Act, 1980.

Under this Act, the Union Government and the State Governments are empowered to issue permits and licenses for supply and distribution of essential commodities and for further control of prices. This Act

provides to disadvantaged consumers access to essential commodities, and also plays the role of ‘checks and balances’ on marketing of essential commodities.

Special courts have been constituted to prosecute offenders violating provisions of this Act. As of today, the Governments (both Union and State), have failed to declare a stipulated (subject to revision) list of essential commodities to be supplied all over the country on an equitable basis and price. Another criticism is that though, through this Act, the issue of access to essential commodities has been addressed, it does not ensure built-in availability (see Box 3.2 for the UN Guidelines on essential goods and services).

Box 3.2: Distribution Facilities for Essential Goods and Services

Government should, where appropriate, consider:

- Adopting or maintaining policies to ensure the efficient distribution of goods and services to consumers; where appropriate specific policies should be considered to ensure the distribution of essential goods and services where this distribution is endangered, as could be the case particularly in rural areas. Such policies could include assistance for the creation of adequate storage and retail facilities in rural centres, incentives for consumer self-help and better control of conditions under which essential goods and services are provided in rural areas; and
- Encouraging the establishment of consumer co-operatives and related trading activities, as well as information about them, especially in rural areas.

3.3.3.2 Monopolies & Restrictive Trade Practices Act, 1969

The Monopolies & Restrictive Trade Practices (MRTP) Act, 1969, restricts monopoly of industries and ensures fair competition among industries. This Act prohibits practices that tend to restrict competition and deprive consumers of their right to choice. This Act prescribes imprisonment and fines for offenders. The Commissioners under this Act have *suo moto* powers to take note of erring traders.

In simple terms, the MRTP Act is certainly a beneficial legislation to uphold the consumers’ right to choice (see Box 3.3).

Box 3.3: Advantage Consumer: MRTPC Protects Consumers’ Right to Choice

- The Monopolies & Restrictive Trade Practices Commission (MRTPC) has restrained Business India magazine from continuing their sales promotion scheme of contests. Investigation by the MRTPC investigating team revealed that the participants were induced to buy the magazine on considerations other than their choice of participating in the contest. This practice not only distorted competition among publishers of magazines, but also deprived the participants of the benefit of other quality magazines available in the market.
- An inquiry was initiated following a complaint by B G Kundgol against Canara Bank by the MRTPC. The Bank was accused of compelling him to keep Rs 20,000 as fixed deposit for his safe deposit locker. Furthermore, the Bank collected three years advance rent for the locker. This type of practice and non-payment of interest on advance rent “amounts to restrictive trade practice” as defined under Section 2-(O) (ii) of the MRTP Act.

The interaction between the MRTP Act and the right to choice can be analysed by taking into account the example of ‘gift price’. In other words, when there is an offer of a gift, the consumers’ choice gets deflected, and it becomes a violation of the right to choice. However, gift offering is not necessarily an *offence*. According to the MRTP Act, when the cost of the gift is included in the transaction cost, and is against public interest, it is an *offence*. Furthermore, the lottery-based gift violates consumers’ right to

choice. However, when everybody gets a gift, it is not an offence. The following are some important points that need to be considered while studying the relationship of the MRTP Act with the right to choice.

- Do Government Departments come under the purview of the MRTP Commission? The answer is yes;
- Can a Government Department be sued or not? The answer is yes;
- When the service is made available to “potential users”, it comes under the Commission;
- When a service is made available *in lieu of* ‘fees’, it comes under the MRTP Act;
- When a service is made available *in lieu of* ‘tax’, it does not come under the MRTP Act;
- The sovereign services do not come under the MRTP Act;

The government has omitted sections 20 to 26 of the MRTP Act vide an ordinance on 27th September 1991. These sections dealt with “dominant market power” and merger, amalgamations and takeovers. The impact of this is seen in the Hindustan Lever Ltd.(HLL)-TOMCO merger case. This merger has created a virtual monopoly for HLL in the soap market, and violates consumers’ right to choice (see Box 3.4).

The Government had constituted a committee in October 1999 to examine the provisions of the Monopolies Restrictive Trade Practices (MRTP) Act, 1969, and to propose a modern Competition Law. The Committee recently submitted its report to the Government.

Box 3.4: Consumer Groups Flay Merger Plan of HLL-TOMCO

According to leading consumer groups, this merger would eliminate competitors and reduce consumers’ choice in the market for soaps and detergents. Furthermore, this kind of merger and amalgamation was not only against consumers, but against national interests as well and violated Article 39(C) of the Constitution. The consumer groups, led by CUTS and VOICE, expressed shock at the violation of an earlier directive that states that any such anti-consumer step should be permitted only with the permission of the MRTP Commission.

A sister organisation of the MRTP Commission is the Office of the Director General, Investigations and Registrations (DGIR). The DGIR office generally looks after cases brought under the purview of the Commission. However, there is very little institutionalised co-ordination between the Commission and the DGIR office, and this causes delay in investigations against unfair trade practices.

3.3.3.4 Standards of Weights and Measures Act, 1976

The Standards of Weights and Measures Act, 1976, stipulates that all goods produced in the country can be sold only in standard weights and measures, which are annually stamped by the authorities. This Act ensures that certain commodities can be sold only in certain measures or weights (see Box 3.5). This Act also appends rules regarding the sale of packaged commodities.

Box 3.5: A Guide to Information on Purchase

While buying kerosene oil, be a little careful:

- Look for the Inspector's verification stamps on the measure,
- Have a look at the bottom of the measures. There should be no cut mark or hole in the bottom,
- The bottom as well as the body of the measures should be free from dents,
- Check the welding marks at the bottom of the measures to ensure that the same has not been cut and re-fixed,
- Do not allow the dealer to deliver the oil by putting the measure on the brim of the drum or the tank. Ask him to lift the measure to deliver the oil in your container,
- Ensure that the measure is filled to the brim (marked hole) before delivery,
- Do not allow formation of lather in the drum or measure while buying kerosene oil. This can lead to short delivery,
- While purchasing vegetables/fruits, see that the weight of tray is not included with the vegetables/fruits, and
- Ensure that the measure does not contain wax or sponge.

The consumers should be cautious while buying by weight:

- Look for the Inspector's verification stamps on weighing instruments and weights,
- Buy with only verified and stamped weights and weighing instruments,
- Do not purchase anything from such weights in which the lead is missing,
- Do not purchase with non-standard weights, i.e. stones, iron pieces etc.,
- The beam scale should freely move on the central axis, and
- See that the counter scales are kept on a leveled surface.

The importance of this Act (in ensuring consumers' right to choice from the equity perspective) can be gauged by the statement of the former Union Minister of Civil Supplies, Consumer Affairs & Public Distribution, A K Anthony: "The government will review the Weights and Measures Rules to meet the needs of an open market economy and to ensure protection of consumer interests. The purpose of the rules was to protect the consumers by way of ensuring that they got the right quantity of the goods they purchased. The technical aspects of the law and its implementation machinery have not kept pace with the advance of technology, and hence call for an amendment."

3.3.3.6 Bureau of Indian Standards Act, 1986

The Bureau of Indian Standards Act is a statute that attempts to set up a benchmark of high quality supported by a visible presentation. The rationale is to help consumers make an informed choice.

Stipulations on information about commodities like quality, quantity and maximum retail price are made in the Act and in the appended rules. Authorities are empowered to seize, confiscate and pass orders of cease, desist and fine. This Act therefore ensures a clear flow of information to consumers to help them choose between goods of different quality and differing prices (see Box 3.6).

Box 3.6: BIS and Consumers' Right to Choice

Product standard and weight are two important elements influencing the consumers' right to choice. In view of this, the Bureau of Indian Standards (BIS) has the following provisions to ensure that the consumers' right to choice is secured:

- Right to be informed about the quality, quantity, potency, purity, standard and price of goods so as to protect the consumer against unfair trade practices—the product standards laid down by the BIS *invariably prescribe the information that the manufacturers should provide on their products/packing/containers*. The BIS licensees have to necessarily provide such information on the label affixed on to the product or the container. In the case of vanaspati, which had been brought under compulsory certification since September 1, 1985, the container or pouch must carry, besides the Standards Mark, information such as net mass, Vitamin A content etc.; and
- Right to be assured, wherever possible, of having access to a variety of goods at competitive prices—the Certification Marks Scheme of the BIS brings certain benefits to manufacturers also, who may opt for third party assurance of quality for their goods. The Bureau is constantly making efforts to attract more and more manufacturers to join the Scheme. *The Bureau's endeavour is to provide the consumer with not only quality products but also a choice of quality products* by bringing as many manufacturers of a product as possible under its Certification Marks Scheme. [Emphasis added].

3.4 ENFORCEMENT AND ASSOCIATED PROBLEMS

3.4.1 Overview

The aforementioned analysis makes it clear that in India the government seems to be sincere in ensuring the consumers' right to choice. However, the proper implementation of the regulations remains a serious issue.

Therefore it is necessary to examine those caveats to get a proper picture of what is happening at the lower levels of civil society. One way of analysing this is to take an overview of the activities of the Government, the bureaucracy, the producers, the middlemen and the consumers.

3.4.2 The Government

Since the 1990s, government policy has leaned towards an environment of competition. At least on paper, the new economic policy has given credence to the legitimate role that consumers can, and should, play in the production decision. In other words, consumers can choose the best among the possible options.

However, in reality, the new economic policy has opened a floodgate of consumer products in the market without an effective regulatory mechanism. In such a situation, consumers are saddled with the problem of choosing between *too many* products with too less information.

Consumers have little or no ability to get all the information necessary to make a proper choice. At the same time, collection and dissemination of necessary information is too costly. And this is where consumers need effective regulatory institutions for supply of reliable information. Otherwise there will be the problem of *adverse selection* that in the long run will drive out *good* producers from the market. Prevention of this calls for market regulation.

For an effective regulatory mechanism, the then Prime Minister of India, P V Narasimha Rao, commented at the 10th meeting of the Central Consumer Protection Council (16.09.1991):

“This (Consumer Protection Act) is meant for implementation and we will not tolerate any non-implementation of this law, because this goes to the very root of the matter. Our entire economy rests on this. If there is no consumer movement in this country, there will be no economic management in this

country. It is that simple to me. They are two sides of the same coin. If there is no consumer movement, there is no pressure for proper management of the economy. *Everyone will do whatever he wants to do and there will be utter anarchy in this country.*” [Emphasis added].

3.4.3 The bureaucracy

The role of the bureaucracy in enforcing consumers’ right to choice is often mis-construed. Either they are equated with the Government or their role is completely ignored. However, as the think tank and executor of this right, they play an important role.

As policy makers they need to be in tune with the needs of the consumers. As executors of the policy, there should be proper allocation of work between the different departments of the bureaucracy.

Currently, the major drawbacks of the bureaucracy are their pre-conceived ideas regarding the process of development and existence of widespread corruption. The above mentioned nexus not only pollutes the atmosphere of competition in the country, but also denies consumers effective access to execute their right to choice.

3.4.4 The producers

The producers have a greater role to play in ensuring consumers’ right to choice. The rationale is that apart from the notion of value for money, value for people (ethics) is also important for *good* business. Corporate governance is only a necessary condition for value for people, not the sufficient one.

At present, Indian producers are trying to enjoy the best of both worlds. On the one hand, the “license-permit-quota raj” has been dismantled; the rationale is to ensure free competition so that consumers have a greater choice between similar products. On the other hand, in the absence of checks and balances, consumers are unable to distinguish the nuances between the various attributes of similar products.

The free market policy, with its dismantling of regulations with respect to mergers and amalgamations has led to a peculiar situation in India. Such a policy might lead to an oligopolistic market structure where consumers end up paying more than what they actually should.

Take the case of the merger involving Hindustan Lever and Tata Oil Mills Company (TOMCO). The merged entity now controls over 70 percent of the soap market in India. The result of this could be overpricing and restricted choice of soaps.

This basic tenet of the right to choice is being violated in the absence of a proper competition policy, i.e., a regulatory mechanism with respect to competition.

Thus the Indian consumers are left at the mercy of producers who mostly compete with each other in terms of quantity and not quality. There are implicit agreements regarding market shares. Such agreements hinder the very basis of competition. In such an atmosphere of implicit contract along with mergers and amalgamations, the very objective of competition policy and the right to choice gets lost.

What is most unfortunate is that the MRTP Commission with its *suo motu* powers has not vindicated its existence by initiating any proceedings against such cartels. In short, instead of a social coalition between producers and consumers, we today have a politburo-industry alliance between producers, politicians and the bureaucracy. The ultimate losers are the consumers who have very little or no scope to exercise their right to choice in such an atmosphere.

3.4.5 The middlemen

In the market, between the producers and end-users are the middlemen, in the form of wholesalers and retailers. The middlemen’s role in influencing consumers’ choice in the market stems from two factors.

Firstly, they are the link between the producers and the consumers, and can thus influence both production and consumption decisions. Secondly, given the non-institutionalised structure of Indian markets, their role is doubly important.

Middlemen play an important role in fostering competition at the local level by encouraging small-scale producers. With liberalisation and the increasing role of global business, the situation is fast undergoing a structural change. Increasingly, stockists are threatened if they point out any fault/guilt in the actions of multinationals (see Box 3.9). Furthermore, today, the decision of market stockists is influenced by multinationals that force them to stock and retail particular brands to the detriment of consumers' choice.

Such semi-institutionalised arrangements between producers and stockists result in a shrinking of the choice space. Stockists are deprived of their right to choose between what to stock and what not to.

There has been an instance where a complaint was filed by a stockist of Hindustan Lever Limited (HLL), alleging unfair trade practices by HLL itself. HLL purportedly enforced an agreement with the stockists of its consumer products.

Under this agreement the stockists could not re-book or in any way convey, transport and dispatch, parts of stocks of products received by them, outside their town of operation (in this case Pune), except when they are so expressly directed to, in writing, by the company. The MRTP Commission declared the impugned clause expressing inter-town restriction as a restrictive trade practice limiting the choice of consumers and passed a cease and desist order. On appeal, the Supreme Court upheld the Commission's order.

Box 3.7: Right to Choice and Retailers

A retailer recently reported to the Consumer Action Group the under weighing detected in the '50-50' biscuit packets produced by the Britannia group. When he brought this consistent occurrence to the notice of the producer, he was threatened with dire consequences including boycott and a defamation suit. When the retailer informed the Controller of Weights & Measures, he was informed that if the complaint was accepted, the retailer would also be implicated. Till today the complaint remains unattended. Therefore, at present, the role of middlemen in enforcing the right to choice is limited by legislative compulsions.

Since wholesalers and retailers are the link between the producers and the consumers, they have a greater chance of being detected in the event of any foul play. Such vulnerability has forced them to cartelise their operations against both producers and consumers. In short, a retailers' cartel is a double-edged sword vis-à-vis the implementation of the right to choice.

3.4.6 The consumers

Consumers have a double-role to play with respect to the right to choice. Not only have they the right to choice *per se* (as a fundamental right to consumer protection), but they have the responsibility for enforcing and executing of that right.

In India about 35 percent of the population lives below the poverty line, literacy is among the lowest in the world and a very low percentage of the population is being educated. The situation on the basic needs front is, to say the least, bleak. Is the "right to choice" an infeasible phrase with respect to the poor, low-income and disadvantaged consumers?

Accepting such a line of thinking excludes a large section of the population from the purview of responsive civil society. It also amounts to poor public policy—curing the patient by killing him /her, instead of preventing the occurrence of the disease.

In other words, the State has a larger responsibility (with respect to disadvantaged consumers), and should take care of those sections, and not fall prey to the (non-) right to choice.

On the other end of the spectrum is the burgeoning middle class population that is not only starving to consume *good* products at reasonable prices, but confused because of its ex-ante lack of knowledge.

The Indian middle class has a peculiar characteristic—it wants its rights, but at the same time it shirks from its responsibility in enforcing those rights. Demanding good products at just prices is a right, but good product at unjust prices or bad products at below the just prices certainly do not amount to the right to choice.

3.5 HOW TO IMPROVE?

3.5.1 Availability

To improve the situation, availability of goods and services have to be ensured by:

- Removing constraints like hoarding, black marketing etc.; and
- Ensuring fair play in business.

Only tightening up the enforcement machinery can curb hoarding and black marketing. Strict administrative measures are required in this respect. In this area the existing legal standards are quite stringent. Hence, the Departments concerned can be sensitised by complaints from the consumer groups and consumers.

It is in the area of fair play in business where much can, and should be, done. The following points are important:

- Mergers and amalgamations should be allowed only under conditions of free market, and after consultations with the Central Consumer Protection Council. A merger might lead to a situation of monopolistic competition. At the same time it may not harm consumers' choice if economies of scale are directed towards consumers' satisfaction (e.g. passing on the fall in cost of production to consumers in terms of reduced price). To achieve this end, a mutually agreed arbitrator may be appointed to consider the appeals of both parties;
- Ban on fixation of uniform prices or charges by traders' associations etc. Uniform prices could be treated as an indication of coalition of interests between producers and retailers;
- Strict liability should be enforced on service providers by specifying it under the MRTP Act and the Consumer Protection Act;
- a regional office of the Director General (Investigations) may be established to look exclusively into the offences of mergers, amalgamations against public interest, cartelisation and enforcement of strict liability. Regional branches of the MRTP Commission may be established in all the States;
- List of essential commodities under the Essential Commodities Act needs to be reviewed from time to time, and a separate wing is to be created under the Ministry of Food and Consumer Affairs, in co-ordination with the Department of Consumer Affairs, against non-stipulated marketing of essential commodities;
- The production of goods be allowed on the condition that spare parts and after-sales service are made available for at least 10 years in general, and a reasonable life span according to the special characteristics of the product; and
- A range of products should be introduced in the public distribution system. The idea is to introduce choice among the impoverished sections of the population.

3.5.2 Information

Information is a pre-condition for real choice. One can make choices, but if one lacks information about alternatives, their pros and cons, uses, side-effects and dysfunctions, the results of those choices can range from inadequate to catastrophic. Information can also create choices or guided choices concealing rather than elucidating the full range of options. Thus, stringent action needs to be taken against manufacturers who mislead consumers with advertisements.

The following actions are needed for effective dissemination of information to consumers to enable them to make right choices:

- Misleading advertisements should be declared as both an economic and moral offence. Strict application of the MRTP Act in this regard has to be done *suo moto*. A regulatory code on advertisements has to be drawn up in consultation with the Central Consumer Protection Council;
- Minimum life expectancy of consumer durables should be prominently printed on the products;
- Consumers' right to choice is severely restricted by the absence of information on the packaged goods. The Standard Weights & Measures Act should be suitably amended to enforce the provisions of the Packaged Commodities Rules; and
- Through the mass media, consumer education should be spread to all parts of the country. The idea is to make consumers aware of the various provisions of the Consumer Protection Act and associated rules.

Box 3.8: A Case of Uninformed Consumption!

Recently, the Indian Medical Association has expressed shock at the setting up of a *mantra shakti* healing centre in the Maulana Azad Medical College, New Delhi. They allege that the centre not only purveys unscientific practices but is also illegal. Janak Shahi, *tapasvi* of this centre, claims to heal incurable diseases by chanting *mantras*.

The DMR (OA) Act, 1954, prohibits *mantra* healing for diagnosis or cure of any human being or animal. Also, the Delhi government, by its July 4, 1997 notification, has said that "anybody doing medical practice without possessing a medical degree will be considered as a 'quack', and is punishable by law."

3.5.3 Regulations

The imperative for effective regulations stems from two sources. One is the existence of public utility services where the government sector has a natural monopoly. The second is the problem of *adverse selection*, which drives 'good' producers out of the market.

Two questions have to be answered while analysing the issue of right to choice with respect to public utility services:

- Is privatisation the answer? and
- What should be the role of competition policy vis-à-vis the protection of consumers' right to choice?

The economic reform agenda does not recommend fast and immediate privatisation. On the contrary, the basic approach is that a public sector enterprise can be as efficient as any other corporate sector unit, provided that the relationship between the government and the public sector unit can be made to approximate the relationship between shareholders and a corporation.

It was further argued that for a public enterprise to function efficiently, and for it to treat the consumer with respect, what is urgently required is proper regulation even in these natural monopoly areas.

The second question could be as to what would happen if there was no competition to the public utility provider? Or is it enough to have a Consumer Protection Act that defines *service* and further defines *deficiency in service*? Litigation in any form is costly, and delays are beyond the realm of tolerance.

The most obvious example is that of Indian Airlines—a monopoly deriving its status from the Aircraft Act, 1934. The monopolistic situation was such that Indian Airlines had become associated with delayed and cancelled flights, and rude, officious personnel.

A related issue is whether unregulated competition automatically protects consumers' interest in the market. The reality is, market forces do not necessarily and effectively protect consumers' interests. The reasons behind this are asymmetric availability of information and the associated issue of cost of dissemination of information. Therefore, the consumers need an effective regulatory mechanism to protect, enforce and execute the right to choice with respect to the purchase and use of goods and services.

A related mechanism (with respect to regulations and consumers' right to choice), is the Price Monitoring Commission. A price monitoring cell (PMC), set up in the Department of Consumer Affairs in pursuance of the decision taken at the Chief Ministers Conference convened by the Prime Minister in November, 1998, is monitoring the price situation and availability of essential commodities on a daily and weekly basis. A high-powered price monitoring board under the chairmanship of the cabinet secretary has also been constituted, and meets every week to review the prices and availability of essential commodities.

The function of the above cell, besides monitoring, could be to—

- Discourage an organisation with market power from taking advantage of that power when setting prices;
- Discourage cost increases which stem from wage increases, or changes in employment conditions, that are inconsistent with the principles established by relevant industrial policy statements.
- Effective and prompt information dissemination to the various state governments, particularly about the likely impact due to volatility in the markets so that they can take effective/necessary steps in order to make the goods available at affordable prices; otherwise, the same kind of situation as developed in the case of onions two years ago, may recur.

The role of consumer organisations vis-à-vis the Price Monitoring Cell are to:

- Vet the proposed price rise of any business organisation placed under price surveillance;
- Hold inquiries into pricing practices and related matters, and to report the findings to the responsible Ministries; and
- Monitor prices, costs and profits of an industry or business and report the result to the relevant Ministries.

3.5.4 Administrative and legislative measures

Apart from the various measures mentioned above, in concrete terms, the following administrative and legislative measures (in line with the core objectives of fulfilling consumers' right to choice), are required:

- Control of abusive and restrictive business practices—

Legislative

- An effective competition policy and legislation where consumer welfare considerations are not subordinated to economic efficiency arguments;
- Other sectoral regulatory reforms in financial markets, utility industries etc., to address market place abuses;
- Where there are natural monopolies or oligopolies, stronger regulatory mechanisms with mandatory participation of public interest and independent experts should be put in place;

- Goods that meet the standards of durability, utility and reliability, fit their purpose, and availability of reliable after-sales services and spare parts—
 - ♦ Standards and obligations by manufacturers/importers to ensure availability of service and spare parts for at least ten years; and
 - ♦ Legislation to govern warranties and guarantees, and service frauds;
- Protection of consumers from unfair contracts, and regulation of promotional markets and sales—

Legislative

- Well drafted Contracts and Sale of Goods legislation; and
- Legislation governing unfair terms, unfair and restrictive business practices such as resale price maintenance, mis-leading advertising and deceptive packaging; and
- Review of the legislation and enforcement of weights and measures—

Legislative

- Standardisation of the measurement system, i.e. metric standards; and

Administrative

- International co-operation for adoption of a universal metric system

3.5.5 In short...

In short, with respect to consumers right to choice, consumer laws should consider the following:

- Ensuring that manufacturers and suppliers do not abuse their powers;
- Giving consumers the right to obtain redress for goods which are unsafe, unsuitable, defective or of poor quality; and
- Establishing procedures for community and consumer education about products.

3.6 RIGHT TO CHOICE—AN IDEAL LAW

With respect to the right to choice, any comprehensive law should take into account two factors: the demand for goods and services and the supply (sale) of goods and services. However, in a developing country like India where the costs of generation and dissemination of information regarding the quality of the product are very high, ideally, the law should look into the supply side of the issue.

In this respect the New Zealand Consumer Guarantees Act, 1993, is a good example to follow. It provides the following guarantees where goods are supplied to a consumer:

- The supplier has a right to sell the goods;
- Goods are free from undisclosed security;
- The consumer has the right to undisturbed possession of the goods;
- Goods are of acceptable quality (fit for all the purposes for which goods of the type in question are commonly supplied, acceptable in appearance and finish, free from minor defects, safe, and durable);
- Goods correspond with the description;
- Goods correspond with the sample or demonstration model in quality;
- Consumers will have a reasonable opportunity to compare the goods with the sample;
- The consumer is only liable to pay a reasonable price where the price has not been left to be determined in a manner agreed by a contract, nor left to be determined by the course of dealing between the parties;

- The manufacturer will take reasonable action to ensure that facilities for repair of the goods and supply of parts for the goods are readily available for a reasonable period after the goods are supplied; and
- All other express guarantees by a manufacturer are binding on the manufacturer as re-implied guarantees provided by the Act.

In respect of supply of services, the New Zealand Consumer Guarantees Act, 1993, provides guarantees that the service:

- will be carried out with reasonable care and skill;
- will be reasonably fit for any particular purpose and of such a nature and quality that it can reasonably be expected to achieve any particular result that the consumer makes known to the supplier;
- will be completed within a reasonable time; and
- that the consumer is not liable to pay more than a reasonable price where the price is not determined, nor left to be determined in a manner agreed by the contract, nor by the course of dealing between the parties.

3.7 CONCLUSIONS

The right to choice is essential for dignified living in civil society. Unless there is the right to choice, consumers will be left at the mercy of business.

Theoretically, a free market leads to an optimal choice of goods and services. However, such a possibility is only under stringent and idealistic assumptions. In the real world, such assumptions seldom have any relevance.

The UN Guidelines for Consumer Protection, 1985, spelt out the objectives of the right to choice. However, what is important is the extent of its implementation. This is the real issue that needs to be properly addressed for the betterment of consumers.

This chapter has been researched and written by Bipul Chatterjee with inputs from Ms. M. Kavita of Citizen Consumer and Civic Action Group, Madras and Raghav Narsalay, CUTS.

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4

Right to Information

4.1 INTRODUCTION

4.1.1 Introduction

In today's era of liberalisation and globalisation, consumers (especially the disadvantaged ones), are increasingly faced with the problems of making the right choice of goods and services. The problems are further aggravated by the existence of asymmetric information. In simple words, a large number of consumers are not able to exercise their choice of goods and services because of lack of correct information about the quality of the products. Access to information about markets is crucial not only for the producers but equally so for the consumers. Often, middlemen, who bring consumers and producers together, are able to seek disproportionate rent because they have better access to information on ruling prices in different markets.

4.1.2 About right to information

From the viewpoint of a consumer, the right to be informed means the right to be given the facts needed to make an informed choice or decision. Consumers must be provided with adequate information, thus enabling them to act wisely and responsibly. They must also be protected from misleading or inaccurate publicity material, whether included in advertising, labeling, packaging or otherwise.

In other words, without vital information such as directions for proper use and information related to side effects and risks associated with such use or mis-use, the consumer becomes a prey to the possible hazards of products. Thus, appropriate information is a basic right of all consumers and it must be available in a form that is easily understandable. The consumers' right warrants governments, manufacturers, service providers etc, to shoulder the responsibility for providing relevant information.

4.1.3 The United Nations Guidelines

The UN Guidelines for Consumer Protection, 1985, which includes the right to information, are primarily laid down to promote the interests and needs of consumers. It should be used as a standard against which various practices (production, supply, information dissemination, propaganda and campaigns), that have a bearing on consumers, could be tested for their beneficial or harmful aspects. Necessary legislation and institutions to implement laws on right to information to the citizen to curb unfair trade practices etc, as per the UN Guidelines, need to be put in place.

The Guidelines spell out the following provisions:

- Information to consumers on the proper use and risks associated with consumer products;
- Free flow of accurate information relating to consumer products; and

- Governments to develop consumer information programmes in the mass media, aimed at rural and illiterate consumers.

4.2 OBJECTIVE

With respect to the right to information, governments should have well defined objectives. The Guidelines say that governments should develop or encourage development of general information programmes, bearing in mind the cultural traditions of the people concerned. The aim of such programmes should be to enable people to act as informed consumers, capable of making an intelligent choice of goods & services, and conscious of their rights and responsibilities.

In developing such programmes special attention needs to be given to the requirements of disadvantaged consumers, in both rural and urban areas, including those with low-income levels. Information programmes directed towards consumers should cover aspects of consumer protection such as:

- Health, i.e. nutrition, prevention of food-borne diseases and food adulteration;
- Product hazards, i.e. the information on the environmental effects of the products consumed;
- Product labeling;
- Relevant legislation on how to obtain redress, and information about agencies & organisations for consumer protection; and
- Information about weights and measures, prices, quality, credit conditions and availability of basic goods and services.

Governments should encourage consumer organisations and other interested groups, including the media, to undertake information programmes, particularly for the benefit of low-income consumer groups. On the other hand, business should, where appropriate, undertake or participate in programmes that disseminate factual and relevant consumer information. Bearing in mind the need to reach rural and/or illiterate consumers, governments should develop or encourage the development of information programmes that reach the common consumer through the mass media.

Furthermore, it is imperative for governments to organise or encourage training programmes for educators, mass media professionals and consumer advisers, to enable them to participate in carrying out consumer centric information programmes. At the same time, the objective of the training programmes should be based on innovative methods so that they can cater to the needs of different categories of consumers.

4.3 LEGISLATIVE FRAMEWORK

Business, consumer organisations and the government all have a role in informing consumers. The most important aspect of the role of business is the disclosure of information (often dictated by statute), about specific goods and services. Moreover, business, in its own interests, often provides information about products and services to consumers.

Consumer organisations and governments have an important role to play here. The reason is that in most cases it is beyond the ability of an average consumer to use the information provided by business in a correct and coherent manner.

The government's problem is that of fixing priorities and allocating work between itself and other agencies, besides being a facilitator. Furthermore, government has to decide whether to involve others at all in the process of providing information to consumers. If business is left to act as a self-regulatory body, there is the danger of a clash between business interests and the eagerness to take care of the interests of common consumers.

The role of consumer organisations becomes crucial here. Consumer organisations, being representatives of civil society, are more dependable and can be deputed the task of acting as watchdogs. The danger of involving civil society groups, however, lies in the real threat of them being co-opted by big business and other vested interests.

In this context (consumers' right to information), a speech delivered by the former Minister for Civil Supplies, A K Antony, at the National Convention on Consumer Protection (NCCP), 1993, needs to be quoted:

“Considerable media initiative is required to reach out the consumer movement to the people. The vast masses of consumers in the country are not aware of the rights, protection and remedies available to them. Media can play an effective role here. Apart from this well known role of the media, there is a less obvious role, that of providing advertisement space for products and services.”

“A product reaches the market through advertisements. If there is distortion at that stage, the final victim is the consumer. Therefore, independent initiative is required to x-ray the claims given in advertisements. I am also sure that the media is enlightened enough to evolve its own code of ethics.”

“In the past few months, efforts were made to inform the public about claims of the competitive companies about various features of some industrial products based on evaluation reports by independent agencies. But we need more of this kind of work”.

Furthermore, addressing the 16th meeting of the CCPC in 1994, A K Anthony had contemplated that the Ministry was seriously examining the possibility of generating consumer awareness through counter-advertising, which would telecast deliberations of an expert panel that would examine claims put forward by various manufacturers about their products through televised advertisements.

4.3.1 Constitutional provisions

The Constitution of India has some provisions, which have partial (though not inclusive), overlaps with the right to information. Though Article 19(1)(A) of the Constitution empowered the fundamental rights of expression and speech, which included the freedom of the press, Article 19(2) laid down restrictions. According to Mr. Justice P. B. Sawant, the Chairman of the Press Council of India, “The reasonable restrictions imposed by Article 19(2) of the constitution were vague and required to be defined”.

4.3.1.1 Freedom of the press

Article 19 of the Indian Constitution deals with various freedoms. Though the freedom of the press is not expressly mentioned in the article, but it is assumed to flow from the freedom of speech and expression which is guaranteed to all citizens. Furthermore, various judicial decisions and interpretations have come to expand this right as not only the freedom to write and publish what the writer considers proper (with reasonable restrictions), but the freedom to carry on the business, so that information may be disseminated and excessive and prohibitive restrictions on circulation may be avoided. Some of the important decisions relevant here include:

- Virendra vs. the State of Punjab, AIR 1958, SC 986;
- Express Newspapers vs. the Union of India, AIR 1958, SC 578;
- Bennett Coleman vs. the Union of India, AIR 1973, SC 106;
- Sakal Papers vs. the Union of India, AIR 1962, SC 305; and
- Sharma vs. Sri Krishna, AIR 1959, SC 395, 402.

These case laws which establish the freedom of press are important to the consumer as they allow the press to be a vehicle for the free flow of information useful to the consumer. The press is, however, not

immune from the general law of liability for defamation (Civil and criminal—Printers Mysore vs. Assistant Commercial Law officer, JT 1994, 1 SC 692).

4.3.2 Provisions on informed choice

As mentioned in the UN Guidelines, governments should ensure that consumers are able to make an 'informed choice'. An informed choice has to be based on undistorted facts. Advertisements are responsible in a big way for the flow of information regarding products and services. Article 19(2) of the Constitution and various judicial decisions have come to establish that Government advertisements should be given to newspapers under a definite policy or uniform guidelines (guidelines have been set out in the judgement). A relevant case on this issue is Ghulam Nabi vs. the State of Jammu & Kashmir, AIR 1990, J & K 20, 21.

Apart from the Consumer Protection Act, 1986, the following acts and orders under which legislative and administrative provisions regarding the right to information on products and labeling, meant to protect/inform consumers are provided, are the

- Indian Official Secrets Act, 1923;
- Companies Act, 1956;
- Trade and Merchandise Marks Act, 1958;
- The Prevention of Food Adulteration Act, 1954;
- Essential Commodities Act, 1955
- Agricultural Produce (Grading and Marketing) Act, 1937;
- The Standards of Weights & Measures Act, 1976 and the Standards of Weights & Measures (Packaged Commodities) Rules, 1977;
- Monopolies & Restrictive Trade Practices Act, 1969;
- The Drugs and Cosmetics Act, 1940;
- The Drugs & Magic Remedies (Objectionable Advertisement) Act, 1954;
- Insecticides Act, 1968;
- Water (Prevention and Control of Pollution) Act, 1974;
- Air (Prevention and Control of Pollution) Act, 1981;
- Fruit Products Order, 1955; and
- Household Electrical Appliances (Quality Control) Orders, 1981 & 1988.

4.3.3 Disclosure of information by the Government

The understanding of the Judiciary, on disclosing of its information, is as follows: "Disclosure of information in regard to the functioning of the Government is justified only where the strictest requirement of public interest so demands. The approach of the Court must be to attenuate the area of secrecy as much as possible, consistent with the requirement of keeping the public interest in mind all the time, and that disclosure also serves an important aspect of public interest.

Furthermore, any person residing within the area of a local authority or any social action group or interest group or pressure group, shall be entitled to make an inspection of any sanction, grant or plan approved by such a local authority in the construction of a building, along with related papers and documents. An exception has to be made in a case where, in the interest of security, such inspection cannot be permitted." (Refer to 4.4.1 for further details).

A detailed discussion on the Government policy on freedom of information is presented in Chapter 7—Right to Representation.

4.4 IMPLEMENTATION

It is clear from the above discussion that there is no overreaching law in India regarding consumers' right to information. In other words, this right is indirectly provided through various acts and orders.

4.4.1 Indian Official Secrets Act, 1923

While delivering the judgement on writ petition number 2733 of 1986, the Bombay High Court held that disclosures of information with regard to the functioning of the government were justified only where the strictest requirement of public interest so demanded. The most important category of information, disclosure of which has been prohibited and made punishable under the Indian Official Secrets Act, 1923, is that which is likely to affect the security of the country, internal and/or external.

It is worthy to note that this is a much-abused Act. There is talk of scrapping this Act and moving towards greater transparency in the public sphere. However, this would require new safeguards to be put in place.

4.4.2 Companies Act, 1956

There are provisions in this Act, relating to information to be given to investors and to the Government at set intervals. The Act also covers information to be provided to prospective investors at the time of public issue.

4.4.3 Trade and Merchandise Marks Act, 1958

This Act provides for the registration of trademarks of manufactured goods so as to not only protect business but also the consumer from being cheated due to non-identifiable products. If a consumer is sold a spurious product carrying the trademark or brand name of a reputed manufacturer, she/he can complain to the manufacturer to take action against those who have spuriously used its trademark or brand name.

There is an implied warranty on sale of marked goods by the seller. The Act also provides for action against the trader or shopkeeper who sells spurious goods as well as the person who affixes the trademark in a 'duplicate' manner. Complaints can be made to the Registrar of TradeMarks who is also called the Controller General of Patents, Designs and TradeMarks. The head office is at Bombay with regional offices at Delhi, Calcutta and Madras.

4.4.4 The Prevention of Food Adulteration Act (PFA), 1954

Under Section 14 of the Act, the manufacturer, distributor/dealer in the sale of food/food products shall not sell any food unless they give a warranty in writing about the nature and quality of the product sold.

State Governments have been conferred powers under Section 9 of the PFA Act, to issue notifications for information to the public about persons appointed as food inspectors in local areas, where they would exercise their powers to take samples for analysis of food, and take action as per law when samples are found to be adulterated. An amendment to the Act, made in 1986, has also empowered the consumer groups or individual consumers to collect samples of food and approach the competent laboratories for testing, as well as to approach the competent authorities for appropriate legal measures.

4.4.5 Essential Commodities Act, 1955

Section 10(b) of the Act deals with the publication of information. When any company is convicted under this Act, the court convicting the company is empowered to publish information regarding the name and place of business of the company, nature of contravention, the fact that the company has been so convicted, and such other particulars as the court may consider proper in the circumstances of the case.

All occurrences of food poisoning are required to be notified by the medical practitioners in the specified local area to such officers as may be specified in the Government notification (Section 15 of the Act).

4.4.6 Agricultural Produce (Grading and Marketing) Act, 1937

This Act gives powers to the government to lay down grades and grade standards for various agricultural products, known popularly as AGMARK grades and standards. It has been provided in the Act that AGMARK labels, carrying the appropriate grade designation mark, should be affixed to the packages containing the graded agricultural produce to enable consumers to ensure that the agricultural produce they are buying is of good quality as per the prescribed grade and standard.

There is a Consumer Complaints Cell in every state capital, operating under the Director of Marketing and Inspection, Ministry of Agriculture and Rural Development. This cell also has a laboratory, and on receipt of a complaint it seizes the batch and tests the commodity. If an irregularity is detected the manufacturers/packers can lose their license and also face persecution.

4.4.7 The Standards of Weights and Measures Act, 1976

This Act and the Standards of Weights & Measures (Packaged Commodities) Rules, 1977, deal with information about weights, number, measure, sale price, date of manufacture, name and address and other descriptions of the manufacturer to be printed on the packaged products.

Complaints under these can be made to the Controller of Weights & Measures in the state, or the Weights & Measures Inspectors in the districts. The 1986 amendment to the Act empowers any aggrieved consumer or registered voluntary consumer organisation to file a complaint in a court.

If any company is convicted under the Act, the name and place of business of the company, nature of contravention etc, can be published in newspapers (Section 74(3) of the Act).

Rule 38 of the Standards of Weights & Measures (Packaged Commodity) Rules, 1977, provides that the Director of Weights & Measures shall compile a state-wise list of manufacturers registered by him and circulate such lists to the controllers in the states so that they may take samples and test the materials.

Every manufacturer/packer is required to put a label on every package, and to fix it securely on the package—and the label should contain information about the name and address of the manufacturer and also of the packer, common or generic names of the commodity and other information as prescribed in Rule 6 of the Standard of Weights & Measures (Packaged Commodity) Rules, 1977.

4.4.8 Monopolies & Restrictive Trade Practices Act, 1969

The Monopolies & Restrictive Trade Practices (MRTP) Act, 1969, had the underlying idea that the State shall direct its policy towards securing that the ownership and control of material resources are distributed so as to serve the common good. The MRTP Act aims to prevent the concentration of economic power to the common detriment, while providing for the control of monopolies and the prohibition of monopolistic, restrictive and unfair trade practices and for protection of consumers interest.

4.4.8.1 Scope and application of the final order

For proper execution of the final order, the Commission can make certain provisions and impose certain conditions that it thinks necessary in a particular case. These may include the requirement of reporting compliance by the respondent by way of an affidavit and obligations of filing price lists or of intimating price revisions from time to time or arranging supply of goods in a specified manner. However, an appeal can be preferred before the Supreme Court against an order of MRTPC.

4.4.8.2 Unfair trade practices

Unfair trade practices under the MRTP Act directly relate to falsely informing consumers, baiting them through wrong advertisements and such other issues. Such acts, which constitute unfair trade practices, are in their very nature infringements of consumers' right to information. Unfair trade practices are adopted for promoting the sale of goods to, or boosting the use of certain services by, an unsuspecting (tricked) consumer, causing loss or injury to her/him. These unfair trade practices are further subdivided under certain heads among which the following are of contextual importance:

- Misleading advertisements and false representations which take into account the following factors—
 - falsely representing that goods or services are of a particular standard, quality, grade, composition or style;
 - falsely representing any second hand, renovated or old goods as new;
 - representing that the seller or the supplier has a sponsorship, approval or affiliation which they do not have;
 - making a false or misleading representation concerning the need for, or usefulness of, goods or services; and
 - giving any warranty or guarantee of performance that is not based on an adequate test;
 - false or misleading claims with respect to prices of goods or services;
- Bait advertising and switch selling entails fooling the buyer with false pretences. This could take many forms. For example, a particular product may be offered at a heavily slashed down price with the intention of alluring customers to a shop where she/he would be steered tactfully to some other product;
- Gift offers and promotional contests where a false claim of offering certain goods or services free of cost is made to the consumer, when the cost of supplying it is fully or partially covered by the amount charged in the transaction as a whole. The MRTP Act clearly states that when the gift price is included in the transaction cost, or when it is against the public interest, such an action can be called an offence.

4.4.8.3 Provisions relating to inquiry

The procedure of lodging a complaint and the subsequent inquiry by the MRTPC is more or less clearly spelt out. An inquiry may be initiated for various reasons. It could be on a complaint received by an individual or by a registered consumer organisation. Again, an application received by the Commission from the Director General of Investigation and Registration (DGIR), or any reference from the Government to the Commission could lead to an inquiry being instituted. The Commission can also start an inquiry *suo moto*.

The Commission and DGIR are also vested with powers like searching of premises, seizing of records and collecting evidence etc. On completion of an inquiry relating to any complaint the Commission may pass a 'final order' which could be an order to cease and desist, order for modifying an agreement or advertisement, order awarding compensation, or an order to close the inquiry without passing an order to cease and desist.

4.4.9 The Drugs and Cosmetics Act, 1940

The purpose of this Act is to prohibit the production, trade, distribution, import and export of drugs and cosmetics that do not conform to the prescribed standards or are being sold under false brands. It is mandatory on the manufacturers to give the following information on the labels of medicines:

- Name of medicine,
- Name and address of the manufacturer,
- Batch number and date of manufacture,
- Date of expiry of the medicine,
- Detailed composition of the medicine, and
- Precautions regarding harmful effects or side effects of the medicine.

4.4.10 Drugs & Magic Remedies (Objectionable Advertisement) Act, 1954

In recent years there has been a manifold increase in the number of objectionable advertisements published in the print and electronic media, relating to claims of cures for various diseases. These are mainly related to venereal diseases, sexual stimulants and claims of cures for diseases and conditions peculiar to women. These advertisements tend to cause the ignorant and unwary to resort to self-medication using harmful drugs and appliances. People also rely on quacks that indulge in advertisements for magic treatments.

For example, on a complaint it was found that a drug-cure was being offered for obesity by using a picture from the *Ajanta* frescoes in their advertisements. The message was that on taking that drug a person would develop a figure like the one in the advertisement. On inquiry it was found that the drug being offered was nothing but one meant to relieve flatulence.

The objective of this Act is to control advertisements of drugs and prohibit advertisements of remedies for diseases for which no cure is normally possible. Its aim is also to prohibit advertisements of remedies that are supposed to be magical cures.

4.4.10.1 Important provisions

Important provisions of the Act deal with the definition of an advertisement that includes any notice, circular, label or wrapper. Even an announcement made orally, or produced by transmitting light, sound or smoke is included in the definition. The Act further defines 'drugs' to include internal or external medicine, any substance or article other than food, which influences the bodily functions of human beings.

Any talisman, mantra or charm supposed to possess miraculous powers to cure is called 'magic remedy' under this Act, which further lists 54 diseases, including cancer, impotence etc., for which no cure can be advertised. The exceptions are when sign boards/notices are displayed by registered medical practitioners on their premises or when any treaties apply. Advertisements published by the government or published with the previous sanction of the government also come under the same exceptions.

4.4.11 Insecticides Act, 1968

The Act contains provisions relating to safety information, dosages and applications that are to be given to users.

4.4.12 Water (Prevention and Control of Pollution) Act, 1974

If any person convicted of an offence under this Act commits a like offence again, the court has the authority to publish the offender's name and place of residence, the offence and the penalty imposed, at the offender's expense.

4.4.13 Air (Prevention and Control of Pollution) Act, 1981

Under Section 19 of the Act, the State Government may, after consultation with the State Pollution Control Board, and by notification in the Official Gazette, declare any area or areas within the State as “air pollution control area or areas” for the purpose of controlling air pollution.

The State Government can by notification in the Official Gazette appoint persons having prescribed qualifications, to be government analysts for the purpose of analysis of samples of air or emission sent to a laboratory, established under Section 28 of the Air (Prevention and Control of Pollution) Act, 1981.

Furthermore, in accordance with Section 28 of the Act, the State Government is required to notify in the Official Gazette, information regarding establishment of State Air (Control of Pollution) Laboratories.

4.4.14 Fruit Products Order, 1955

Under this Order, it is mandatory for the manufacturer of fruit and vegetable products to obtain a license and ensure minimum standards for quality, packing labels and sanitary conditions.

4.4.15 Household Electrical Appliances (Quality Control) Orders, 1981 & 1988

These Orders have been promulgated under the Essential Commodities Act, 1955. The manufacture, storage and sale of 40 household electrical appliances are prohibited unless these conform to the specifications of the Bureau of Indian Standards. The list includes certain cables, hot plates, toasters, kettles, jugs and thermostats used for water heating appliances. In addition to these, seven items, which include electric irons, water heaters, radiators, stoves, switches, 3-pin plugs and sockets are covered under the compulsory ISI Certification Scheme.

4.4.16 Freedom of Information Bill, 2000

Recently, the Central Government has decided to introduce a bill regarding the much-talked about right to information. The bill, called ‘The Freedom of Information Bill, 2000’, has the objective to provide freedom to every citizen to secure access to information under the control of public authorities, consistent with public interest, in order to promote openness, transparency and accountability in administration (Box 4.1).

Box 4.1: The Freedom of Information Bill, 2000

According to the bill ‘freedom of Information’ means the right to obtain information from any public authority by means of –

- (i) inspection, taking of extracts and notes;
- (ii) obtaining certified copies of any records of sub public authority;
- (iii) diskette, floppies or in any other electronic mode or through print-outs where such information is stored in a computer or in any other device.

The Bill imposes certain obligations on public authorities, such as:

- i) to maintain all its records, duly cataloged and indexed;
- ii) to publish the particulars of its organisation, including facilities available to the citizens for obtaining information and other particulars from the public information officer
- iii) to publish all relevant facts concerning important decisions and policies etc.

According to the Bill, every public authority shall appoint one or more officers as Public Information Officers for the purpose of providing information. Any person desirous of obtaining information shall make a request in writing, or through electronic means, to the concerned Public Information Officer. On receipt of such a request, the Public Information Officer shall, as expeditiously as possible, and in any case within thirty working days of the receipt of the request, either provide the information requested or reject the same for some reasons specified under the legislation.

There is certain information related to issues of strategic importance like security or those affecting public safety and order etc, including cabinet papers and records of deliberations of the Council of Ministers, Secretaries and other officers. These are exempted from this bill.

There is a provision of appeal against the decision of the Public Information Officer. Furthermore, there is also a provision for a second appeal. However, according to the draft Bill, all these appeals are to be made to the Central or State Governments or the competent authority, but not to the judiciary.

The Central Government, despite all the promises so far, has not introduced the bill in the Parliament yet. However, some State Governments like those of Tamil Nadu, Goa and Rajasthan have already enacted right to information legislation. Some other States are also following in their footsteps. The public has felt a need about transparency in the functioning of the Government.

The right to information (disclosure of information), regarding affairs of the states, should have been initiated by the respective Governments. The example of the state of Rajasthan shows that the peoples' movement has been instrumental in forcing the Government to enact legislation on the right to information. The struggle by the Mazdoor Kisan Shakti Sangathan (MKSS), for many years, forced the state of Rajasthan to finally enact legal provisions that confers on people the right to information.

4.5 DRAWBACKS OF THE SYSTEM

In India there are a number of laws to guard the right to information of the consumer, but, obviously there is ample scope for improvement.

4.5.1 Problem with information

With respect to the right to information, the greatest drawback of the existing system is its inadequate implementation of existing laws. A law can be judged as good only when its implementation is done in a proper manner. The Freedom of Information Bill, 2000, is yet to be passed in Parliament.

Some examples of inadequate/inappropriate information are:

- Currently the ingredient labeling under the PFA Act (which lists ingredients in the descending order of proportion), mentions only the name of the ingredient but not the quantity;
- At present nutrition labeling is mandatory only for infant foods under the PFA Act;
- With respect to food additives, general statements like “contains permitted flavours and colours” have little or no meaning for those who wish to avoid certain additives for health reasons; and
- With regard to general information, what is conveyed is important, but how it is conveyed is also equally important.

Apart from the problems mentioned above, there are two continuing drawbacks in devising and implementing consumer information programmes. The first is timing. The ability of many consumers to absorb consumer information is severely limited. Consumer information competes with a wide variety of other kinds of information vying for the attention of consumers.

The second drawback is that in a country like India the written word is often the least effective way to convey information, although it may be the easiest to prepare. It is regrettable that many public and private bodies involved in consumer information feel the need to assert their own distinctive identity and role by producing their own publications, with inevitably limited distribution.

However, the entire issue of the Right to Information Bill is quite confusing. It is not very clear as to what would happen to the State laws already enacted, once the Central legislation comes into force. If the Central law turns out to be weaker than the state laws, the people of these states would be most disappointed since the state laws have been achieved after a long period of struggle.

Coming to certain points of the draft Central bill of 2000, there seem to be some misgivings. For example, the Government may refuse to provide any information under Section 8(4) and 8(5). Under section 8(4), cabinet papers, including records of the deliberations of the Council of Ministers, Secretaries

and other officers, are exempted from disclosure. Similarly, the minutes or records of advice including legal advice, opinions or recommendations made by an officer of a public authority during the decision making process prior to the executive decision or policy formulation (Section 8(4)), may also be exempted. Therefore, it would be difficult to achieve the obligations of Section 4(c) and 4(e), since these seem to be contradictory in nature.

Another limitation of the bill seems to be the question of the rights of citizens to seek judicial redress against the appellate authorities' decision justifying denial of information on any ground. According to Section 15 of the proposed Act "No court shall entertain any suit, application or other proceedings in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act".

4.6 HOW TO IMPROVE?

At the outset, mention must be made of the imperative for overreaching legislative and/or administrative provisions catering to the demand for consumers' at large. In this respect, and with regard to the avowed objectives (as stated in the UN Guidelines), of fulfilling consumers' right to information, the following legislative and administrative measures need to be taken:

- Legislation on mandatory labeling/information on both consumer products; and
- The Governments at the national, sub-national and local levels to provide resources and mechanisms for developing effective delivery of user-friendly information to not just literate but also to illiterate consumers. It should:
 - Empower consumer organisations/NGOs to carry out the tasks; and
 - Encourage the mass media to allocate time for consumer information programmes.

Furthermore, consumer laws which are meant to safeguard 'consumers' right to information, should require all necessary information to be given to consumers about the goods and services they acquire, especially in relation to therapeutic goods and toxic products. It would call for:

- Appropriate statements and warnings regarding possible hazards should accompany toxic products;
- Establishing methodologies for scrutinising national and international developments relating to therapeutic goods and toxic products; and
- Laying down mandatory standards for information so that product-specific information is available.

Such legislation should also ensure that consumers are able to judge various products and compare them. This should be done by:

- Prohibiting deceptive packaging; and
- Making it mandatory for packages to clearly identify their contents and the prices of the same. Again, laws guarding consumers' right to information should protect them from conduct that is false or misleading by—
 - prohibiting conduct, in relation to the supply of goods or services to a consumer, which is unfair, misleading or deceptive or is likely to be misleading or deceptive;
 - Prohibiting false representation of manufacturers and suppliers, or representations which are construed to mislead consumers; and
 - Prohibiting any sales or marketing practices which are to the detriment of consumers.

Moreover, consumer laws should require that all relevant information regarding food and drinks be given to consumers so that they can make informed decisions about health and nutrition. Consumer laws should also ensure that information provided to the consumer is accurate and comprehensible.

Another complementary consumer information strategy is the development of a system of consumer information and advice centres, which provide personal advice and counseling as well as distribute information.

The Consumer Co-ordination Council (CCC), an apex body of consumer organisations in India, has submitted a detailed proposal to the Government of India on operating District Consumer Information and Guidance Centres in various States, and the proposal has been accepted by the Government (see Annexure-4.1 for details).

The various acts of these centres include co-ordinating and spreading consumer information through post offices, National Literacy Mission centres, Nehru Yuvak Kendras in villages etc.

4.6.1 What can consumer organisations do?

The above discussion pointed out that consumer organisations have a greater responsibility in helping common consumers, especially the poor and the illiterate ones, to make informed purchases of goods and services. In this respect, as pricing is the single-most important factor in determining consumers' purchase decision, consumer organisations can inform consumers about pricing in the following ways:

- Obtain the cost structures of the products from companies or manufacturers and inform consumers;
- Professional experts can be asked to judge whether pricing methods adopted adhere to consumer interests;
- Organisations can also study company balance sheets and evaluate the quantum of overheads and profit;
- Price based on cost can be worked out by consumer organisations, and this information can be provided to governments for price regulation; and
- Different products could be comparatively analysed, based on price, quantity and service criteria.

This information could be published through the mass media so that consumers can make informed decisions. Consumer organisations also have a greater role to play in organising the people at large and in seeking information and transparency in public dealings at all levels.

4.6.2 In short...

With respect to consumers' right to information, consumer laws should demand:

- Appropriate statements and warnings to co-exist with toxic products;
- Regulating the supply of therapeutic goods and toxic products to ensure that information is disclosed in a manner consistent with international practices;
- Establishing procedures to monitor national and international developments relating to therapeutic goods and toxic products;
- Prescription of mandatory information standards to require particular information to be disclosed about goods not otherwise regulated;
- Prohibition of deceptive packaging;
- Requiring packages to clearly identify their price and their contents;
- Prohibition of conduct, in relation to the supply of goods or services to a consumer, that is misleading or deceptive, or likely to mislead or deceive, or which is unfair;
- Prohibition of representations about goods or manufacturers and suppliers which are not true or which could mislead consumers; and

- Prohibition of any kind of sales or marketing practices which act to the detriment of consumers.

The various departments of the government, including the Panchayats, municipal corporations and other civic bodies, should publish/display all kinds of information of interest to the public on its own, rather than consumers seeking information from these bodies.

4.7 CONCLUSIONS

The enormous expansion in trade and commerce has significantly increased the set of goods and services from which consumers (in terms of quantity as well as quality), can choose. New inventions, changes in technology and wondrous new products have made the consumers' choice more rewarding, but at the same time, more challenging. Many of the new products are technically complex and well beyond the ability of the individual consumer operating on the principle: *caveat emptor* (let the buyer beware).

The transmission of a complex technical message does not guarantee that the recipient has been informed, and even less does it guarantee that a consumer has understood the full consequences.

At the national level this may require capital in the form of skilled scientists and professionals working for government departments, research institutions, consumer organisations and media, fully equipped with the technical back up information to interpret correctly and objectively the information being made available. To transmit this information to the consumers, legislation as well as administrative arrangements for the dissemination of information need to be put in place.

However, bridging the gap between the laws as they now exist and as they should be, to best safeguard consumers' right to information, is in itself a difficult task. Moreover, reaching the desired levels of implementation also involves increased costs, and application on the part of the decision-makers and implementers in particular, and the government in general.

With the liberalisation of the economy, including the tremendous progress in information technology, people are increasingly seeking transparency in governance. Consumer organisations, in the coming years, will have a greater role to play in not only organising the people to seek information from public bodies, but in seeking and disseminating information to the cross sections of society.

The benefits that can accrue once the laws are made more up to date, with a minimum of gaps and loopholes, are difficult to quantify but surely these will be visible in the form of increased consumer confidence and reduced incidence of product-related hazards etc.

This chapter is researched and written with inputs from Mr. V. K. Parigi, Managing Trustee, Consumer Education Centre, Bangalore.

Annexure-4.1

Scheme for District Consumer Information and Guidance Centre

1. Introduction

1.1 The liberalisation process pursued by the Government has opened up new challenges for the industrial and service sectors of the economy. The industries and services have already moved into the relatively higher growth phase. This momentum of higher growth is required to be nurtured in an atmosphere of competition, fair play and transparency in market information. In short, the present trend of a “sellers’ market” prevailing in the economy needs to be balanced with a “buyers’ market” where the consumer can exercise her/his choice in a free and fair atmosphere based on full and accurate information on the products and services available in the market. A fully informed and educated consumer provides a safety valve against market malpractices. The long term health and sustainability of a market economy depends to a great extent on the consumers’ interests, which need to be effectively channelised. Educating the consumers about their rights, duties, problems and prospects and guiding them by providing relevant information, therefore, gains priority in policy making.

1.2 It is, therefore, necessary that initiatives be taken in institutionalising the flow of information on the various aspects of consumer welfare to the consumers across the country. This can be achieved by establishing a guidance cum information centre in each of the districts in the country, which can provide reliable and comprehensive information to the consumer at the least cost. In fact, by careful nurturing and upgradation of the functioning and utility of the centre, it can be developed in due course into a Citizens’ Centre. This can become a focal point for rendering assistance to the common citizen in her/his day to day problems, as also for increasing her/his awareness by providing information in simple, easy to read material, besides various audio-visual material on a variety of matters of topical interest. This proposal can form an integral part of the consumer awareness programmes envisaged for the 9th Five-Year Plan.

2. Objectives of the Scheme

- Providing access to information on services and products to the consumer and creating awareness about consumer rights vis-à-vis such services and products;
- Establishing a library for making available consumer literature from different agencies of the country in regional languages, including provision of various types of audio-visual material on various aspects of consumer protection and consumer rights;
- Providing effective consumer guidance and counseling;
- Helping people to access information from various bodies of the government, more particularly from those involved in public dealings.
- Networking district headquarters with the National Informatics Centre (NICNET)
- Monitoring of consumer awareness activities
- Providing basic testing facilities for food products through kits provided for the purpose, and guiding consumers regarding standards and product quality, besides providing information about how defects in such products can be tested for grievance redressal purposes.

3. Basic Structure of the Centre

3.1 The basic structure of the centre can be as follows:

- It will have own building (hired in the initial stages), consisting of a minimum of three rooms, a hall or a large room to be used as a library, and a meeting room. The other rooms are to be used as the office and visitors room for counseling etc., with basic amenities such as water, electricity and toilets.
- It should have minimum essential furniture such as tables, chairs, almirahs, shelves, benches etc.; and
- It should have a telephone, a computer with a printer, a TV set, a VCR/VCP, a radio cum tape recorder, a photocopying machine and facilities for networking with NIC etc.

3.2 It should have a minimum staff of three persons, consisting of—

- a Centre Co-ordinator, who will be in-charge of the Centre,
- a Counselor, and
- a Facilitator.

(These persons would be duly trained in different aspects relevant to the efficient functioning of the centre, and their duties and functions would also be spelt out in an Operation Manual to be prepared for the guidance and use of each centre).

4. Action Plan for Establishing the Centre

4.1 There will be 40 centres in the first six months of the first year of the plan, followed by 60 more in the latter part of the year.

Year 1

- | | | |
|-----|------------|--|
| 4.2 | Month 1 | <ol style="list-style-type: none">1. Identifying 40 districts (approximately 10 each for the Northern, Eastern, Western and Southern regions, for the establishment of the centres.2. Starting the preparation of a comprehensive Operational Manual for the centres. |
| 4.3 | Month 2 | <ol style="list-style-type: none">1. Initiation of the process of selection of the Centre Co-ordinators, Counselors and Facilitators for the centres.2. Preparation of a comprehensive course content in the form of a Training Manual for training the centre personnel. |
| 4.4 | Months 3&4 | <ol style="list-style-type: none">1. Selection of location premises for each of the District Centres.2. Providing of basic infrastructure. |
| 4.5 | Months 5&6 | <ol style="list-style-type: none">1. Commencement of the functioning of the centres. |

- | | | |
|---------------|-------------------------|--|
| 4.6 | Months 7,8
9,10 & 11 | <ol style="list-style-type: none"> 1. Setting up of a Co-ordinating Body at the District and State levels for the District Centres functioning in each of the States. 2. Visits by well known consumer activists of the region to see how the centres are functioning, and to give suitable advice and guidance to the personnel manning the centres to make them more effective. 3. Selecting the location of 60 more centres for completing the quota, of 100 centres during the 1st year of the plan, as indicated above, for the establishment and commencement of the centres by the end of the year. |
| 4.7 | Month 12 | <ol style="list-style-type: none"> 1. Meeting of the Local Advisory Committees to assess the effectiveness and functioning of the centres in their respective jurisdiction, and giving a feedback in a proforma to be prescribed for the purpose, for consolidation at the State and national levels. |
| Year 2 | | |
| 4.8 | Month 1 | <ol style="list-style-type: none"> 1. Repetition of the above action plan for setting up of 100 centres during the subsequent year. |

5. Systems & Controls

5.1 a) District Advisory Council: For providing guidance and exercising overall supervision of the functioning of the centre, there should be a District Advisory Council, consisting of the District Collector as the Chairman, a few functionaries of Civic Bodies, one or two prominent citizens of the district, one or two social workers and representatives of consumer organisations, who should periodically review the different aspects of the working of the centres.

b) State Advisory Council: There should also be a State Advisory Council functioning under the Department concerned with consumer welfare, consisting of members of the State Consumer Protection Council and others, which should monitor the functioning of all the centres in the State at least every six months, if not every quarter.

5.2 Feedback Mechanism: A suitable feedback mechanism should be devised, not only for each District Centre for covering the various aspects of the functioning of the centres, but also for the collection of statistical and other information which will enable an overall assessment of the functioning of the scheme, both at the State and National levels.

(A Six Monthly/Annual Report of the functioning of the centres and their effectiveness will be placed before the Central Consumer Protection Council at its meetings).

5

Right to Consumer Education

5.1 INTRODUCTION

5.1.1 The rationale

In the words of the noted economist and diplomat, John Kenneth Galbraith: “It is not the consumer who is the king, but it is the large corporation who is the king in the economy. Whatever happens is not because the consumers want it that way, but simply because powerful large corporations prefer it that way.” In other words, the perfect market place is a myth and an economist’s dream and consumers are at the mercy of business, if not fully, but to a large extent.

This goes against the notion of consumers’ sovereignty, which says that the right person to make the decision is the consumer herself/himself. If the purpose of economic activity is to allocate resources to meet consumers’ needs, then the purpose is most likely to be defeated unless there are planned efforts to educate the consumers.

India is one of the very few countries where consumer education has already been introduced in school curricula. However, adult community education is just as important in order to build a society of critically aware consumers. Education programmes should therefore be geared towards the young as well as towards adults, the illiterate and the low-income consumers.

5.1.2 The United Nations Guidelines

The UN Guidelines for Consumer Protection, 1985, which include the right to consumer education, were primarily set up to promote the interests and needs of consumers. They were to be used as a standard against which various practices (production, supply, dissemination of information, propaganda and campaigns), that have a bearing on consumers, would be tested for their beneficial or harmful aspects.

Necessary legislation to curb unfair business practices etc., that are harmful to consumers and encroach upon their rights as per the UN Guidelines, would have to be put in place. Governments as well as the international community should facilitate the process with help from the executive and judiciary.

5.2 DEFINITION AND OBJECTIVES

5.2.1 What is this right?

“The right to consumer education means the right to acquire the knowledge and skills to be an informed consumer throughout one’s life. The right to consumer education incorporates the right to knowledge and skills needed for taking actions to influence the factors which affect consumer decisions.”

5.2.2 The objectives

In stating the objectives of consumers' right to consumer education, the UN Guidelines state that:

- Governments should develop or encourage the development of general consumer education programmes, bearing in mind the cultural traditions of the people concerned. The aim of such programmes should be to enable people to act as discriminating consumers, capable of making an informed choice of goods and services, and conscious of their rights and responsibilities. In developing such programmes special attention should be given to the needs of disadvantaged consumers, in both rural and urban areas, including low income consumers and those with low or non-existent literacy levels;
- Consumer education should, where appropriate, become an essential part of the basic curriculum of the education system, preferably as a component of the existing subjects;
- Consumer education programmes should cover such important aspects of consumer protection as the following:
 - ♦ Health, nutrition, prevention of food-borne diseases and food adulteration,
 - ♦ Product hazards,
 - ♦ Product labeling,
 - ♦ Relevant legislation on how to obtain redress,
 - ♦ How to approach appropriate agencies and organisations for consumer protection,
 - ♦ Information on weights and measures, prices, quality, credit conditions and availability of basic necessities, and
 - ♦ Pollution and environment;
- Governments should encourage consumer organisations and other interested groups, including the media, to undertake education programmes, particularly for the benefit of low income consumer groups in rural and urban areas;
- Business should, where appropriate, undertake or participate in factual and relevant consumer education programmes;
- Bearing in mind the need to reach the rural and the illiterate consumers, governments should develop or encourage development of consumer education programmes in mass media; and
- Governments should organise or encourage training programmes for educators, mass media, professional and consumer advisers, to enable them to participate in carrying out consumer education programmes.

5.3 GOVERNMENT POLICY

In India there is no clear government policy with regard to consumer education. However, the Union as well as the state governments have accepted the introduction of consumer education in school curricula. The National Council of Education Research and Training (NCERT), has been given the task of developing the syllabus and text books.

The importance of consumers' right to consumer education has been re-iterated in various statements by government officials, including the concerned Ministers.

Addressing the National Convention on Consumer Protection in 1993, A K Anthony, then Minister for Civil Supplies, stated: "There is a lot of talk about transparency in public administration. The consumer movement should also ensure that the trade plays a fair game. Free play of market forces is perhaps a myth. We know that the prices are subject to all kinds of manipulation. Therefore, as a first step towards transparency in trading practices, we should educate the consumer to demand for easy availability of cost data of various industrial products. Slowly, we should strive for a culture whereby the market rejects products which are not consumer friendly."

In a related context (in line with the objective stated above—“as appropriate, pollution and environment”), the National Conservation Strategy & Policy Statement on Environment & Development, Ministry of Environment & Forests, stated: “Implementation of the conservation strategy would be impossible without the active participation of the people. Non-governmental organisations can play an important role in mobilising the people at grass root levels. This will need a network among NGOs and interface between the people and governments to work on community involvement, providing education and information on environmental surveillance and monitoring, transmitting development in science and appropriate technology to the people at large.”

5.4 IMPLEMENTATION

The above mentioned discussion on the imperative for, and the objective of, consumers’ right to consumer education clearly calls for implementation of various policies and strategies with respect to consumer education in a decentralised manner. Mere legislation will not fulfil the objective of reaching out to the consumers at large.

5.4.1 Role of the Government:

To educate consumer organisations and other sections of society, the Department of Consumer Affairs, under the Ministry of Consumer affairs & Public Distribution, is conducting training programmes in the field of consumer protection. These training programmes are being conducted for State Government officials, non-judicial members of State Commissions/District Fora and voluntary organisations.

Besides these, publicity measures through documentaries like “Mubarak Kadam” and “Misleading Advertisements” have been prepared and were telecast on Doordarshan. A 12 part serial in Hindi on consumer related matters, entitled “Grahak Dost”, was produced and began its telecast in June 1998. This is now being produced in regional languages.

The Department has also brought out the following printed publicity materials that are being distributed free of cost:

- Brochures entitled “Salient Features of Consumer Protection Act, 1986”, “Rights of Consumers” and “Consumer Protection Act and You”
- Booklets entitled “Help prevent Adulteration”, “Consumer Protection & Weights & Measures” and “Directory Addresses of Redressal Agencies” have been printed.
- Seven booklets in Hindi on various aspects of consumer awareness, for their use in Adult Education Programmes mainly for the rural masses.
- Quarterly journal entitled “Upabhokta Jagaran” which is distributed to consumer organisations.

5.4.2 Role of consumer organisations

The Government of India, through the Consumer Welfare Fund, has a provision to fund consumer education programmes undertaken by consumer groups or state governments. The Consumer Education & Research Centre (CERC), Ahmedabad, the Federation of Consumer Organisations of Tamilnadu (FEDCOT), and Consumer Unity & Trust Society (CUTS), Jaipur and Calcutta, have produced videocassettes on consumer education. The Mumbai Grahak Panchayat, Mumbai, brings out a consumer magazine in Marathi.

Over the years, CUTS has been publishing a consumer newsletter in Hindi, *Upbhokta Tarang* (Consumer Movement), to reach out to society. Furthermore, since 1991, CUTS has also been conducting “Upbhokta Mitra Training” (Training for Consumers’ Friends), to train and educate young consumer leaders from rural areas, who then multiply their knowledge at local levels. As part of this programme, CUTS has published two relevant documents: “Reaching Out” and “Reaching Justice”.

Furthermore, the Steering Committee of the Central Consumer Protection Council has welcomed the idea of setting up of the National Institute of Consumer Education by voluntary consumer organisations.

5.4.3 Consumer Co-ordination Council

The Consumer Co-ordination Council (an apex body of consumer organisations of India), has been conducting several programmes on consumer education for activists and others. It has published training manuals covering:

- The Consumer Protection Act, 1986;
- Water, food and public distribution system;
- Health, drugs and cosmetics; and
- Road transport and railways.

5.4.4 Role of the press

In the past few years, particularly after the enactment of the Consumer Protection Act (COPRA), 1986, there has been widespread interest among people about their rights as well as duties as educated consumers. The number of cases filed in various consumer forums and the spurt in the growth of consumer organisations is a reflection of growing consumer consciousness.

The average consumer is now more assertive and cannot be taken for granted by the traders. While voluntary consumer organisations have been doing their best to bring about this awareness, the press and other media are also playing an effective role.

Since the enactment of COPRA and even before that, newspapers and magazines have been responding to the needs of consumers in more than one way. Apart from publishing articles, columns etc., newspapers have also tried to come to the rescue of harassed consumers. For instance, the Indian Express was one of the first newspapers to start a consumer complaint column. It carried the problems and grievances of consumers and took up the responsibility of forwarding these to the concerned authorities for redressal. In many cases the results were published and consumers were able to get their grievances settled.

This reflects the importance of informal education to consumers to settle their grievances through their knowledge of case studies. The success and popularity of the column in the Indian Express motivated other newspapers to follow suit. Today, almost all newspapers carry a consumer complaint column every week. The regional language newspapers are also not lagging far behind.

5.4.5 Role of Universities

In this regard, the Indira Gandhi National Open University (IGNOU), has made a beginning by developing a comprehensive syllabus which provides the basic framework for other universities to develop a curriculum for consumer education. The details are provided in Annexure-5.1—“Proposed Application Oriented Course in Consumer Studies”. The course will be conducted by the Faculty of Political Science of the School of Social Sciences of IGNOU. The Kakatiya University in Warangal, Andhra Pradesh, is already running a one-year PostGraduate Course in Consumer Law. The Maharashtra Open University in Pune is also offering courses in consumer education.

5.5 DRAWBACKS OF THE SYSTEM

Firstly, consumer education faces the universal problem of inadequate resources. Governments have done little in this regard.

Secondly, experiences throughout the world indicate that educating consumers, which is not the same as informing them, is a time consuming process involving personal dedication, professional skills and money.

Thirdly, in a large country like India with a multiplicity of languages, the problem is further aggravated; i.e. to find resources to match needs.

Fourthly, the consumer movement has not been able to reach out to every corner of the country. It also lacks innovative methods to motivate the uneducated masses to demand consumer education.

Finally, there is no holistic policy (administrative as well as legislative), on the part of the Union and State governments to pursue the objectives of consumer education vigorously throughout the country.

5.6 HOW TO IMPROVE?

The general consumer education of the future may attempt to teach children and adults a value system, which goes beyond purchasing skills.

Such a programme may relate to environment, duties and obligations as well as rights, concern for the disadvantaged and an awareness of the finite resources of the planet. This is best achieved in schools and colleges through the curriculum or as a part of life-skills training. Unless teachers, as part of their training, are given the skills and motivation to introduce consumer education in classrooms, little is likely to be achieved.

5.6.1 Administrative and legislative measures

The objective of spreading consumer education among the masses requires administrative as well as legislative measures on the part of the government and business.

Broadly speaking, the following are the objectives and the measures to be taken to achieve them:

Objectives:

- Introducing consumer education in the basic curriculum of the education system;
- Education programmes, particularly for the benefit of poor consumers in rural and urban areas;
- Business to undertake/participate in factual and relevant consumer education programmes; and
- Governments to organise training programmes for teachers, mass media, professionals, etc.

The first three require a combination of the following administrative and legislative measures:

- Administrative measures through co-operation with various branches of the government, like the Education Ministry and business chambers; and
- If required, suitable legislation for budgetary provisions in the government as well as in business could enhance the implementation.

The last objective can be fulfilled through the following administrative measures:

- Budgetary provisions and institutional mechanisms need to be provided to conduct training on a regular basis; and
- Consumer organisations and other NGOs also need to be provided resources to carry out these measures effectively.

5.6.2 Role of business

The government and consumer organisations should encourage the Apex Chambers and other prominent business associations to organise consumer education courses and to produce teaching material as part of industry's responsibility as a corporate citizen, to the community at large, and with the objective of corporate governance in mind.

5.6.3 Role and use of electronic media

The electronic media is an effective tool for the government to spread consumer education among the masses. So far little attention has been paid to this vital aspect of consumer education, which is not only inexpensive but yields quick results. The government has already fixed programme slots on television and radio for agriculturists, youth and women. A similar fixed time slot is now being given for relaying consumer education programmes on TV and radio on a daily basis.

But the time slots selected for the programmes are such that these clash with other programmes that consumers do not want to miss.

The Internet should also be effectively harnessed. Teleconferencing between consumers, business, redressal agencies and government departments can be organised. With the communication revolution, consumer education programmes can easily reach millions of people in the rural and urban areas. Akashvani may plan offering exclusive FM channels for broadcasting consumer education programmes, which can be sponsored by business houses. However, the role of business-sponsored programmes should be clearly defined.

5.6.4 What consumer organisations can do?

Consumer organisations have important roles to play as well as responsibilities to fulfil in providing decentralised education to consumers at large. In this context, the following methods are imperative:

- Production of educational films;
- Preparation of posters;
- Media workshops to expose consumer activists to the working of the media for imparting consumer education; and
- Initiation of an internship programme to impart consumer education to the interns.

5.6.4 The imperative for innovation

The imperative for innovative consumer education programmes stems from the following facts:

- The involvement and active participation of target beneficiaries in the planning and implementation of programmes are central to achieving the goals of a programme;
- Collaborative efforts between government departments, NGOs and business are necessary for policy interventions;
- Monitoring and evaluation mechanisms are to be included in programme schedules and activities. The reason is the changing nature of socio-cultural institutions as well as the value system; and
- Specific advocacy programmes for shaping public opinion on consumer issues are necessary to ensure policy changes.

Given below is an example from the Pacific Islands. Over the years the South Pacific Consumer Protection Programmes (SPCPP) of Consumers International have been trying to develop innovative methods to reach out to the diverse grass roots population of the region.

Specific consumer education books have been developed for women and school students. “Behind Our Smiles” covers a range of topics that concern Pacific women and includes opportunities for reflection and action on those concerns. Stories of Pacific women, which have been used throughout the book, reflect their everyday experiences. “Cola or Coconuts?” is designed to introduce consumer rights and responsibilities to Pacific Islands’ students. Stories, activities, illustrations and interesting information are designed to create a programme that Pacific students can relate to.

Consumer education may be imparted according to different age groups:

- For standards four and five, it should be in the form of poems, stories, prayers, and plays in the literature text itself;
- For standards six and seven, it should be taught in the civics text; and
- For standards eight, nine and ten, it should be taught in depth in the economics text.

5.6.5 In short...

With respect to consumers’ right to consumer education, the consumer laws should take into account the following:

- Ensuring that consumer laws are written in a language which can be easily understood;
- Prescribing mechanisms to monitor consumer awareness and use of their rights;
- Introducing laws to protect particular groups with special needs, as required;
- Set in place mechanisms to inform consumers about how to enforce their rights; and
- Ensuring that consumers are aware of their responsibilities.

5.7 CONCLUSIONS

The point of contention is; who should be providing the resources to educate consumers? In a welfare state like India, it is the natural duty of the government to look after the well being of its citizens, and so the government should be solely responsible for providing consumer education. However, the government is incapacitated in two ways in effectively carrying out this important task.

First, shortage of funds, and second, lack of manpower. Lack of manpower need not be a big problem as there are a large number of educated unemployed who could be effectively utilised in this important task.

The main problem is of finding adequate resources. Either resources used elsewhere have to be channelised into this project or funds like the Consumer Welfare Fund must be used more freely to bear the cost of educating consumers. If resources used in some other activities are to be channelised into this area, then a social cost-benefit study becomes necessary, keeping in mind the benefits (both tangible as well as intangible), that will accrue to the nation as a whole.

If business has to be involved in educating consumers, some effective internal regulatory mechanism has to be instituted so that the intention to educate consumers does not turn into a camouflage for cleverly laid designs to promote its own causes.

It is clear that the unfinished task of consumer education is of great magnitude, but that should not be considered a license for pessimism. What has been achieved should be inspiration enough to push us along in this arduous but fulfilling task. A negative conclusion is bound to defeat the macro objective of achieving consumers’ right to consumer education. Therefore, by taking a proactive stance on achievements, without any prejudices, it is necessary to turn those achievements into tangible benefits for the Indian consumers.

This chapter is researched and written with inputs from Mr. V. K. Parigi, Managing Trustee, Consumer Education Centre, Bangalore.

Annexure-5.1

IGNOU's Proposed Application Oriented Course in Consumer Studies

CS—01	Consumer: Perspectives on Protection Movement
Block—1	Consumer: The Basics
Unit—1	Who is a consumer?
Unit—2	Evolution of the consumer
Unit—3	Consumer environment
Unit—4	Consumer dynamics
Block—2	Consumer Movement
Unit—1	Origin and growth
Unit—2	Consumer movement in India
Unit—3	Consumer movement in selected countries
Unit—4	Consumer movement: Features, issues and trends
Block—3	Consumer Protection
Unit—1	Consumer rights
Unit—2	Consumer responsibilities
Unit—3	Empowering the consumer
Unit—4	Social accountability
Block—4	Consumer Protection: Depth and Scope
Unit—1	Consumer behaviour in the market economy
Unit—2	Mass media, advertisements and their impact on consumers
Unit—3	State and the consumer
Unit—4	Ecology, environment and the consumer
CS—02	Consumer Affairs: Socio-legal Aspects
Block—5	Consumer Protection Act
Unit—1	Evolution of consumer protection laws
Unit—2	Consumer Protection Act: Basic features
Unit—3	Consumer rights and their manifestations
Unit—4	Limitations of Consumer Protection Act
Block—6	Other Important Acts
Unit—1	Major acts relating to food and adulteration
Unit—2	Major acts relating to primary services and products (e.g. health, drugs, water, housing etc.)

- Unit—3 Major acts relating to utility services
(E.g. railways, electricity etc.)

- Block—7 Redressal of Consumer Grievances

- Unit—1 Consumer complaints: Guidelines for filing
- Unit—2 Grievance redressal: Alternatives
- Unit—3 Role of NGOs in grievance redressal
- Unit—4 Public interest litigation

- Block—8 Consumer Organisations

- Unit—1 Establishing a consumer organisation
- Unit—2 Strategies: Campaigning and advocacy
- Unit—3 Managing the organisation
- Unit—4 International organisation

6

Right to Redressal

6.1 INTRODUCTION

6.1.1 Justice—a human right

Equal access to justice is a cardinal principle on which the entire system of administration of justice is based. It is also recognised as the basic requirement, i.e. the basic human right in any egalitarian legal system. However, rendering justice to the people, rich or poor, is not a minor problem but an issue engrossing the fundamental character of the state and the civil society.

6.1.2 Justice and the welfare state

A welfare state must provide adequate and effective means of dispute resolution to every citizen, and at reasonable cost. Effective dispute resolution is also indispensable to ensure justice: social, economic and political. The importance of the right to redress lies in addressing and securing justice.

6.1.3 How to approach the issue?

Therefore, the question is whether an analysis of the right to redressal is to be approached from the demand side or the supply side. The answer is: from both sides. Lopsided emphasis on either of them would result in a poor public policy. The rationale for this view is that *a priori* “supply creates its own demand” and vice-versa, if, and only if, the system has proper and effective mechanisms to regulate them.

In simple terms, the objective of the right to redressal is based on the principle of making justice feasible as well as approachable, i.e. catering for an enabling framework for consumers to take advantage of the judicial system.

In short, different aspects of the right to redressal have to be analysed under the broad objective of *reaching justice*. Furthermore, there is the imperative for an overreaching law covering the rights and responsibilities of end-users (consumers) as well as producers to get and to deliver the redressal mechanism appropriately.

This chapter deals with the right to redressal as a stand alone issue. However, it does cover all other rights of consumers, as incorporated in the UN Guidelines for Consumer Protection, 1985.

6.2 DEFINITION AND OBJECTIVE

6.2.1 Broadly speaking...

Broadly speaking, the right to redressal means the right to a fair settlement of just claims, not only economic but also social and political. The socio-political dimension of the issue stems from the fact that in a

stratified society (polity) like India, vulnerable sections may not have real access to justice. This is true even if justice is available on paper (as in the Preamble to the Constitution of India).

The meaning of stratified society would be clear (particularly with respect to consumer protection), if one mentions the reasons behind the poor progress of consumer interests and protection in India, or for that matter in any developing country. The reasons are:

- **Poverty:** More than a third of the population is below the poverty line. These people are unable to exercise their rights as consumers. They are at the mercy of suppliers of goods and services. Besides them, a vast majority of consumers are living just above the poverty line and, in fact, have no real access to justice;
- **Malnutrition:** Hungry consumers do not differentiate between, say, adulterated and unadulterated food. They accept without protest whatever they are supplied with;
- **Inadequate organisation of consumers:** Consumer organisations have limited participation from the general public and are usually concerned only with local problems. They hardly rise to the challenge of tackling problems at the national level. This can be attributed to lack of organised consumer activism; and
- **Poor implementation of laws:** Consumer protection laws are seldom implemented effectively. While on the one hand, consumers themselves, particularly in the rural areas, are not aware of their rights because of illiteracy and ignorance, on the other hand, the suppliers of goods and services try to avoid indictment by consumer courts by taking advantage of loopholes in the laws.

In view of these problems, the definition and objective of the right to redressal have to be based on the notion of reaching justice to consumers.

In simple terms, it includes the right to receive compensation for mis-representation of shoddy goods or unsatisfactory services and to the availability of acceptable forms of legal aid or redress for small claims, wherever necessary. If damage is done to a consumer, s/he has the right to get compensation depending upon the degree of damage.

A consumer can generally be regarded as a prudent shopper. However, in a country like India, the consumer is not necessarily prudent because of her/his illiteracy and ignorance. She/he becomes a victim of the unleashing of pernicious advertisements and misrepresentations by suppliers.

To sum up, consumers have the right to be compensated for shoddy goods, unsatisfactory services, or injuries from defective and hazardous products. Obtaining redress is a problem, particularly for poor and illiterate consumers who lack access to the regular legal system. Most consumer transactions are of such a nature that it would not be cost effective to refer these complaints to the regular court.

6.2.2 The UN Guidelines—Objectives

The UN General Assembly adopted the Guidelines for Consumer Protection on April 9, 1985 (General Assembly Resolution 39/248). The Guidelines provide a framework for governments, particularly those of developing countries, to use in elaborating and strengthening consumer protection policies and legislation.

According to the UN Guidelines, the following are the objectives that enable consumers to obtain redress:

- Governments should establish or maintain legal and administrative measures to enable consumers or, as appropriate, relevant organisations, to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. In particular, such procedures should take into account the needs of low-income consumers;

- Governments should encourage all enterprises to resolve consumer disputes in a fair, expeditious and informal manner, and to establish voluntary mechanisms, including advisory services and informal complaints procedures, which can provide assistance to consumers; and
- Information on the existing redressal mechanism and procedures and redress available should be made available to consumers.

6.2.3 Overview

Thus, the right to redressal is the basis of all rights that have the ultimate aim of ensuring equal access to justice to all. The UN Guidelines also urge governments to give special attention to the needs of disadvantaged consumers, in both rural and urban areas, including low-income consumers and those with low or non-existent literacy levels.

The objective of implementing the right to redressal is that the State should guarantee, assure and facilitate to every consumer the right to effective redressal against violation of Fundamental Rights and other legal rights guaranteed by the Constitution or by any other law, and related to the protection of consumers.

6.3 GOVERNMENT POLICY

In India, until the Consumer Protection Act (COPRA), 1986, was enacted, the consumers had to rely on a number of diverse legislation, none of which provided an effective remedy against the violation of consumers' rights.

COPRA was passed with the specific purpose of protecting consumers' rights and providing a simple quasi-judicial dispute resolution system for resolving complaints.

In this context, it is worth mentioning the view expressed by the former Prime Minister of India, P. V. Narasimha Rao. Addressing the 10th meeting of the Central Consumer Protection Council in 1991, Rao said: "A good law has been passed and it is languishing. If it is not being implemented, one does not know where it is going wrong, due to whom it is going wrong. Government needs to know who is responsible.

"If equal justice is being done to all the parties, there is no need for us to politicise it. Legislation needs to be implemented as it is meant for implementation. It is not there only to adorn the Statute Book. It will be a disgrace for any legislature not to get Government's own legislation implemented. Whether it is the Government or any agency, it should be our endeavour to see that the law which we pass expressed the will of the people in the manner in which the Constitution wants it to be implemented."

6.3.1 Setting up of COPRA

The rights of consumers under COPRA have been elaborated as the right to safety, the right to information, the right to choice, the right to representation, the right to redressal and the right to consumer education. These rights emanate from the consumers' right to redressal, which has been incorporated in COPRA itself. Interestingly, the rights to basic needs and to a healthy environment are not incorporated under COPRA, though they are specifically mentioned in the UN Guidelines.

The rationale of the Act is to take the system of redressal to people's doorsteps. In other words, COPRA envisages a supply-side approach to the issue of consumer protection (see Box 6.1).

Box 6.1: Jurisdiction of COPRA		
Court and Place	Monetary Jurisdiction (Rs. Lakh)	Territory and Jurisdiction
District Forum (District headquarters)	0 - 5	Revenue district/city
State Commission (State capital)	5 - 20 and appeals against District Forum orders	State or Union Territory
National Commission New Delhi	20 & above and appeals against State Commission orders	The territory of India
<i>Note: Parentheses denote the place where the respective fora are located</i>		

Furthermore, COPRA envisages establishment of Consumer Protection Councils at the Centre and in the States, whose main objectives are to promote and protect the rights of consumers. Some states have already set up councils even at the district levels. These Councils are advisory bodies and meet twice/thrice a year with a generalised agenda. Most of these district councils are not functioning properly. They are only on paper.

6.4 EXISTING SYSTEM

An aggrieved consumer has various external channels open to her/him to redress her/his grievances. In India, internal redressal systems in business organisations, companies and public utilities etc., for resolving consumer disputes expeditiously and inexpensively, are either non-existent or ineffective. Hence, consumers are left with no alternative but to approach the redressal machinery provided by the legal/administrative system. However, recently the Reserve Bank of India appointed a banking ombudsman to look into consumer grievances (see Box 6.2).

The objectives and functions of the ombudsman scheme are as follows:

- Provide for mediated settlement of consumer disputes through an ombudsman body;
- The concerned trade/service/business would be mandated to follow the decision of the ombudsman body; and
- The consumer would, however, be free to take recourse to legal redress, if she/he is unsatisfied with the decision of the ombudsman.

6.4.1 Legal framework

The right to seek redressal is set out in the Preamble to the Constitution of India, wherein it has been declared that the people will strive for justice, social, economic and political, and equality of opportunity.

According to Article 39A of the Constitution, the State shall secure that the operation of the legal system promotes justice on the basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Box 6.2: Appointment of a Banking Ombudsman

A banking ombudsman has been recently appointed by the Reserve Bank of India, for speedy and inexpensive redressal of complaints by bank customers against deficiencies in banking services.

The banking ombudsman will deal with all complaints relating to a deficiency in banking service such as:

- non-payment/inordinate delay in the payment or collection of cheques, drafts/bills etc.;
- non-acceptance, without sufficient cause, of small denomination notes;
- non-issuance of drafts;
- non-adherence to prescribed working hours by banking branches;
- failure of banks to honour guarantee/letter of credit commitments;
- claims in respect of unauthorised or fraudulent withdrawals from deposit accounts etc.
- complaints pertaining to the operations of any savings, current, or any other account maintained with a bank;
- complaints from exporters in India, provided they pertain to the bank's operations in India;
- complaints from non-resident Indians having accounts in India, in relation to their remittances from abroad, deposits and other bank-related matters.

In respect of loans, only matters relating to delays in sanction beyond the prescribed time schedule, and non-observance of directives on interest rates and any other directions of the Reserve Bank in this regard will be considered.

The Constitution guarantees specific enforceable Fundamental Rights. It also assures non-justifiable rights in the form of Directive Principles of State Policy.

Due redressal against the State can be sought against infringements when:

- The State acts against the right of equality among men and women to obtain adequate means of livelihood;
- Equal pay for equal work is denied to any man or woman;
- The health and strength of workers; men, women and children of tender age, is abused;
- Children and youth are exploited physically, mentally or morally; and
- Humane conditions of work and maternity relief are not made available by the State.

These rights are important for consumer protection, as without them a consumer cannot act discriminately while fulfilling her/his needs or demands.

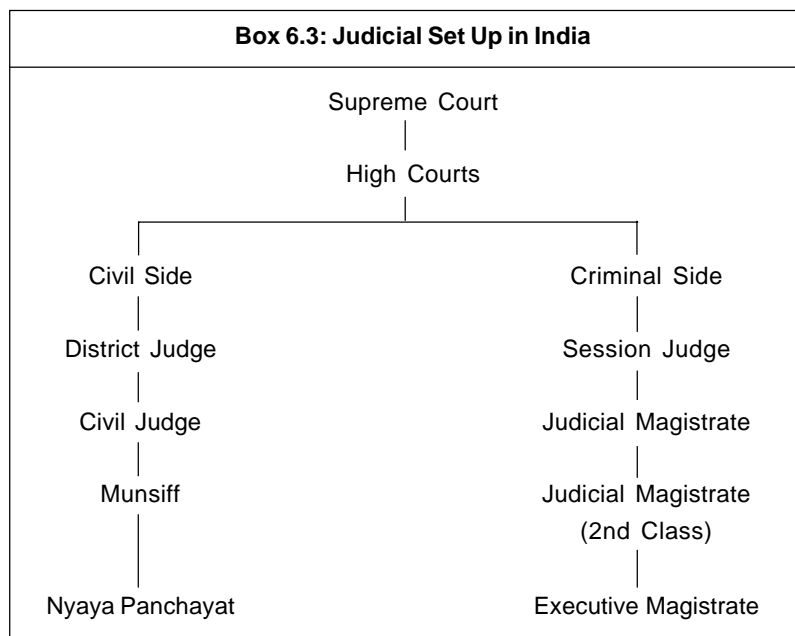
Articles 32 and 226 of the Constitution confer a unique, unprecedented and extraordinary jurisdiction on the Supreme Court to issue directions, orders or writs for the enforcement of fundamental rights. Among the writs encompassed in Articles 32 and 226 the following are related to the right to redressal:

- Mandamus
- Certiorari
- Prohibition
- Quo-warranto

6.4.2 Administrative/Judicial framework

According to the nature of the proceedings, courts may be classified as judicial or quasi-judicial. Consumer Disputes Redressal Forums, Sales-tax Tribunals, Service & Labour Tribunals and Commissions appointed under law are quasi-judicial courts. Civil and criminal courts at the district level, Metropolitan courts, High

Courts and the Supreme Court are judicial courts. The judicial set up according to the hierarchy is given below in Box 6.3 in a tree form.



6.5 IMPLEMENTATION

In India, consumers' can seek redressal through judicial and quasi-judicial State organisations. The consumers can also seek redressal through various codes of practice, i.e. the informal redressal delivery system.

In simple words, the informal mechanism is one that is built-in within the business to resolve consumers' grievances. However, ignorance on the part of consumers, procedural delays and lack of vigorous implementation make it (by and large) a non-functioning mechanism.

6.5.1 Redressal under Consumer Protection Act, 1986

The Consumer Protection Act (COPRA), 1986, is a milestone in the history of socio-economic legislation in India. It is one of the most progressive and comprehensive pieces of legislation enacted for the protection of consumers// after an in-depth study of consumer protection laws and arrangements in the UK, the US, Australia and New Zealand.

6.5.1.1 COPRA—Salient features

The salient features of the Act are summed up as under:

- Applies to all goods and services unless specifically exempted by the Union Government;
- Covers all the sectors whether private, public or co-operative;
- Provisions of the Act are compensatory in nature. In other words, this Act gives consumers an additional remedy besides those which may be available to her/him under the provisions of other existing laws, and she/he is free to chose any remedy at her/his discretion;
- Enshrines the consumers' rights related to safety, information, choice, representation, redressal, and consumer education; and

- Empowers consumers seeking discontinuance of certain unfair and restrictive trade practices, defects or deficiencies in services, and stopping or withdrawal of hazardous goods from the market.

In 1993, following pressure from consumer organisations all over the country, Parliament amended COPRA. The salient features of the Consumer Protection (Amendment) Bill, 1993 are to:

- Enlarge the scope of COPRA to enable consumers to file complaints in respect of goods which will be hazardous to life and safety when used, to file complaints against certain restrictive trade practices adopted by traders;
- Enable consumers who are self-employed to file complaints before the redressal agencies, if goods bought by them exclusively for earning their livelihood, suffer from any defect;
- Add 'services' relating to housing constructions within the purview of COPRA;
- Enable filing of class action complaints on behalf of groups of consumers having the same interest;
- Provide for the constitution of selection committees for the selection of non-judicial members of various redressal agencies;
- Increase the monetary jurisdictions of District Forum/State Commissions/ National Commission;
- Confer additional powers on the redressal agencies by way of awarding costs to the parties, for ordering removal of defects or deficiency from the services, and for recall of goods likely to endanger the safety of the public;
- Impose punishment on the complainant in cases of frivolous or vexatious complaints; and
- Provide for a maximum period of one year for filing complaints.

6.5.1.2 Definition of a consumer

In COPRA, the word *consumer* has been defined separately for the purposes of goods and services.

For the purpose of *goods*, a consumer means a person belonging to the following categories:

- Buyer—is one who buys any goods for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment; and
- User—includes any user of such goods other than the person who actually buys the goods, and such use is made with the approval of the purchaser.

For the purpose of *services*, a consumer means a person belonging to the following categories:

- Hirer—is one who hires the service or services for a consideration which has been paid and partly promised or under any system of deferred payment; and
- Beneficiary--includes any beneficiary of such service other than the one who actually hires the service for a consideration, and such services are availed with the approval of such person.

6.5.1.3 Other definitions

The following definitions are envisaged in COPRA, 1986:

- Goods—means goods as defined in the Sale of Goods Act, 1930 (3 of 1930);
- Service—means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, boarding or lodging or both, house construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;

- Restrictive Trade Practice—means any trade practice which requires a consumer to buy, hire or avail any goods or, as the case may be, services, as a condition precedent for buying, hiring or availing of any other goods or services;
- Unfair Trade Practice—means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice;
- Defect—means any fault, imperfection, or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law, for the time being in force or as is claimed by the trader in any manner whatsoever in relation to any goods; and
- Deficiency—means any fault, imperfection or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law in force at that time, or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

6.5.1.4 Who can file a complaint?

The following categories of persons may file a complaint under COPRA:

- Consumer—A consumer or group of consumers;
- Organisation—Any voluntary consumer organisation, registered under the Societies Registration Act, 1860, or the Companies Act, 1956, or under any other law in force. Furthermore, in recent years a number of laws relating to protection of consumers have been amended to confer standing on voluntary consumer associations. In 1986, the Prevention of Food Adulteration Act, 1940, the Drugs & Cosmetics Act, 1940, the Standards of Weights & Measures Act, 1956, the Essential Commodities Act, 1955, and the MRTP Act, 1969, were amended to provide *locus standi* to registered consumer associations; and
- Government—The Union Government, the State Governments or Union Territory Administrations.

6.5.1.5 What constitutes a complaint?

Under COPRA a complaint means any allegation in writing made by a complainant in regard to one or more of the following:

- Loss—that she/he has suffered loss or damage as a result of any unfair trade practice adopted by a trader;
- Defect—that the goods mentioned in the complaint suffer from one or more defects;
- Deficiency—the services mentioned in the complaint suffer from deficiency in any respect; and
- Overcharging—that a trader has charged for the goods mentioned in the complaint, a price in excess of the price
 - ♦ fixed by or under any law for the time being in force, or
 - ♦ displayed on goods, or
 - ♦ displayed on any packet containing such goods.

6.5.1.6 COPRA—Three-tier mechanism

To provide simple, speedy and inexpensive redressal of consumer grievances, COPRA envisages a three-tier quasi-judicial machinery at the National, State and District levels (see also Box 6.1):

- A National Consumer Disputes Redressal Mechanism (known as the “National Commission”) at the National level;
- State Consumer Disputes Redressal Mechanism (known as “State Commission”) at the State level; and
- District Consumer Disputes Redressal Mechanism (known as “District Consumer Forum”) at the District level.

These quasi-judicial bodies are required to dispose of complaints within a prescribed time frame. District Forums have original jurisdiction, but State and National Commissions have been vested with original, appellate and revisional jurisdictions. In respect of complaints filed in original jurisdiction, the final order is to be passed within 90 days of the receipt of the copy by the opposite party. Such is the case if the goods forming the subject matter of the complaint are not to be sent to a laboratory for testing, If goods are to be sent to a laboratory for testing, a maximum of 150 days are allowed to give the decision.

It would be interesting to study the above aspects across the country by taking a reasonable sample of cases. This study may also deal with the constraints and difficulties these fora face in delivering their duties.

6.5.1.7 How to file a complaint?

Procedures for filing complaints and seeking redressal are simple and speedy. They are as follows:

- No fee—no fee is required for filing a complaint before the District Forum, the State Commission or the National Commission;
- Lodging—the complainant or her/his authorised agent can present the complaint, duly signed, in person or can send it by post to the appropriate Forum/Commission; and
- Particulars—a complaint should contain the following information:
 - ♦ the name, description and address of the complainant,
 - ♦ the name, description and address of the opposite party or parties, as the case may be, as far as they can be ascertained,
 - ♦ the facts relating to the complaint and when and where it arose,
 - ♦ documents, if any, in support of the allegations contained in the complaint, and
 - ♦ the relief sought.

A model form of complaint is provided in Annexure-6.1.

6.5.1.8 Procedure for filing appeal/revision

The procedures to be followed when a consumer files an appeal or a revision against the order of the District Forum, State Commission, and/or National Commission, are the same as that of the original complaint, except that in such cases the application must be accompanied by the orders of the District Forum or the State Commission as the case may be, and the grounds for filing the appeal/revision should be specified. There is no fee for filing an appeal/revision.

The following are the exact procedures for filing an appeal/revision:

- Appeal—an appeal against the decision of a District Forum can be filed before the State Commission within a period of 30 days. An appeal against the decision of a State Commission can be filed before the National Commission within 30 days. An appeal against an order of the National Commission can be filed before the Supreme Court within a period of 30 days; and
- Revision—The State Commissions and the National Commission, apart from original jurisdiction, enjoy appellate and revisional jurisdictions and may call for records and pass appropriate orders in any consumer dispute which is pending before or has been decided by the District Forum/State

Commission as the case may be, where the Forum or the Commission has exceeded jurisdictions illegally or has failed to exercise their jurisdiction. In case of any procedural defect in the lower consumer court, the higher consumer court can invoke its revisional jurisdiction to set the proceeding on the right track.

6.5.1.9 Relief award

The relief measures that can be awarded to the aggrieved consumers by the redressal machinery have been enumerated under Section 14 of COPRA. Depending on the facts and circumstances of the case before the Forum/Commission and the nature of relief sought by the consumer, the Forum/Commission could direct the opposite party to do one or more of the following:

- Remove—removal of defects from the goods and of deficiency in the service;
- Replace—replacement of the goods;
- Refund—refund of the price paid;
- Redress—award compensation for the loss or injury suffered;
- Withdraw/Ban—withdraw and/or ban marketing of hazardous goods; and
- Costs—payment of adequate costs to the consumer.

A synopsis of case studies involving COPRA is provided in Annexure-6.2.

6.5.2 Redressal under the MRTP Act, 1969

The Monopolies & Restrictive Trade Practices (MRTP) Act, 1969, entitles any aggrieved consumer to seek redressal against unfair and restrictive trade practices by filing a complaint before the MRTP Commission. The Commission is a quasi-judicial body enjoying all the powers of a Civil Court while trying a suit.

It can issue interim orders in the form of a stay, an injunction and also stop such practices even before the final disposition of the complaints.

It can also award compensation to the sufferers of unfair and/or restrictive trade practices indulged in by the trader/manufacturer. A voluntary consumer association may also file the complaint before the Commission on behalf of consumers or for espousing the cause of public interest.

The high powered committee on Competition Policy & Law, constituted by the Government of India, has recently presented its report. The committee has recommended transfer of all provisions against unfair trade practices from the MRTP to the Consumer Protection Act.

For a detailed discussion on the mechanism of the MRTP Commission, see Chapter III—Right to Choice.

6.5.3 Redressal through tribunals

The transformation of a *laissez-faire* state into a welfare state led to the establishment of tribunals for adjudication of disputes between public enterprises and individuals. The unprecedented expansion of government functions generated numerous occasions of conflict in respect of limitations such as technical procedures and costs.

The tribunals, having characteristic features of democracy, were established under a statute with the objective of providing cheap, accessible, simple and flexible remedies to the individuals. Its members have greater insight due to regular handling of related matters.

The statute constituting a tribunal contains details about its jurisdiction, functioning, procedures, awarding relief etc. The decisions are in the form of an award or order, which is binding on the parties in dispute.

The jurisdiction of a civil court is barred in respect of matters over which the tribunal has jurisdiction. However, the power of judicial review is vested with the High Courts and the Supreme Court.

The tribunals relating to public utilities in India are the Railway Rates Tribunal under Section 39 of the Indian Railways Act, 1989, Railway Claims Tribunal, Telephone Tribunals etc. For example, a consumer can make a complaint before the Railway Rates Tribunal in the matter of discriminatory and/or unreasonable charging of rates.

6.5.4 Redressal through arbitration

Recognition of arbitration as a mode of resolution of disputes is ingrained in the justice delivery system of India, and thus forms a part of the psyche of its people. In the past, there was a popular practice of referring disputes and conflicts to a group of respected and wise persons of the village, called the *Panchs* (or *Panchayat* as it is collectively called), who functioned as arbitrators and who used to settle disputes without bias towards any party. The system was informal, cheap, expeditious and binding upon the parties in the dispute.

Following in its footsteps, the Indian Arbitration Act, 1940, was passed. Its objective was to refer matters of dispute, both present and future, to arbitration without the intervention of courts of law, ensuring speedy justice to some extent.

The standard form of contracts offered by public utilities generally contain a stipulation of referring eventual disputes between the parties to arbitration. Some merchant associations provide for in-house arbitration facilities amongst its members and their customers.

For example, purchase bills generally refer the purchasers for the mode of payment or the recovery thereof to the sole arbitrator whose decision is final and binding on the parties in the dispute. The Indian Stock Exchanges provide for in-house arbitration for resolution of disputes among members and others.

Disputes redressal through arbitration, however, became unpopular due to cumbersome procedures, legal technicalities, challenging of awards granted by arbitrators without any exception, and various other lacunae in the Indian Arbitration Act, 1940.

In view of this sorry state of affairs, the Parliament has repealed the Indian Arbitration Act, 1940 and enacted a new legislation—the Arbitration & Conciliation Act, 1996.

The rationale was to make redressal of disputes less costly and more effective with the objective of encouraging the “Alternative Disputes Resolution Procedure”. Such a procedure is based on negotiation, conciliation, mediation, arbitration and an array of hybrid procedures, and it offers arbitration, mini-trials, mediated arbitration and neutral evaluation. Apart from the Indian Arbitration Act, 1940, the ‘New Act’ also takes into account the following Acts:

- The Arbitration (Protocol and Convention) Act, 1937, and
- The Foreign Awards (Recognition & Enforcement) Act, 1961.

6.5.4.1 Objectives

The objectives of the ‘New Act’ are to:

- Comprehensively cover international commercial arbitration and conciliation as also domestic arbitration and conciliation;
- Provide an arbitral procedure, which is fair, efficient and capable of meeting the needs of the specific arbitration;

- Provide that the arbitral tribunal gives reasons for its arbitral awards;
- Ensure that the arbitral tribunal remains within the limits of its jurisdiction;
- Minimise the supervisory role of courts in the arbitral process;
- Permit an arbitral tribunal to use mediation, conciliation or other procedures during the arbitral proceedings to encourage settlement of disputes;
- Provide that every final arbitral award is enforced in the same manner as if it were a decree of the court;
- Provide that a settlement or agreement reached by the parties as a result of conciliation proceedings, will have the same status and effect as an arbitral award on agreed terms on the substance of the disputes rendered by an arbitral tribunal; and
- Provide that, for purposes of enforcement of foreign awards, every arbitral award made in the country, to which one of the two international conventions relating to foreign arbitral awards (the Geneva Convention and the New York Convention, to both of which India is a party), applies, will be treated as a foreign award.

6.5.5 Redressal through business codes of ethics

A number of associations have set up their own codes of ethics and business practices for redressal of consumer grievances. A few examples of such types of redressal methods are:

- Redress from professional groups—
 - ♦ self-regulation versus legal control (e.g. Indian Medical Association and Consumer Protection Act), and
 - ♦ self-regulation is not equal to statutory regulations, but has an ethical element enshrined in it.
- Council for Fair Business Practices (CFBP), established in 1996), tries to promote the following practices among business:
 - ♦ to charge only fair/reasonable prices,
 - ♦ to take steps to ensure that agents/dealers do not charge prices higher than those fixed,
 - ♦ not to hoard at times of scarcity,
 - ♦ not to trade in spurious goods,
 - ♦ not to adulterate goods,
 - ♦ to invoice goods exported/imported at correct prices,
 - ♦ not to publish misleading advertisements,
 - ♦ to maintain accuracy in the weights and measures of goods offered for sale, and
 - ♦ not to deal knowingly in smuggled goods;
- Advertising Standards Council of India (established in 1985)—
 - ♦ adopted the code of self-regulation, and
 - ♦ established the Consumer Complaint Council;
- Associated Chambers of Commerce and Industry (similar to CFPB)—
 - ♦ worked on “Norms of Business Ethics”;
- Confederation of Indian Industry—
 - ♦ formulated “Consumer Code”; and
- Confederation of Indian Food Trade and Industry has developed—
 - ♦ the “Code of Ethics” for food trade industry.

Their ostensible object is to safeguard consumer interests in an institutional manner and thereby help to elevate the public image of business.

One can request them to report periodically about redressal of important complaints and services provided to consumers, and also watch whether they work honestly and fairly in the interests of the complainants.

6.6 DRAWBACKS OF THE SYSTEM

Parliament, by promulgating the Consumer Protection Act, 1986, has given the nation such a beneficial piece of legislation which has no parallel elsewhere. However, it is a matter of deep regret that most state governments do not evince enough enthusiasm and attention in promptly implementing the provisions of the Act by carrying out their mandatory obligation of establishing District Fora and State Commissions in every State.

Fortunately, the Supreme Court, reacting on a Public Interest Writ Petition filed by “Common Cause”, New Delhi, intervened and issued pre-emptory orders. The Court directed all State Governments which had not established State Commissions and District Fora in their States to comply with their statutory obligations within the time limit specified in the order.

As a result, all the states and Union Territories have set up State Commissions and most of the states have established District fora as well. The consumers are thus able to seek redressal of their grievances. As on March 1999, there were 32 State Commissions, one each in a State/UT, and 545 District Fora functioning in the country to deal with consumer grievances.

6.6.1 Ineffective implementation

As a matter of fact, the Indian system of justice is plagued by its omnipresence in every nook, whether relevant or not. This over-presence makes the system of delivering justice unnecessarily slow (see Box 6.4). As on December 1999, about 231,050 cases are pending in the District for a, and 66,404 cases are pending in the State Commissions. At the National Consumer Disputes Redressal Commission, 8,337 cases are pending against the 18,309 number of cases that have been filed since its inception.

In general, the problems in the dispute redressal machinery are:

- Due to the increasing number of complaints, the complaints are taking, on an average, about a year for the decision, against the norm of 90 days (where no analysis/testing is required). This is likely to take even longer in the near future. This delay applies equally to all three levels; and
- The State/National Commission ask the complainant and the opposite party to file affidavits for whatever they have already stated in their complaints, as also the opposite party’s version and rejoinders, thus further delaying the decision on the complaint.

A study was conducted by the Indian Institute of Public Administration to evaluate the effectiveness of the implementation of COPRA. The results of the study revealed the following points about why consumers are not interested in filing complaints before the redressal forum:

- Lack of awareness of the Act and its provisions. Lack of awareness of the District Forum and its functioning;
- Distance of the Forum’s location from the complainant’s residence;
- Procedures of the forum are technical and time consuming; and
- Absence of proper guidance and assistance from voluntary associations and fear of exploitation by advocates.

Box 6.4: Reaching Justice or Delaying Justice!

There are an estimated 20mn cases pending in the law courts all over the country; 97,170 in the Supreme Court alone. With such a backlog, it is not surprising that judicial redressal takes so much time.

Project LARGE, New Delhi, did a detailed survey and came out with astounding findings. Look at the issues considered by the Supreme Court:

- in 1959, it was examining whether charcoal was coal;
- in 1962, the Supreme Court was engaged with the question whether “resident in India” and “resident of India” were synonymous; and
- in 1985, it got busy with the question whether coconut was a vegetable. In this instance, the problem was caused by the irrational tax structure.

Furthermore, it is important to get the power-tentacles of the Government out of the courts. In the course of a sample survey in Bangalore, the National Law School discovered that in the area of income tax cases, 60 percent of the times, the Government was a litigant.

6.6.2 Systemic failure

During the past decade, a number of consumers throughout the country have benefited because of the orders passed by the District Fora, the State Commissions and the National Commission. However, there have been times when the orders passed by the different authorities under COPRA have either not been enforced, or partially enforced, or the accused have managed to evade the execution of such orders.

A case study will show how it is the systemic failure of the Act itself that prevents consumers from getting speedy and fair justice.

Recently a writ petition came up before the Delhi High Court involving Ravikant and others versus National Consumer Disputes Redressal Commission and others. The petitioners were directors of two companies, namely, Instant Growth Funds Private Limited and IGF Leasing Private Limited. These companies had raised deposits from the public and had defaulted in refunding the same to some of the depositors.

The aggrieved depositors filed complaints before the State Commission under COPRA. The State Commission directed the companies to refund the deposits within a period of three months. The companies, however, failed to honour the order passed by the State Commission.

The High Court considered the relevant provisions of COPRA in the light of the contention of the rival parties.

The counsel for the petitioners contended before the High Court that the penal provision under COPRA was not applicable to the company. The reason was that neither Section 27 nor Section 2(m) of COPRA, which defines ‘person’, includes the word ‘company’. The High Court took recourse to the definition of the word ‘person’ given in Section 3(42) of the General Clauses Act, 1897, which is an inclusive definition.

Therefore, the aggrieved consumers were harassed because there was a flaw in the text itself. Furthermore, such evasion of the orders of the consumer courts are taking place despite the existence of Section 25 of COPRA. This section clearly states that every order passed has to be enforced by the respective authorities in the same manner as if it were a decree or order made by a court in a suit pending before it. In other words, an order passed by any authority under COPRA has the same force as a decree passed by a civil court.

6.7 HOW TO IMPROVE?

Under Section 2(1)(d) of COPRA, the definition of ‘consumer’ is limited and restricted in its scope and ambit. It defines the term with reference to the consideration in which the outmoded concept of hiring and payment was used. Such an outdated methodology of defining consumers has robbed many consumers of the benefits of COPRA.

In a social welfare state like India, the Government is the biggest provider of services to the people, without charging any specific price for this purpose. The poor and the under privileged sections are especially dependent on the goods and services offered by various Government Departments/Undertakings, e.g. supply of drinking water by municipal bodies through roadside taps. Here, the rationale is to supply benefits free of cost or at affordable prices.

In such a situation, the Government should not be licensed to cause injury or loss to the consumer, as it is incorrect to say that there is no *quid pro quo*, since the funds mobilised by the State to provide these services are paid, directly or indirectly, by the people in the form of taxes, duties, fees etc.

The exemption of these services, on the grounds of want of consideration, would result in defeating the purpose of the right to redressal under COPRA. Hence, the definition of the word ‘consumer’ should be inclusive to encompass all such services so as to make equal access to justice a living reality.

6.7.1 Relief

Section 14 of COPRA envisages the different kinds of relief that can be awarded by the Forum/ Commission to aggrieved consumers. However, such relief can be granted only after the proceedings are completed in accordance with the provisions of this Act.

COPRA does not empower a Consumer Forum/Commission to issue interim orders in the form of a stay, injunction and direction in the interests of justice and fair play. Therefore, the need is for incorporation of a provision empowering a Consumer Forum/Commission to issue interim relief in the form of a stay, injunction and direction to make the right to redressal more effective and meaningful.

The reason is that the absence of the same denies issuance of cease and desist orders, pending final disposal of any complaint, even after being convinced about the substantial nature of allegations. The sanctioning of such interim relief is an inherent power vested in a court dispensing justice, and denial of such powers to consumer fora would render the fora redundant and incomplete.

Such redundancy would emasculate the fora in its efforts at discontinuing unfair and restrictive trade practices and preventing the sale of hazardous goods in the market. Incidentally, COPRA does not provide a definition of ‘hazardous goods’.

However, the Consumer Forum/Commission is empowered, under Section 14(d) of COPRA, to find ‘fault’ or ‘culpability’ of the manufacturer/producer if its product/service causes suffering, loss or injury. Hence, this provision is the *sine qua non* of having put the onus of proof upon the consumer claiming compensation.

The loophole is that consumers cannot claim any compensation, in spite of having suffered some loss or damage due to defects in goods purchased by them, if the manufacturer is not negligent. Even if negligence is proved, the manufacturer could escape from being held liable to compensate under the facade of various exemption and immunity clauses in the contract.

Furthermore, by virtue of the manufacturers’ entrenched position, their liability does not arise for hidden defects unknown to them under the traditional doctrine of negligence. The theory of negligence has therefore, proved detrimental to consumers, and discouraged them from enforcing the right to redressal even in genuine cases.

Therefore, this theory has to be replaced by a theory that puts the onus of responsibility on producers. The theory of product liability is a replacement of the doctrine of negligence on the part of manufacturers, and has been adopted by most developed countries (see Section 6.7.4).

6.7.2 Speedy redressal

The Law Commission of India has done at least eighteen reports that directly or indirectly deal with the improvement of the justice delivery system. The problem is that very few of these recommendations have been implemented. The recommendations have three different strands: improve the institution, upgrade the quality of personnel and simplify the procedures.

The following points are to be addressed for speedy redressal:

- There is a systemic flaw in the consumer courts. The idea of the court is to approach dispute resolution in a commonsensical manner. That is why the President of the court is a judicial person and the other two members are non-judicial persons. To make them more accountable, COPRA (and the consumer courts), need systemic changes;
- There are several sections in COPRA. However, in practice, Section 27 has been widely used (despite gaping holes in it), and there is under utilisation of Section 25. This has to be rectified to do away with the fear of Section 27;
- Consumer courts normally impose a small penalty against government departments. As a result of this, consumers have to go to the higher court to get proper redress, thus delaying the process of redressal. Therefore, proper compensation should be awarded earlier (at the first point); and
- The approach of the governments is to treat consumer courts as a liability. In some cases there is an unholy nexus between the presiding judge and the party to the dispute. Therefore, both non-judicial members as well as consumer organisations have to be trained properly for delivery of speedy and just redressal.

In order to fulfil these objectives for speedy redressal, the following organisational and institutional measures need to be adopted:

- The redressal machinery at all levels must work on a whole time basis. If necessary, the Union and State Governments should appoint only such persons who agree to work as Presidents and Members on a full time basis;
- The role of lawyers should be restricted in the following manner—
 - they shall not ordinarily be permitted to be engaged. The opposite party may be permitted to engage a lawyer only if the complainant has engaged a lawyer, and then too with the permission of the District Forum/State Commission/National Commission; and
 - if the District Forum/State Commission/National Commission finds it necessary that the legal complexities of the case require the presence of a lawyer, the reasons should be recorded in writing;
- Adequate infrastructure should be provided to the District Forum/State Commission/ National Commission;
- The Union and State Government rules need to be enlarged to say that the other party's version, complaint rejoinder or memo of appeal should be duly supported by affidavits, failing which the concerned document should be ignored. This should be mentioned in the notice; and
- The Union Government's rules are silent on the number of adjournments the National Commission may give in a particular case, whilst there is already a provision in the State Governments' rules that ordinarily, not more than one adjournment shall be given. The Union Government's rules should be amended to include a similar provision.

6.7.3 Legislative and administrative measures

In view of the difficulties/drawbacks mentioned above, and to fulfil the measures as envisaged (along with the objectives), the following legislative as well as administrative measures need to be taken:

Governments to set up expeditious, fair, inexpensive and accessible avenues for redress—

- Legislative
 - Exclusive forum for consumer disputes under a comprehensive legislation, rather than small claims courts;
 - Legislation for alternative dispute redressal or binding arbitration; and
 - Co-regulation with mandatory participation of public interest groups.
- Administrative
 - Encourage business to appoint ombudsmen to avoid costly and time consuming litigation; and
 - More importantly, information dissemination about these measures; and
 - Companies to resolve disputes in a fair, expeditious and informal manner, and to set up voluntary mechanisms such as advisory services and informal complaint procedures for consumers;
 - Business to establish consumer cells under their Chief Executives and Chambers to pursue the adoption of voluntary codes, consumer complaint cells and voluntary arbitration mechanisms.

6.7.4 Product Liability Law

The establishment of a product liability law would serve the following purposes:

- Save consumers from ill effects, and take faults in the product into account, and not the negligence of the manufacturer;
- At the same time, such an Act/Law relieves consumers from the obligation of establishing negligence;
- Under the circumstances, the court shall always presume existence of negligence, thus discouraging the manufacturer in disproving the same; and
- Provides incentives for manufacturers to introduce more and better safety measures.

6.7.4 In short...

In short, with respect to consumers' right to redressal, consumer laws should take into account:

- Prescribing procedures to ensure that consumers know their rights and how to enforce them, particularly in relation to disadvantaged consumers;
- Ensuring that consumers are allowed to play an equal role in the resolution of their disputes;
- Providing consumers with a right to compensation if they are injured as a result of unsafe goods or faulty services; and
- Establishing procedures to monitor the number of complaints and grievances, and to report the results back to the consumer.

6.8 CONCLUSIONS

Analysis of the consumers' right to redressal clearly shows why this right is essential for the dignified living of human beings within civil society. Without this right, there will not be an effective "Rule of Law" in society. Such a situation will certainly lead to anarchy within the system, and ultimately the destruction of the social structure.

In India, consumers' right to redressal is duly recognised through various Acts. However, when it comes to implementation, the performance is poor.

One reason could be the ineffectiveness of the judiciary itself. This ineffectiveness, in turn, is because of the interference of the legislature into judicial activity—and in the general atmosphere of crime, bribery etc.

However, it would be a mistake to take a reactive stance on the basis of this gloom. Civil society not only has the right to demand, but also has the responsibility to advocate for steady supply, devoid of any structural rigidity. Here lies the role and responsibility of consumer organisations. Their role is summed up in the following manner:

- Reaching up to different fora for facilitating redressal, and advocating for a supply-side push;
- Inducing the government, through advocacy, to adopt a holistic as well as simple law for dispute redressal;
- Increasing co-ordination between different organisations for effective demand pull; and
- Reaching down to civil society at large and making people aware of their rights and responsibilities i.e. demand push.

This chapter is researched and written with inputs from Mr. Ch. Diwakar Babu, Secretary, Consumer Guidance Society, Vijayawada.

Annexure-6.1
Form of Complaint under Consumer Protection Act, 1986

To
The President
National Commission/State Commission/District Forum
(Place....)

1. Name & address of the complainant :
2. Name & address of the opposite party against whom complaint is being filed :
3. Value & full description of the goods or services complained about :
4. Synopsis of complaint :
5. Supporting documents like invoice, cash memo, correspondence, statements or affidavit in case of no document :
6. Witness or evidence in support of the complaint :

Signature of complainant
or authorised agent & date

Number of copies

While the National Commission insists on at least five copies as they may be required considering the number of opposite parties, other Fora or Commissions may settle for less.

Annexure-6.2

A Synopsis of Case Studies Involving Redressal

Overcharging and criminal prosecution

Journalist Sanjay Sinha of Patna filed a complaint of overcharging in parking fees at the Patna Railway Station against the contractor, the Divisional Railway Manager and the Superintendent of Police, Government Railway Police, Patna. The matter was set right. The contractor lost his license and also faced criminal prosecution.

Injury and redress

Anand Prasad Sinha of Patna filed a complaint in the Bihar State Commission against the General Manager, Eastern Railway, Calcutta, and the Deputy Railway Manager, Danapur, for the non-functioning of fans and shutters in the 1st class coupe he and his wife travelled in, and injury to his wife due to exposed nails. The Sinhas were awarded a compensation of Rs 20,000 and directions were given to the Railways to keep the coaches in good repair. The National Commission reduced the award to Rs 3,000 individually.

Refund of difference

The Patna District Forum ordered the Railways to refund to S.I. Vishnoi of Patna, the difference in fare charges for the failure of the air conditioning in a train he travelled in, and to charge only ordinary 1st class fare.

Replacement

Crompton Greaves Limited., Mumbai, replaced the defective regulator of Abhay Prakash Sahay just on receipt of a notice from the Patna District Forum, as the guarantee period of the fan had not expired.

Guarantee extended as redress

In a case involving the replacement of the entire kit of a defective colour TV within the guarantee period, the Udaipur District Forum ordered the dealer to extend the usual one-year guarantee from the date of replacement, and to also give an extra three month's guarantee as compensation for harassment to the consumer.

7

Right to Representation

7.1 INTRODUCTION

7.1.1 Peoples' voice

The UN Guidelines for Consumer Protection, 1985, provide a framework for strengthening national consumer protection policies and embrace the principles of various consumer rights. The right to representation is one of the important aspects that provide opportunities for consumer bodies to present their views on the decision-making processes and policy matters affecting consumers at large. In simple terms, this right is also defined as the *right to be heard*.

There is a growing recognition of the need to involve civil society in matters of social and economic development. This recognition stems from the failure of the so-called “trickle down” hypothesis to ameliorate peoples’ woes in the era of protectionism during the post-war years. Therefore, today, the idea is to involve people in the process of socio-economic development with the objective of growth *with equity*.

The macro objective of the right to representation is essential to ensure that public interest is in the forefront of policy making. The micro objective is that a consumer’s grouse or viewpoint is heard and the problem or problems are solved directly or through systemic changes.

7.2 DEFINITION AND OBJECTIVES

The right to representation means the right to advocate consumers’ interests with a view to receiving full and sympathetic consideration in the formulation and execution of public policies.

In this respect, consumer groups have the right to represent the interests of consumers in the formulation and execution of Government policies affecting them. The UN Guidelines aim to encourage the growth of the consumer movement as a positive force and recognise the fact that such groups should be allowed to participate in policy making that concerns the interests of consumers’. As a result of the Consumer Protection Act of 1986, the consumer movement in India has begun to play an active role in highlighting consumer problems and advocating positive changes, thus catalysing policy responses.

This right includes the right to represent views pertaining to consumer welfare in the government and in other policy making bodies. This also provides the right to know the manner in which goods and services are produced, distributed and sold. The right to representation is not only a right *per se* but also a responsibility on the part of civil society to put forward consumers’ views on appropriate platforms.

7.2.1 The UN Guidelines—Objectives

The Guidelines define the objectives of the right to representation as:

- Efforts to be made by governments to facilitate the development of independent consumer groups; and
- Existence of opportunities for consumer groups to present their views in the decision-making processes affecting consumers.

7.3 GOVERNMENT POLICY

Consumer organisations and the government have realised the potential of the right to representation as a base for ‘good governance’. Increasingly, the people in government are convinced that interaction and participation of consumer bodies can make qualitative changes in various decisions affecting consumers, especially those affecting the disadvantaged consumers like women, the poor and the illiterate.

In this respect it is worth mentioning the view expressed by former Union Minister for Food & Civil Supplies, Sukhram. Addressing the third meeting of the Central Consumer Protection Council in 1988, he said: “The programme of consumer protection can be purposeful and effective only when there is a popular consumer movement in the country, right down to grass root levels. Moreover, consumers have not only to be aware of their rights but have to be equally conscious of their duties. We are, therefore, keen for the development of a responsible and responsive, broad-based and effective consumer movement in the country with peoples’ participation.”

A more pointed view came from another former Union Minister for Food & Civil Supplies, A K Anthony. In 1993, addressing the National Convention on Consumer Protection, he said: “There is the question of how best we can use the Consumer Welfare Fund. My personal view is that it should be used in promoting a broad-based consumer movement in the country. The consumer groups have so far confined their activities, by and large, to the urban segment of the society. They have a huge task before them. We are pinning our hopes on them that they will, in a concerted manner, expand their activities to the rural areas.”

In order to bring about necessary changes in governance, Mr. I K Gujral, the then Prime Minister of India, initiated a massive exercise by the Personnel and Administrative Department in 1996-97. As a part of this exercise, in May 1997, the Conference of Chief Ministers came up with a set of operative recommendations for responsive administration and accountability of the Government. The following objectives of Government (both Union and States) policies in this respect were enunciated:

- *Redefinition of the role of the government:* The crisis in administration calls for a redefinition of the role of the Government, its functions and its real focus to serve the public effectively as much as to ensure efficient and cost-effective administration. Accountability, transparency and cleansing of public services are all inter-connected issues for ensuring a clean and responsive administration. It is necessary to cover the efforts of various public agencies for the delivery of basic services in rural and urban areas and for single level dealings with the public. This calls for steps to re-organise work procedures, for delegation down the line and an effective management information system accessible to all. Simultaneous steps to address the right-sizing of the public services, value for money on public expenditure, restoring effective audit, monitoring and evaluation and a good financial management system etc. are needed;
- *Transparency and openness:* It is necessary to introduce greater transparency and openness in the functioning of the government and other public bodies. This would cover, for example, movement towards a Right to Information Act, transparent and well-publicised procedures for approval by the general public and entrepreneurs, for various statutes and regulations etc. The aim should be to move towards a citizen centred administration;

- *Access to information:* The citizens in rural and urban areas should be provided with widespread and easy access, through the media, posters and various forms of neighbourhood level communications, to all information relating to government operations, and reverse the over emphasis on secrecy etc. should be reversed;
- *Citizens' charters:* Accountability should be interpreted in a larger sense in relation to public satisfaction and responsive delivery of services. The Government may consider the introduction of Citizens' Charters for as many service institutions as possible, by way of citizens' entitlement to public services; the collaboration of consumer organisations and citizen groups; wide publicity to standards of performance, quality, timeliness, costs etc. for public services, and the provision for periodic and independent scrutiny of performance of the agencies against set standards;
- *Grievance redressal:* Immediate measures are needed for strengthening the machinery of grievance redressal at all levels, with increased thrust on the needs of disadvantaged and vulnerable sections. Attention must be given to systemic reforms, gender sensitive approach at all levels, and well understood systems of filing complaints relating to poor services and malfeasance of the delinquent, while devising ways to filter frivolous complaints. The good examples of redressal in different states should be widely publicised and scaled up along with due recognition of innovation and citizen-friendly attitudes;
- *People's participation:* Encourage participation of citizens and of representative groups in local decision-making, and in the implementation of schemes affecting their livelihood and quality of life. The media has an important role to play in this regard; and
- *Legal reforms to promote access to justice:* Urgent steps should be taken for legal reforms, for the access of citizens to quick and cheap justice, while initiating steps for amendment and simplification of the concerned laws. Also, obsolete legislation should be replaced with simple and speedy procedures. Those laws that militate against the interests of the poor need to be quickly amended.

7.4 IMPLEMENTATION

The Government does not have any concrete or particular policy to implement the objectives of the right to representation. However, there are certain ways and methods through which individuals as well as civil society organisations can reach their views to the government. Such mechanisms include petitions to different parliamentary committees and sub-committees.

At the same time, consumers and consumer organisations can have access to other fora by means of submitting petitions to various government and departmental authorities. This provision is enshrined in Article 350 of the Constitution of India.

7.4.1 Parliamentary committees

There are several parliamentary committees keeping a close watch on different areas of governance; some of them deal with different issues pertaining to consumer welfare. These are known as Standing Committees. But there is no separate Standing Committee for looking into matters of consumer protection. In such a scenario representations related to consumer protection are given mainly to the Committee on Petitions.

A matter may come up before a committee, which may require detailed study, investigation and/or examination. For this purpose, Parliament has the power to form specific sub-committees having all the powers of the full committee. The procedures followed by a sub-committee are, as far as practical, the same as followed by a full committee.

Box 7.1: Extracts from a Representation by Consumer Education & Research Centre (CERC) to the Ministry of Finance, Government of India, on the Draft of the Redressal of Public Grievances Rules, 1998

The draft Rules primarily fail to recognise and reaffirm the role of the voluntary consumer groups and NGOs as well as that of the Union Ministry of Food and Consumer Affairs and the Insurance Regulatory Authority (IRA) in the current regime of economic liberalisation in India, in so far as the promotion and protection of consumer rights and interests are concerned.

The representatives of consumer groups, the Ministry of Food and Consumer Affairs and the IRA do not find a place in the proposed Insurance Council or its Governing Body, which are vested with substantial powers of appointment of the, and budgetary allocation for the monitoring of the performance of, the ombudsman.

There is an imperative need to rectify the shortcoming in the draft Rules by making the composition of the two bodies such as to include the aforesaid essential constituents in order that they become more representative of all the interested parties, more democratic and more broad-based to inspire public confidence in the independence, impartiality and integrity of the Ombudsman.

The draft Rules should also provide for the setting up of an Ombudsman in every State and Union Territory in India to make it an effective grievances redressal forum through easy accessibility. It may be noted that consumer courts are available in every district of India for quick and inexpensive redressal by operation of the mandatory provisions of Sec.9 of the Consumer Protection Act, 1986.

The adoption, in the draft Rules, of the Ombudsman system operational in the insurance sector of a small country like the Netherlands, is recommended. As is clear from the 1997 Annual report of the Association of Dutch Insurers, specialised categories of insurance Ombudsman have been set up to promote effective redressal of consumer grievances.

7.4.1.1 Committee on Petitions

Both the Houses of Parliament (the Upper House: *Rajya Sabha*, and the Lower House: *Lok Sabha*), have their own Committee on Petitions, and representations on public issues may be presented to each or any one of them, separately as well as collectively.

In the case of petitions on matters of general public interest, the Committee examines the suggestions made therein, calls for factual comments where necessary, and makes suitable recommendations to the concerned House.

The Committee also considers representations, including letters and telegrams from various individuals and associations, which are not covered by the rules in relation to the petitions under consideration, and gives directions for their disposal.

Representations of this category are considered in the order of their importance, and the need for intervention by the Committee is assessed. Furthermore, if the need is established, they are graded in various categories like A, B, C etc.

7.4.2 Representation through consumer organisations

One necessary condition for the realisation of consumers' right to representation is enshrined in the fifth objective of the UN Guidelines, i.e. to facilitate the development of independent consumer groups. The reasons are that for effective representation by the consumers it is necessary to have a strong consumer movement throughout the country, and in many cases a "group action" has proved to be much more effective than an individual action.

In view of this, the Government has set up the Central Consumer Protection Council (CCPC), for organised growth and development of the consumer movement in the country. This has legal sanction, i.e. it is a requirement under the COPRA. The same law also requires the establishment of State Consumer

Protection Councils. These councils are required to promote and protect the rights of consumers, six of which have been listed out in COPRA: safety; information; choice; representation; redressal and consumer education.

The Government of India has established a Consumer Welfare Fund (CWF), for providing financial support to consumer groups to promote the consumer movement in the country. In this regard, the Central Excise and Custom Laws were amended in 1991 so that the refundable money with the Government, collected through excise and customs, is deposited with the CWF. It is presumed that the duty has already been recovered from consumers by the manufacturer through the sales price, and that the actual bearer of the cost cannot be identified for refund.

From this fund, voluntary consumer organisations are provided financial assistance, mainly for the following purposes:

- Production and distribution of literature and audio-visual material for spreading consumer literacy and for awareness building programmes for consumer education;

- Setting up of facilities for training and research in consumer education and related matters on a national/regional basis;

- Community based rural awareness projects;

- Setting up of complaint handling/counselling/guidance mechanisms;

- Setting up of consumer product testing laboratories;

- Building up infrastructural facilities for organising consumer education activities on a permanent basis.

Furthermore, in some states like Rajasthan and Andhra Pradesh, there are district-level consumer protection councils. In Rajasthan, many members of CUTS' networking grass root groups serve on the district councils. This has empowered the grass root groups phenomenally, and given them the credibility and the strength to raise and resolve many consumer problems at the local level. In Madhya Pradesh, state legislators are even authorised to nominate persons to represent them in some of the district bodies.

For effective implementation of consumers' right to representation as well as other rights, in 1995 the CCPC set up three Working Groups consisting of government officials and consumer activists. Among other issues, relevant to the right to representation, the Working Groups in their recommendations talked about the setting up of a Price Monitoring Commission (see details in Chapter III—Right to Choice), and a Code of Conduct for consumer organisations, for ethical representation.

Through their representations before various government bodies, consumer organisations are increasingly making use of the right to representation and highlighting various lacunae in the existing system. For example, CUTS has inter alia served on the Expert Group to Review Laws & Regulations, of the Department of Economic Affairs, Ministry of Finance, in 1997-98, wherein it helped the government to streamline various laws. While serving on the Ministerial Committee of the National Road Safety Council, Ministry of Surface Transport, CUTS was instrumental in developing the National Road Safety Policy in 1992-93. Similarly, various other consumer groups have served on important policy making bodies and shaped the policies as well.

7.4.3 Representation through right to information

There cannot be effective representation unless the consumers (citizens) and their groups have access to relevant information. In view of this, and with the popular demand for the introduction of greater transparency in the functioning of the government and other public bodies, the Government is considering amending its laws and regulations with respect to the Official Secrets Act and the Indian Evidence Act.

The Union Government set up a Working Group under the Chairmanship of the doyen of the consumer movement: Mr H D Shourie, to formulate a Bill for Freedom of Information and amendments (Section 5

of the Official Secrets Act and Sections 123, 124 and 125 of the Indian Evidence Act) to the laws relevant for this purpose. The working group has already submitted its report and the Freedom of Information Bill, 2000, has also been drafted. This is to be placed before parliament. However, due to various reasons, the Bill is due for placing before Parliament for several months. This Bill, including some limitations, has already been discussed in the Chapter “Right to Information”.

7.5 DRAWBACKS OF THE SYSTEM

Despite the existence of a number of administrative as well as organisational tools, the implementation of consumers’ right to representation faces several drawbacks.

One of the major drawbacks is that the consumer movement in the country has not developed to the size and reach required to be able to serve the vast country and its huge population. The government has done little to facilitate the growth and development of independent consumer organisations. For example, there was a recommendation from the CCPC to formulate a State-level Consumer Welfare Fund in every State to help out rural consumer organisations. So far, nothing has been done in this regard. The only exception in this regard is Maharashtra.

In Maharashtra, an innovative approach has been adopted, somewhat on the lines of the Central Consumer Welfare Fund; the Maharashtra Consumer Protection and Guidance Fund has been set up by the Maharashtra Government by crediting excess sales tax recoveries and fines. In this fund, all excess excise recoveries which have been challenged by the manufacturers successfully, and the tax appellate tribunal or the courts have upheld the challenge, are also being accumulated. Every State, of course, has its respective grant-in-aid schemes for consumer groups. But budget allocation for such schemes is normally too scanty and irregular.

Furthermore, a majority of consumer organisations are mostly confined to cities and urban areas. They are not being able to penetrate deep into society where the majority of poor, low-income and disadvantaged consumers live. This is mainly due to lack of adequate resources and also a lack of professionalism. Exceptions include CUTS, which is a totally professionally run organisation and has a well-designed programme to penetrate into the rural areas of Rajasthan. There are a few other organisations too, which have also been professionalised. The notable ones among them are:

Consumer Education & Research Centre (CERC), Ahmedabad, which is into legal affairs and product testing in a big way.

Consumer Guidance Society of India, Bombay, which has inter alia a rural extension programme in Maharashtra.

Voluntary Organisation in the Interest of Consumer Education (VOICE), New Delhi

Mumbai Grahak Panchayat, Mumbai, which is a members’ cooperative comprising of over 15,000 members

Federation of Consumer Organisations of Tamilnadu (FEDCOT), Chennai

Citizen, Consumer and Civic Action Group (CAG), Chennai

Federation of Consumer Associations of West Bengal (FCAWB), Calcutta

There is an apex body of consumer organisations: Consumer Coordination Council (CCC), which has failed to provide leadership and guidance to the consumer movement in India as it has been captured by a few people, making proper representation within the CCC a casualty. Many are therefore afraid that the apex body will be reduced to becoming an ineffective organisation. As required under the circumstances, it should have a strong secretariat. Unfortunately, in the last five years it has had over five executive secretaries, who could never function independently. This is a major drawback, which reflects the lack of

co-ordination between different consumer organisations, as well as between government departments and consumer organisations.

The apathy and lack of co-ordination between different administrative agencies towards consumers' causes has also affected the proper implementation of the measures to protect and promote the right. For example, in West Bengal the ration shops are under the control of the Food & Supplies Department, while the food safety law (the Prevention of Food Adulteration Act, 1954), is under the supervision of the municipal bodies (as they are the designated health authorities). In such a situation an aggrieved consumer is perplexed as to how and where she/he should represent her/his views for the better functioning of ration shops. At times it is difficult to find the appropriate agency to represent consumer views.

Finally, sometimes the government just refuses to take into consideration consumers' interests and goes ahead with its decisions. In most cases, consumer organisations are neither organisationally or institutionally strong enough to challenge the Government's decision.

7.6 HOW TO IMPROVE THE SITUATION?

The overall idea and aim for the improvement of the present situation should be based on an adage—if the consumers are vigilant and exercise their right to be heard, this would definitely have some impact as has been the case in certain states like Gujarat, Rajasthan, Tamil Nadu etc.

The above mentioned adage stems from the following case studies:

- With respect to the Dabhol Power Project, in a writ petition filed by the Mumbai Grahak Panchayat, the Bombay High Court directed the Government of Maharashtra to allow inspection of the controversial Power Purchase Agreement signed between Enron Corporation and the Maharashtra State Electricity Board; and
- Another citizens group, the Environment Action Group of Bombay, compelled the Union Government to invite and hear objections from citizens on the environmental aspects before giving final clearance to the Dabhol Power Project.
- The Mazdoor Kisan Shakti Sangathan (MKSS) in Rajasthan, have been continuously involved in bringing transparency and accountability in public works/dealings. They have been able to bring to public notice the corrupt practices in the gram panchayats (village councils). In one instance the activists unearthed that about a third of the expenditure in public projects had been siphoned off. They also found that bills are usually concocted and muster rolls filled with fictitious names. The MKSS movement became so strong that the government of Rajasthan had no alternative but to adopt regulations on the Right to Information. This regulation provides a detailed procedure for obtaining copies of accounts and records from local government bodies.

From the few instances mentioned above, it is obvious that the consumers/people at the grass root level have to be organised to fight for their rights. Here the NGOs/consumer organisations can play a significant role in representing peoples' causes.

Secondly, for the improvement of utility services, the Government has established independent regulatory authorities. Such Commissions will be empowered to scrutinise the proposals of various public utilities about revision of their tariffs, rates, charges and fees. If properly implemented, the unbridled and arbitrary powers being exercised by state monopolies like railways, telephones, electricity etc., in increasing their rates and tariffs, would be checked.

Consumer organisations must study the working of public utilities, identify wasteful practices, and suggest ways and means of conducting these operations more effectively and economically. With the help of consumer-oriented experts, consumer organisations can influence and shape consumer-oriented policies by the Government.

Thirdly, consumer organisations can also help to democratise, decentralise and monitor what can be called the ‘social audit’ of government-sponsored programmes (and hence effective representation) through a combination of the following innovative methods:

- Citizens’ charters;
- Budget analyses;
- Social audit processes;
- Public interest litigation; and
- Shadow cabinet process.

Citizens’ charters are based on the principles of:

- Wide publicity of the standards of performance of public agencies and local bodies;
- Assurance about quality of services;
- Access to information (for effective representation);
- Choice of and consultation with the citizens;
- Simplified and convenient procedures for receipt and acknowledgement of complaints and time-bound redressal of grievances; and
- Provision for annual review and independent scrutiny of performance with the involvement of citizens groups.

In India (due to suitable provisions in the Constitution), citizens can move the high courts under Article 226 and the Supreme Court under Article 32 for violation of the Fundamental Rights of individuals and the general public (public interest petitions). Article 21 of the Constitution, which guarantees the personal life and liberty of every citizen, has been expanded through case laws by the apex and state high courts to cover the consumers’ and citizens’ rights to basic needs, health, clean environment, safety etc. Therefore, the institution of Public Interest Litigation enables citizens and consumers to challenge abuses, non-performance and negligence by the state.

COPRA also provides for class action and public interest action (where a class of consumers or the whole consumer community is involved), wherever harm has been done or is likely to be done.

CUTS initiated a Class Action Petition on behalf of the victims of the Behala oil tragedy (for details see Chapter II—Right to Safety).

The imperative for the shadow cabinet process lies in the necessity to activate the legislature to peoples’ problems, and effectively represent the citizens’ views in the legislatures.

7.6.1 Legislative measures

In order to fulfil and implement these ideas, and also to cater to the objectives of the Guidelines (with respect to the right to representation), the Government has to consider the following legislative measures:

- Legislative intent and resources are required to ensure the development of an independent consumer movement;
- Constitutional provision is required not only for access to information but also for representation as a Fundamental Right of the citizens; and
- Mandatory consumer impact assessment and consultation should be done in every area of governance where consumer interests are affected.

7.6.2 In short...

With respect to consumers' right to representation, the consumer laws should take into account:

- Mandatory requirement of consumer representation on administrative bodies that have bearing on consumer welfare;
- Requiring laws and policies which affect consumers to be published before they are introduced to allow consumers to comment on them;
- Establishing procedures to channel any comments or complaints made by consumers to appropriate authorities, and to monitor the response to those comments or complaints;
- Establishing the complaint handling systems in both the government and non-government sectors, including the involvement of consumer representatives in the process;
- Ensuring that consumers have a standing to take action in courts and tribunals, including as third parties, to protect consumer interests;
- Enabling consumers to take collective action before courts and tribunals; and
- Enabling indigent consumers to enforce their rights by providing access to legal and financial assistance.

7.7 CONCLUSIONS

To conclude, meaningful participation is the need of the hour in order to influence decisions that affect one's livelihood. Furthermore, participation is increasingly seen as a panacea for development, especially in this era of globalisation and liberalisation.

However, the concept of participation will be meaningless unless the citizens (consumers) have the right to representation. In other words, consumers' right to participation is not only related to development *per se* but also needed to enable them to demand and get other rights fulfilled.

Therefore, the right to representation has to be approached within the liberal democratic values framework encompassing democracy, universal human rights, gender equity etc. The exact objectives of the Guidelines are to cater to the set of actions by individual consumers as well as consumer organisations to re-work and redefine their relationships with the other side of society i.e. the Government, in the framework of justice, viz., the right to be heard.

In India, the right to representation is being implemented through a set of administrative as well as organisational instruments involving the Government and consumer organisations.

However, the problem lies in the implementation itself. The important drawbacks are the lack of adequate resources to help the growth and development of an independent consumer movement in the country, particularly in the rural areas, and cater to the needs of poor, low-income and disadvantaged consumers. There also exists the apathy on the part of the authorities to lend their ears to peoples' problems and grievances.

Therefore, what is required is a set of legislative reforms to make the right to representation effective and implementable. At the same time, consumer organisations have an important role to play, and that is to present consumers' views through innovative methods. Only then can we have a functioning democracy, particularly in the sphere of decision-making, where consumers' interests are directly affected.

This chapter is researched and written with inputs from Mr. Ch. Diwakar Babu, Secretary, Consumers Guidance Society, Vijayawada.

8

Right to Healthy Environment

8.1 INTRODUCTION

8.1.1 A brief overview

This chapter is concerned with two issues as narrated in the Guidelines: a) sustainable consumption, with both rights and responsibilities of consumers, and b) the legal aspects of the right to a healthy environment. In the matter of sustainable consumption, the Guidelines were very narrow in their scope as they dealt with pesticides and chemicals only. To correct this deficiency, the Guidelines were revised in 1999 and the matter of sustainable consumption was discussed comprehensively.

This was pursuant to a resolution of the ECOSOC (Economic and Social Council of the UN) in 1995, after a long exercise under the auspices of the Commission on Sustainable Development. This Commission was established in 1992 as a follow up mechanism to the Plan of Action and Agenda 21 adopted at the “Earth Summit”: the UN Conference on Environment and Development held at Rio de Janeiro in June, 1992. The revision was spurred to define a set of consumer responsibilities so that they too should contribute their bit to sustainable development.

Sustainable consumption includes meeting the needs of the present and future generations, for goods and services, in ways that are economically, socially and environmentally sustainable.

8.1.2 Life and matter

While studying and regulating the environment, care must be taken of animate life as well as inanimate matter. This opens up a vast canvas of learning and experience. Physics and chemistry are, of course, its immediate concerns. Biology comes in when one takes into account flora and fauna. Space sciences do not lag behind. Each of these natural sciences has their sub-divisions.

Natural sciences, in theoretical form, of course, do not exhaust the universe of learning. Man has utilised his knowledge and drawn upon the inexhaustible resources of the mind and applied his learning for various beneficial purposes. Applied science thus presents a baffling variety; and the beauty of environmental learning is that it has to draw upon the learning developed in almost every field of applied sciences.

Take medicine, for example. Polluted air primarily affects the lungs. Hence, learning regarding chest diseases comes in. Polluted water causes diseases affecting the digestive system. So, gastro-enterology becomes relevant. Some noxious vapours affect the brain. Hence, neurology has its part to play. Radioactivity brings in oncology, the super-specialty branch of medical science concerned with cancer.

8.2 DEFINITION AND OBJECTIVES

8.2.1 Complexity

The objective of environmental law is not as simple as it may appear. In practice, both in the formulation of law and in the application of it, one finds a great deal of complexity. This arises, to a large extent, from two major factors: *qualitative* and *quantitative*.

8.2.2 Qualitative complexity

The qualitative element resides in the fact that civilised mankind must exploit a vast amount of physical resources, as well as polish, refine and innovate numerous products, if it is to maintain its *civilised* framework. In the process, the beneficial is bound to mix with the malevolent; and it is not always easy to keep the two apart.

The balancing of *good against bad*, and the comparative assessment of the *merits and demerits* of a particular substance or process, pre-supposes an intellectual activity, which itself involves making judgements. Such a responsibility has to be entrusted to a body that is neutral, that is to say, a body that is not directly connected with, or participating in, the activities that cause benefits as well as harm to society. Such a body has therefore to be an organ of the state—be it legislative, judicial or executive.

8.2.3 Quantitative complexity

From the quantitative angle, the factor that largely accounts for the complexity of environmental legislation, policy, planning and performance, is the extraordinary vastness of the subject. If, as Einstein said, ‘environment’ covers everything that surrounds us, then it means that the entire universe falls within the study of the environment. Environmental legislation can therefore theoretically cover a very vast range of human activities that may have a possible impact on life or matter in the outside world.

The qualitative and quantitative complexities of the discipline of environment have had their own impact on the legal framework in India.

8.2.4 Pesticides and chemicals

Among others, the analysis of the right to healthy environment is closely related to pesticides and chemicals. However, the legislative measures enacted in India do not isolate chemicals as a separate subject and do not have a scheme for a separate Act for chemicals, as such. It has therefore become desirable, at many places, to deal first with the environmental legislation as a whole, before setting out the specific position as to chemicals.

As regards pesticides, the Insecticides Act, 1968, contains specific provisions. But, even on that subject, more general laws, such as the Environment Protection Act and the Public Liability Insurance Act do have a good deal of relevance.

Pesticides, as well as chemicals, are, *albeit* unintentionally, frequently abused rather than used. Some of the common abuses are as follows:

- Applying excessive pesticides;
- Constant low-level exposure to pesticides due to ignorance;
- Using pesticides for uses other than those for which they are intended; and
- Mixing two or more pesticides into a ‘cocktail’ to make them more lethal.

8.2.5 Right to Healthy Environment—The UN Guidelines

The UN Guidelines (1985), equated environmental concerns with consumer protection and recognised the importance of the environment in formulating policies relating to pesticides and chemicals. However, two relevant points, relating to consumers' right to healthy environment, which the 1985 Guidelines did not cover, are worth mentioning.

The first is that the Guidelines were silent on sustainable production and consumption patterns, an omission, which has now been rectified. The second drawback relates to other aspects of environmental protection such as safety in services or regulations governing air, water and soil pollution which impact people adversely.

In recent times, in 1993, the UN appointed the Commission on Environment and Development to look into the impact of developmental activities on the environment. Consumer organisations have a role to play in ensuring that governments adhere to the recommendations of the Commission.

A whole set of guidelines were inserted in the 1985 text on sustainable consumption in the year 1999 (Annexure-I, contains the whole revised text of the UN Guidelines). However, references to sustainable production were dropped, which is quite incongruous, because production patterns are closely related to consumption patterns. One can influence the other.

The UN Guidelines for Consumer Protection, 1999 (Revised), have defined shared responsibilities for sustainable consumption by all members and organisations of society, with informed consumers, the government, business, labour organisations and consumer and environmental organisations playing important roles. Informed consumers have an essential role in promoting consumption that is environmentally, economically and socially sustainable, and can influence producers through the effects of their choices of goods and services. Governments should promote the development and implementation of policies for sustainable consumption and the integration of those policies with other public policies.

Government policy making should be in consultation with business, consumer and environmental groups. Business has a responsibility for promoting sustainable consumption through the design, production and distribution of goods and services. Consumer and environmental groups have a responsibility for promoting public participation and debate on sustainable consumption, for informing consumers, and for working with Government and business towards sustainable consumption. The Guidelines have several other provisions with respect to the right to healthy environment; given below are a few of the most important among them:

- Adopting measures relating to environmental protection and efficient use of materials, energy and water; and
- Ensuring consumer access to accurate information about the environmental impact of products and services.
- Adopting a range of economic instruments, such as, inter alia, fiscal instruments and internalisation of environmental costs, to promote sustainable consumption, taking into account social needs, the need for disincentives for unsustainable practices and incentives for more sustainable practices.

As the revised Guidelines have been adopted recently, cogent work has not been done in India for their implementation. However, several existing policies, laws and regulations do cover the issues. For example, there is a voluntary Ecomark scheme being operated by the Central Pollution Control Board and being implemented by the Bureau of Indian Standards. It has prepared criteria for over 300 products in 15 product categories, but there are no ecomarked goods in the market place.

8.3 GOVERNMENT POLICY

At the outset it should be mentioned what government authorities are thinking about a healthy environment. The same topic also touches upon the issue of sustainable consumption at places.

The National Conservation Strategy and Policy Statement on Environment & Development, Ministry of Environment and Forests, 1992, states:

“Implementation of conservation strategy would be impossible without the active participation of people. Non-governmental organisations can play an important role in mobilising the people at grass roots. This will need a network among NGOs and interface between people and Government to work on community involvement, providing information on environmental surveillance and monitoring, and transmitting development in science and appropriate technology to the people at large.

“Environmental Information Centres should be set up at the district level to generate knowledge regarding traditional and indigenous systems and management practices. NGOs at the district level should be involved in the management and dissemination of environmental information.”

8.2.1 Constitutional position

Coming to the policy of the Government with regard to the environment, one must first refer to the Constitutional position. Article 21 of the Constitution requires the State, *inter alia*, to protect *life*, which is construed as including the right to a healthy and safe environment. This is a *Fundamental Right*. Then, Article 48A (under the *Directive Principles* of State Policy) directs the State to endeavour to *protect and improve* the environment, forests and wild life.

Besides these provisions, Article 51A(g) imposes a *Fundamental Duty* on the citizens to protect the environment.

8.3.2 Legislative measures

In so far as Indian legislation reflects the policy of the Government, it can be said that:

- The policy is to protect the ‘environment’ in all possible ways;
- ‘Environment’ is given the widest meaning; and
- It is assumed that complex administrative machinery will be able to achieve the objectives in view.

8.3.3 Legal framework

8.3.3.1 Sources of the law

The following is a brief description of the various laws relating to environment in India:

- The laws relating to environment in India have to be collected from a number of sources—codified and un-codified. Codified law itself is at two levels—the Constitution and the law to be found in enactments;
- As regards statutory law, it comprises Central Acts as well as a few States Acts. The Central Acts themselves—if one takes a comprehensive view—cover general enactment, such as, the Indian Penal Code (certain sections), the Code of Criminal Procedure (certain provisions) and the Code of Civil Procedure (certain sections). However, along with these, the statute book contains certain specific and comparatively recent Central Acts, dealing with specific areas of environmental law, or addressed comprehensively to environmental law;
- According to modern practice, legislation enacted by the legislature, Central or State, is to be supplemented by a host of statutory instruments, going under the name of “sub-ordinate legislation”. No modern Act can be completely grasped in its actual application without taking into account the

rules, orders, schemes, etc. issued thereunder. In other words, under the modern system of law, the Act only gives the broad directions whereas sub-ordinate legislation is required for actual implementation of the Act; and

- Finally, it is to be remembered that in the Indian legal system, the doctrine of ‘precedent’ has led to the recognition of ‘case law’ as a source of law. In the sphere of environmental law in particular, judicial decisions have illuminated dark corners, filled many vacant spaces, lent new dimensions to constitutional provisions and generally performed a creative role. For example, the principle of absolute liability on the civil side, for harm caused by an environmental wrong, through hazardous substances, has come to be established by judicial decisions.

8.3.3.2 Recent Acts

During the last two decades or so, several Acts relevant to environmental protection have been enacted. These are:

- The Water (Prevention and Control of Pollution) Act, 1974;
- The Forest Conservation Act, 1980;
- The Air (Prevention and Control of Pollution) Act, 1981;
- The Environment Protection Act, 1986;
- The Public Liability Insurance Act, 1991;
- The National Environmental Tribunal Act, 1995; and
- The National Environmental Appellate Authority Act, 1997.

Of these, the Environment Protection Act, 1986, is the most far-reaching measure. A good deal of subordinate legislation has been issued under this Act, including various rules and notifications relating to hazardous chemicals and toxic waste.

8.3.4 Hazardous substances

The expression “hazardous substances” has been defined in the Environmental Protection Act, 1986, as any substance or preparation, which by reason of its chemical or physio-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plants, micro-organisms, property or environment.

8.3.4.1 Hazardous substances and their handling

Specific provisions related to hazardous substances and their handling are described below:

- The principal acts on environment, mentioned in the preceding para, deal, *inter alia*, with hazardous substances and processes. There is no separate set of provisions in the parent acts that deal with the hazards of chemicals. However, a good deal of sub-ordinate legislation addresses itself to hazardous chemicals. The Environment Protection Act, 1986, casts a heavy responsibility on the Union Government to lay down procedures and safeguards for handling hazardous substances;
- Section 6(2) of the Act of 1986 is particularly important because the Central Government can prescribe, thereunder, rules and procedures for handling hazardous substances; and
- The rules so made are given extra sanction by Section 8, which provides that no person shall handle any hazardous substance, except in accordance with procedures and safeguards laid down in Section 25(2)(b). Section 25(2)(b) empowers the Union Government to make rules regarding the procedure for handling hazardous substances.

8.3.4.2 Meaning of handling

The expression 'handling' is defined in the Environment Protection Act, 1986, as to mean (in relation to any substance), the manufacture, processing, treatment, packaging, storage, transport, use, collection, destruction, conversion, offering for sale, transfer, or the like, of such substances.

8.3.4.3 Preventive steps for hazardous chemicals

The preventive steps regarding hazardous chemicals are prescribed mainly under Rule 4, relating to manufacture etc. of hazardous chemicals. An occupier must identify a hazardous product relevant to her/his industry and lay out the plan in such a way that:

- It will resist the stress including that likely to be caused during a disturbance;
- S/he will take precautions to prevent fire and explosion;
- S/he must install adequate warning alarms and security systems;
- S/he must maintain reliable measuring instruments;
- S/he must protect the plant from acts of unauthorised persons;
- S/he can ensure that the design of the foundation and load bearing parts is such that it does not cause additional hazards;
- S/he will subject the plant to continuous surveillance;
- S/he will carry out maintenance and repairs as per accepted rules of technology; and
- S/he will take precautions to avoid errors in operation.

8.3.5 Rules under Environment Protection Act, 1986

Various rules have been made in connection with several matters governed by the Environment Protection Act, 1986, covering, *inter alia*, standards for the discharge of effluents, management of hazardous wastes and chemicals (under Section 8) and laboratories (Sections 12 and 13).

8.3.5.1 Hazardous Waste (Management & Handling) Rules, 1989

The Hazardous Wastes (Management and Handling) Rules, 1989, make provisions for designated wastes, such as:

- Cyanide wastes;
- Wastes from dyes; and
- Other scheduled wastes.

The provisions are made to ensure proper handling (Rule 4) and to obtain clearance from the State Pollution Control Board before handling (Rule 6). Packaging, labeling and transportation are also regulated (Rule 7). State governments often meet to compile and publish an inventory of hazardous waste disposal sites (Rule 8).

Import for dumping and disposal in India is prohibited, though import for processing or re-use as raw material may be permitted (Rule 11). But the State Pollution Control Boards must examine each case of import and the permission of the Ministry of Environment & Forests is required for import (Rule 11).

8.3.5.2 Guidelines for management of hazardous wastes

The Guidelines for Management of Hazardous Wastes have been issued regarding hazardous wastes (see Box-8.1). The occupier/generator will be allowed to store a maximum of 10,000 kg of hazardous

wastes on a site for 90 days (extendable on case to case basis). The occupier etc. may be allowed to store only in closed specified containers and in a designated protected area under the prescribed guidelines. They prescribe other restrictions also.

Box 8.1: Delhi Judgement on Hazardous Toxic Wastes

In *Harshvardhan Steels vs. the Union of India* (CWP 67 of 1996), the Delhi High Court banned the import of toxic waste and directed the Government to file certain affidavits. A connected matter was also pending in the Supreme Court. Thereafter, on 16th January 1997, a draft notification was issued, inviting objections against the (proposed) ban on import of hazardous wastes containing certain specified wastes. These include, *inter alia*: asbestos, chromium, thallium, pesticides, herbicides and insecticides.

8.3.5.3 Levels of requirement

Different levels of controls are prescribed, depending on the danger posed by that particular class of chemicals. These are classified as Low Level, Medium Level and High Level Requirements. 434 chemicals are included in the first category, 179 in the second category and 27 in the third category.

In the case of Low Level controls, the emphasis is on precautions to prevent major accidents and occurrences, reporting of such accidents etc., limiting the consequences, preparing material safety sheets and level containers, reporting of imports, etc. In the case of Medium Level controls, there are additional requirements, such as notification of the site, preparation of 'on site' emergency plans, informing the public about the possibilities of accidents and about desirable precautions. In the case of High Level controls, a safety report is yet to be prepared.

Rule 10 of the rules, relating to chemicals, makes provisions for safety reports and safety audit. The audit report is prepared by an independent expert and has to be revised periodically.

8.3.6 Legislation relating to pesticides

The main Act in India relating to pesticides is the Insecticides Act, 1968. The Destruction of Pests and Insects Act, 1914, and the Poisoning Act, 1919, are not directly relevant to the present theme.

8.3.6.1 Genesis

The Insecticides Act, 1968, came to be enacted after several cases of food poisoning caused by insecticides were reported. This was during April and May, 1958, when many persons died, or fell ill owing to food poisoning arising from contamination with a poisonous organo-phosphorus insecticide, parathion. The Union Government appointed a Committee of Inquiry, whose recommendations were implemented in the Act of 1968.

According to this Act, pesticides, for this purpose, should include chemicals or other products, including biological agents, which are used for destroying, repelling, mitigating or reducing the population of insects, rodents, nematodes, fungi, weed or other forms of life declared as 'pests'.

8.3.6.2 Scheme of the Insecticides Act, 1968

The Insecticides Act provides for the regulation of import, manufacture, sale, transport, distribution and use of insecticides with a view to preventing risk to human beings or animals connected therewith. The manufacture and distribution of insecticides is regulated through registration and licensing.

The Act establishes a Central Insecticides Board to advise the Centre and the States on technical aspects of the Act. A Committee of this Board registers insecticides.

Apart from this Act, the nature of pesticide residues and their tolerance limits are also regulated under the Prevention of Food Adulteration Act, 1954. The residues in air and water are registered under Air (Prevention & Control of Pollution) Act, 1981, and Water (Prevention & Control of Pollution) Act, 1974, respectively. Overall environmental aspects are covered under the Environment Protection Act, 1986.

So far, over 150 pesticides have been examined for registration purposes and may be categorised as follows:

- Insecticides registered and approved for use on a regular basis;
- Insecticides registered provisionally for generation of data under Indian conditions;
- Approved for specific uses only with the permission of the Government of India, Ministry of Chemical's Plant Protection Directorate;
- Pesticides recommended for one time use/restricted use under emergency situations;
- Insecticides phased out of use; and
- Insecticides not approved for registration.

8.3.6.3 Registration procedure

The Registration Committee, on receiving an application, may make necessary inquiries to confirm the claims made by the importer or the manufacturer and can vary the conditions of registration. The aggrieved party can appeal to the Central Government within a period of thirty days from the date of communication of the decision to him by the Registration Committee.

The Registration Committee may refuse to register the insecticide on the ground that precautions claimed by the applicant to ensure the safety of human beings and animals, cannot be easily observed in the use of the insecticide.

8.3.6.4 Misbranding

Misbranding of pesticides is prohibited by Section 3(k) of the Act. In Section 3(k), it is provided that a pesticide is deemed to be misbranded if:

- Its label contains any statement, design or graphic representation, which is false or misleading relating to any particular constituent, or its package is otherwise deceptive; or
- It is an imitation or is sold under the name of another insecticide; or
- Its label does not contain a warning which may be necessary, and if complied with, sufficient to prevent risk to human beings or animals; or
- Any word, statement or other information required under this Act to appear on the label is not displayed in such a conspicuous manner; or
- It is not packed or labeled in accordance to this Act; or
- It is not registered in the manner required by this Act; or
- The insecticide has a toxicity, which is higher than the level prescribed, or is mixed or packed with any substance so as to alter its nature or quality, or contains any substance, which is not included in the registration.

8.3.6.5 Prohibition of manufacture, sale and import of certain insecticides

Section 17 of the Insecticides Act, 1968, prohibits a person, either by her/himself or through another, to import or manufacture any:

- Misbranded insecticide;
- Insecticide, the sale, distribution or use of which is, for the time being, prohibited under Section 27;
- Insecticide, except in accordance with the conditions on which it was registered; and
- Insecticide, in contravention of any other provisions of this Act or of any rule made there under.

It is also provided that no person (either by her/him or through another), is permitted to manufacture any insecticide except in accordance with a license issued for such a purpose.

Section 18 of the Insecticides Act, 1968, prohibits the sale of certain insecticides. As per its provisions, no one, (whether by her/himself or by any person on her/his behalf), shall sell, stock, exhibit for sale or distribute any insecticide:

- Which is not registered in accordance with the provisions of this Act;
- Use of which is for the time being prohibited under Section 27; and
- In contravention of any other provision of this Act or of any rule made under it.

There is also a prohibition under Section 18(2) of the Act, to sell, stock or exhibit for sale or distribute or use for commercial pest-control operations, any insecticide, except under and in accordance with the conditions of a license issued for such purposes under this Act.

8.3.6.6 Offences and punishment

Section 29 of the Insecticides Act deals with offences and penal provisions. Under the provisions, whosoever:

- Imports, manufactures, sells, stocks or exhibits for sale or distributes any insecticide which is misbranded; or
- Imports or manufactures, or sells any insecticide without a certificate of registration; or
- Manufactures, sells, stocks or exhibits for sale or distribution an insecticide in contravention of the Act; or
- Causes an insecticide, the use of which has been prohibited under Section 27, to be used by any worker; or
- Obstructs an insecticide inspector in the discharge of her/his duties, shall be punishable, in the case of a first offence, with imprisonment of up to two years or with a fine of up to two thousand rupees, or both. For the second and subsequent offence, the person charged is punishable with imprisonment up to three years or with fine, or both.

In addition, any person using the insecticide in contravention of this Act shall also be punishable with a fine of up to five hundred rupees.

8.4 IMPLEMENTATION

The environmental law in India, when studied along with the administrative network evolved for implementing the same, is found to be highly complex. It is seen that the multiplicity of laws has led to a multiplicity of administrative mechanisms. A single legislative measure may sometimes involve different administrative departments.

8.4.1 General observations

Implementation of legislation involves:

- Framing of detailed rules to carry out the purpose of the legislation;
- Enforcing the legislation by non-penal measures;
- Enforcing the legislation by penal measures; and
- Giving enough publicity to the legislation.

8.4.2 Complex measures

The variety of agencies administering segments of the relevant legislation has given rise to the possibility of a large number of statutory and non-statutory instruments being issued by the agency concerned. Some are statutory, for example those that are issued under the formal designation of rules.

Some are non-statutory, having been issued as executive instructions. In between the two categories, one has to place the Guidelines, issued by the Ministry or department concerned. To cap it all, there are also published Manuals. An exhaustive discussion of the administrative framework would easily make a book of modest size. What is being offered in this chapter, is only a brief outline.

8.4.3 The Ministries

At the Union level, the Ministries mainly concerned with environmental issues are:

- Ministry of Environment & Forests, concerned with the Environment Protection Act, 1986, the Forest Conservation Act, 1980 and the Insecticides Act, 1968 (protection of environment part only);
- Ministry of Agriculture, concerned with the Insecticides Act, 1968 (the registration authority, and the State Department of Agriculture implements the law);
- Ministry of Chemicals & Fertilisers, concerned with the Insecticides Act, 1968 (import and manufacture of pesticides, at the national and state levels as the case may be);
- Ministry of Health & Family Welfare (through the Controller of Drugs), concerned with the Poisons Act, 1918, and the Insecticides Act, 1968 (regarding the aspect of pesticide residues in food and their health implications. The enforcing authority is the Food and Drug Administration of each State);
- Ministry of Labour, the Director General and the Chief Inspector of Factories in the respective states, concerned with the Factories Act, 1948; and
- Ministry of Surface Transport, concerned with the Motor Vehicles Act, 1988.

Furthermore, the Ministry of Environment & Forests, concerned with the following recent enactments:

- National Environmental Tribunal Act, 1995, and
- National Environmental Appellate Authority Act, 1997.

8.4.4 The Boards

The following are the principal Boards constituted for the enforcement of some of the important laws relating to environment:

- Central Pollution Control Board (CPCB);
- State Pollution Control Boards (SPCB);

- Joint Pollution Control Board; and
- Pollution Control Committees (these can be vested with certain functions in areas for which no statutory Board, as such, has been constituted).

The Boards mentioned above were initially envisaged by the Water (Prevention and Control of Pollution) Act, 1974, but later their functions were widened to cover control of other kinds of hazards to the environment.

The Central Board is the most important amongst all the agencies mentioned above, not only because its role in the formation and implementation of policy is crucial, but also because it has statutory powers to issue certain directions to the State Boards.

8.4.4.1 Functions

The Boards (within their respective jurisdictions), are required to advise, plan and execute programmes to check pollution, to provide technical assistance and guidance to organise education programmes, to lay down standards, to establish laboratories for analysis of samples and to perform several other functions laid down in the respective Acts.

It appears that the Boards have to perform a variety of functions. Thus, the Central Board is concerned with Pollution Assessment, Pollution Control and Technical and Administrative Work as mentioned in its Annual Reports.

Its 'Assessment' function involves survey and monitoring. Its 'Control' function covers chemical industries, basic industries as well as agriculture-based industries (both planning and control). Its 'Technical and Administrative' functions comprise laboratories, research and development, information, drafting publications, public awareness, complaints, etc.

8.4.4.2 The Committees

The Central Board can constitute committees for various purposes (Section 4, Water Act, Section 6, Air Act) and has accordingly delegated powers to Committees for Union Territories.

8.4.5 The Authorities

A large number of authorities are vested with various functions relating to environmental laws. The important ones are:

- National Environment Appellate Authority (headed by a retired Supreme Court Judge), created under the Act of 1997, to hear appeals against refusal orders;
- Environmental Impact Assessment Authority, created under the Environment Protection Act, 1986 (headed by a retired High Court Judge), to deal with the scrutiny of impact statements concerning projects;
- Loss of Ecology (Prevention and Payment of Compensation) Authority, created for the State of Tamil Nadu, to assess the loss caused in affected areas and to assess the compensation for loss caused to individuals and families;
- Various Committees dealing with hazardous micro-organisms and genetically engineered cells, such as:
 - Advisory Committee on Hazardous Organisms,
 - DNA Advisory Committee,
 - Review Committee on Genetic Manipulation,

- Institution Bio-safety Committee, and
- Genetic Engineering Approval Committee.

The first four Committees function under the Department of Bio-technology. The fifth one functions under the Ministry of Environment & Forests.

8.5 DRAWBACKS OF THE SYSTEM

8.5.1 General observations

The legal framework in India relating to the environment is fairly complex. If one focuses one's attention on the Environment Protection Act, 1986, one finds that the coverage is very vast. The Act is fairly exhaustive, relating to diverse matters and authorising various agencies to deal with environment related problems as discussed earlier. On the other hand, there are four Ministries dealing with various aspects of the Insecticides Act, 1968.

8.5.2 The complexity of the legal framework

The large number of Statute Laws relating to the environment, referred to in one of the preceding paragraphs, also has its drawbacks. In addition, there is the situation that several sub-ordinate legislations (rather than the parent Act themselves), now constitute the regulatory mechanisms. Besides this, there are some areas in which case laws and statutes cross each other. This makes it difficult for the ordinary citizens to grasp the gist of the law in its totality.

8.5.2.1 Main drawbacks

The main drawbacks of the legal framework are stated below.

- Multiplicity of laws leads to complexity, thereby rendering difficulties for the citizens, as well as the bureaucracy, agencies and personnel concerned with adjudication and enforcement;
- So far as chemicals are concerned, the parent Act, namely, the Environment Protection Act, 1986, contains very little substance of regulatory content. One must wade through a good deal of sub-ordinate legislation to have a reasonably accurate picture thereof. Now, such sub-ordinate legislation—i.e. the instruments issued in that form—are not easily available to the public, particularly with the amendments incorporated. This deters easy enforcement and compliance; and
- The co-existence of statutory provisions—particularly enactments such as the Public Liability Insurance Act and the National Environmental Tribunal Act—together with case laws, creates confusion, even in the minds of members of the legal profession—not to speak of lay persons.

8.5.2.2 Why the confusion?

There are two main reasons for the confusion:

- The subject is treated in the legislation on some one basis, while the case law deals with it on a different basis; and
- Concepts and expressions employed in the judicial exposition do not possess the precision that can be found or achieved in statutory language.

8.5.3 Position in India vis-à-vis other countries

Broadly speaking, in the context of environmental legislation in India, while the framing of regulations under the parent acts (the duty of the Governments and the Boards), are taken as occupying a position of priority, enforcement through other measures has not received adequate attention.

However, it must be mentioned that unlike the USA, India has not enacted an Environmental Policy Act. In the United States, the National Environmental Policy Act, 1969, Section 101, makes it the policy of the Federal Government to use all practicable means to administer federal programmes in the “environmentally soundest” fashion.

In furtherance of this purpose, Section 102(1) requires that the laws and regulations of the United States shall be ‘administered’ in accordance with the policies set forth. The lack of a specific enactment in India leads to a dismal environmental scenario in the country.

8.5.4 Shortfalls in implementation

The main shortfalls in implementation arise from the fact that enforcement of environmental legislation is primarily conceived of as comprising coercive measures. But the nature of the matter is such that it is paramount that other aspects of enforcement are also taken into account.

8.5.4.1 Inadequacy

Inadequacy of enforcement is reflected in judicial developments. These developments in the field of environmental law, particularly through public interest litigation, show that those concerned, in the official machinery, do not appreciate the need to enforce the legislation in question—which drives the citizens to seek relief through the already overburdened courts. It is also desirable that the rules, executive instructions and guidelines should be made easily available to the interested companies etc.

An example of inadequate implementation can be found in the Insecticides Act, 1968. At the time the Act came into force, in 1971, those chemical pesticides which were in use were “deemed to be registered” by the Registration Committee of the Central Insecticides Board.

The registrants were required to submit the required safety and other data within a prescribed deadline. Since de-registration is not an easy procedure, a large majority of the 150 or so pesticides used in the country continue to be deemed to be registered without submission of their toxicological profiles and data on residue chemistry.

8.6 HEALTHY ENVIRONMENT AND CONSUMER RIGHTS

8.6.1 Relevance

Coming to the traditionally recognised rights of consumers, at least two rights have assumed importance in the context of environmental legislation in India: information and redressal.

8.6.2 Information

In India, it is extremely difficult to get information about the working of the Government. The Right to Information Bill (to be placed before parliament), may remove this legal obstacle. But, greater importance should be attached to the supply of information to those interested in the subject. In fact, the authorities concerned should on their own (*suo moto*) supply or publish information related to public affairs.

In India, information is often ill provided. For example, as a corollary to the Insecticides Act, 1968, the Insecticides Rules, 1971, were enacted primarily for the purpose of providing information relating to the use of pesticides “with a view to prevent risk to human beings”.

As a rule, the labeled information on the product pack should include the common name and chemical nomenclature of the active ingredient, composition of the formulation, its application against specific pests and directions for use, first-aid instructions and antidotes.

The package/container must contain a leaflet printed in all the major languages of the region, giving detailed technical information about the insecticide, precautions regarding decontamination and safe disposal of used containers/packages. However, in the majority of cases the printed matter is illegible.

Furthermore, under the Insecticides Rules, 1971, a colour code had been prescribed on the label of a pesticide pack to signify the toxicity of that particular product formulation (see Table 8.1).

Table 8.1: Colour Codes for Pesticides			
Category	Signal Word	Colour Code	Probable Lethal Dose (If Liquid)
Extremely toxic	Poison	Bright red	A few drops—one teaspoon
Highly toxic	Poison	Bright yellow	Up to 30 ml
Moderately toxic	Danger	Bright blue	30 ml – 0.50 litre
Slightly toxic	Caution	Bright green	Over 0.50 litre
Source: <i>Pesticides and You: Buying Guide</i> , Consumer Guidance Society of India, Bombay, Undated			

8.6.3 Redressal

The avenues of redress for environmental wrongs are many (see Bakshi, P M, *Procedural Options in Environmental Law*, Indian Law Institute, New Delhi, 1993). In brief, the remedies are available as under:

- The Constitution (through writ petitions under Articles 32 and 226);
- The Code of Civil Procedure, 1908 (Section 91);
- The Code of Criminal Procedure, 1973 (Sections 133 to 144);
- Prosecutions under the Indian Penal Code;
- Prosecution under the specific Act;
- Suit by an individual who has suffered special damage (in tort); and
- Suit for compensation under the Public Liability Insurance Act, 1991, and the National Environmental Tribunals Act, 1995.

The last remedy cited is hedged in with the restriction of observance of certain formalities, e.g. notice, etc. These need to be re-examined.

Recently, the Government issued an Ordinance for the establishment of the National Environment Appellate Authority. The Authority shall have a former judge of the Supreme Court or Chief Justice of a High Court as the Chairperson, a Vice-Chairperson and three Expert Members.

8.7 CASE STUDIES

8.7.1 General observations

It is proposed to present here a few case studies, illustrating the application, in practice, of various statutory provisions and constitutional remedies.

8.7.2 Ethyl alcohol

Rajiv Singh vs. State of Bihar, AIR 1992, Patna, 1986, is a case relating to ethyl alcohol. On the basis of a report published in the Hindi weekly *Ravivar*, a social action group filed a writ petition in the Patna High Court, alleging that the respondent, Shankar Chemical Industries Private Limited, Jagdishpur, near Bhagalpur, in Bihar, was manufacturing ethyl alcohol and discharging untreated effluent chemical wastes and sewage. This was not only polluting and damaging the environment but also impaired the health of the people. The petitioner invoked the following provisions:

- Articles 14, 21, 47 and 48(a) of the Indian Constitution;
- Sections 16 and 17, Water (Prevention and Control of Pollution) Act, 1947; and
- Sections 3 and 8 of the Environment Protection Act, 1986.

The High Court initially directed an inquiry and obtained a report from a Committee of Experts and then temporarily suspended all manufacturing processes in the distillery. By a later order, passed after considering another Report from the Department of Environment & Forests of the State Government, the Court permitted resumption of manufacturing, but with certain safeguards. A period of six months was allowed for the implementation of the Court's order. A specific directive was issued by the High Court.

8.7.3 Hazardous industries

In *M C Mehta vs. the Union of India*, 1995, 4 Scale 789, 1995, 7 Scale SP 7, 1996, 4 SCC 351, 1996, 4 Scale 750, the Supreme Court of India, on a writ petition filled by an environmental activist lawyer, passed a series of orders regarding the re-location of certain hazardous industries which were running in non-conforming areas in violation of the Delhi Development Authority Act, 1957, the Master Plan framed by the Delhi Municipal Corporation Act, 1957, and the Factories Act, 1948.

Incidentally, these orders raised questions about the economic consequences of compulsory re-location of industries. The Supreme Court issued appropriate orders to deal with that aspect also.

A major controversy erupted on the shifting/closure of the polluting units in the latter part of the year 2000.

8.7.4 Nature of liability: Oleum case

In 1987, five chemical industries controlled by the same group in village Bichhri, Udaipur, Rajasthan, started producing oleum or concentrated sulphuric acid, in concentrated form and also started producing single super-phosphate. No equipment was installed for the treatment of toxic effluents. The sludge began poisoning the earth, the water in the wells became dark and diseases began to spread.

The Indian Council for Enviro-legal Action approached the Supreme Court with a writ petition on behalf of "villagers whose right to life is violated". The Supreme Court re-affirmed the principle of absolute liability laid down earlier in *M C Mehta vs. the Union of India*, 1987, 1 SCC 395.

According to this principle, if the activity is hazardous or inherently dangerous, the person carrying on the business must make good the loss caused to any other person by his activity, irrespective of the fact whether he took reasonable care while carrying on his activity. Invoking the principle "polluter pays", the Supreme Court declared that responsibility for repairing the damage was that of the industry. The Rajasthan State Pollution Control Board directed the factories to be sealed. Re-opening would depend on compliance with the directions and obtaining of the necessary permissions.

8.7.5 Lessons to be drawn

While these sample studies demonstrate the utility and potency of public interest litigation, they also illustrate the unfortunate situation of the inadequate enforcement machinery to oversee the implementation of environmental litigation.

8.8 HOW TO IMPROVE?

The specific acts related to pollution, public liability and other aspects of environmental law give extra support to the Act of 1986. If a matter cannot be regulated under the Act of 1986, one can still have recourse to specific acts. Conversely, if one finds that the specific Act—such as that dealing with water pollution or air pollution is lacking in any feature, one can still have recourse to the Act of 1986, which is not hedged in by a language of specificity.

8.8.1 Role of sub-ordinate legislation

It is also relevant to mention that at least the Environment Protection Act, 1986, has to be designed so as to confer extremely wide powers to make subordinate legislation. The result is that there is hardly any topic belonging to the domain of environment that cannot be regulated by ‘sub-legislation’ under the Environment Protection Act, 1986.

8.8.1.1 Legislation and sub-legislation

Avenues for improvement with regard to legislation and sub-legislation are:

- The content of the environmental legislation in India does not require any substantial addition. But, pending its consolidation in one place, which may take considerable time, the government should bring out and make available to the public a collection of all laws on the subject (this will also be useful for training—see Section 8.8.3 below); and
- Sub-ordinate legislation on the subject similarly needs to be collected at one place and updated. If that is not possible, separate rules should be made easily available to those affected by, or interested in, the subject.

8.8.2 On case law

A good deal of the content of environmental law in India is now derived from case law. The gist of important decisions to date should be brought out by the Government, to promote legal literacy and public awareness. It should be done on a dynamic basis, as the volume and complexity of case laws grows every week.

8.8.3 On training

Training occupies an important role in enacting and delivering various laws relating to the consumers’ right to a healthy environment. It has now become necessary to impart training to concerned officials of the Government, including officers of local authorities, regarding the general outline of environmental law and litigation. The training should focus on the essentials of:

- The legislation,
- The sub-legislation,
- The administrative machinery,

- Litigation process,
- Important case laws, and
- Procedural aspects.
- The training duration should not be too long. The objective should be to provoke interest and make the participants familiar with the subject; and
- A collection of Central Acts, prepared as stated above, would be useful for the purpose.

8.8.4 On poison information centres

There has been a long felt need for effective, comprehensive, integrated, need-based poison information centres (PIC). There are so many chemicals being used but not enough information and experience is available in dealing with them. Even when such information exists, it is not easily accessible when required.

The hazardous effects of pesticides are known, yet those who mix and spray them are still unaware of their hazards. Health professionals are ignorant of their brand names. They are also ignorant of the clinical presentation of poisoning cases due to injudicious mixing of insecticides, herbicides and fungicides.

All this would require information on usage patterns. There is a perpetual shortage, even absence, of antidotes to poisonous pesticides in government-run health centres. And private practitioners are unwilling to deal with such serious cases of poisoning.

The role of the poison information centre (PIC) would involve identification of problem areas, and associated work towards prevention and prompt treatment. These include:

- Identification of areas reporting large-scale poisoning;
- Identification of toxic substances-related actions already taken up by local groups;
- Identification of various public interest litigation filed by communities suffering from the toxic hazards of chemical effluents;
- Support to the organised efforts of communities who have been victims, should be given priority; and
- Monitoring by the Central and State Pollution Control Boards, in order to prevent such tragedies.

8.8.5 Eco-safety of products

The majority of relatively highly toxic pesticides as per the World Health Organisation classification, which are used under agriculture programmes or vector control of public health, are for specific unavoidable use with considerable benefits to the community. These are need-based and because of their inherent toxicity, they will not meet the rigid safety criteria. These are exceptions.

Now, a large number of chemical pesticides are used for household purposes and for personal hygiene etc. Unfortunately, there is a mushrooming growth of such products in the market place. These are usually freely available to the consumer and many of them are not even registered under the Insecticides Act, 1968.

Therefore, priority should be given to the regulation of this category of products. Moreover, programmes for eco-compatible alternative measures for pest management, like Integrated Pest Management, should be encouraged. Botanical pesticides and biological agents, such as *neem* formulations and predators, should be the thrust area of research and development.

8.8.6 Insecticides Act, 1968—Suggestions for effective implementation

With respect to effective implementation of the Insecticides Act, 1968, the following issues and suggestions are to be considered:

- In order to end the fragmentation and piece-meal approach of responsibility, it will be appropriate that all the related legislation is located or coordinated by a single agency;
- Reorganisation should be effected with a view to ensuring the efficiency of regulation of different laws and achieving optimal functioning of statutory bodies. The implementation agency should be distinct from the main user agencies, i.e. the Ministry of Agriculture and the Ministry of Health & Family Welfare;
- It is necessary to examine the relevant provisions of the concerned Acts to bring about clarity with reference to the authorities who are to set environmental safety criteria, and the authorities responsible for enforcement;
- Non-compliance of toxicological data submission by the registrants for the manufacture of pesticides is the single important factor for the current state of affairs under the Insecticides Act, 1968 (a majority of pesticides are virtually registered conditionally). This matter is to be examined by the concerned authorities with reference to the eco-safety of pesticides; and
- The registration at present is a one-time decision and cannot be revoked or withdrawn except under special circumstances. In fairness, registration should be time-bound, that is, for five to seven years, and be reviewed at each stage of renewal giving due weightage to new information generated and weeding out out-dated eco-dumping pesticides in preference of safer eco-compatible substitutes.

Furthermore, the label on a pesticide container should ideally have all the relevant information. If the label is too small, it can be included in an accompanying information booklet, and should be given in all local languages. If need be, important information can be shown with the help of pictograms for the benefit of uneducated users. The label should contain at least the following information:

- Product name;
- Name & address of manufacturing company;
- Net contents;
- Pesticide registration number;
- Precautionary statement;
- Child hazards warning;
- Signal word CAUTION in bold letters;
- Statement of practical treatment;
- Directions for use;
- Antidote;
- Statement of pesticide classification;
- Storage and disposal methods; and
- Physical or chemical hazards.

Consumer organisations can, and should, play an active role in this regard. They should, if possible, with the help of manufacturers, organise consumer awareness camps, to train consumers in the safe use and handling of pesticides. Debates should be initiated about the desirability of using chemical pesticides to the exclusion of all other methods. Consumer organisations can also act as pressure groups forcing manufacturers to opt for safer and environmentally sound production and distribution processes.

8.8.7 In short...

In short, with respect to the consumers' right to healthy environment, consumer laws should take into account the following:

- Promoting the use of products, which are environment-friendly;
- Encouraging recycling of consumer goods;
- Requiring environmentally dangerous products to carry appropriate warnings and instructions for their safe use and disposal;
- Promoting consumer awareness of safer alternatives to toxic products;
- Encouraging the promotion of ethical and socially responsible practices by the producers and suppliers of goods and services;
- Ensuring that social costs of pollution are minimised; and
- Establishing procedures to monitor international developments, and ensuring that the products that are banned/restricted overseas do not find their way into the national market.

8.9 CONCLUSIONS

The above mentioned analysis clearly brings out the various facets of the issue of the right to a healthy environment, as experienced in India. Governments have tried to ensure a healthy environment for its citizens by enacting a plethora of laws and regulations.

However, the important issue for ensuring a healthy environment is not the number of laws and regulations, but its qualitative aspects. A law can be good only when its implementation is comprehensive. The other important characteristic of a 'good' law (good governance) is related to its reach. The question is whether civil society at large has an effective access to the law.

Lawmakers are blamed because of the poor implementation of laws in India. The "Environment Protection Act" is the holistic law regarding the right to a healthy environment. However, the lack of proper implementation of this holistic as well as overreaching law/act makes it difficult for the consumers to enjoy a healthy environment.

To sum up, for the effective implementation of laws/acts regarding consumers' right to a healthy environment, it is imperative that they be multi-dimensional. The lack of emphasis on any one of them would certainly lead to poor public policy, and hence, associated public action. This is where the consumer organisations come into the picture. Consumer organisations should organise themselves and get involved in the various processes of implementation of Acts and laws, which are made for the benefit of the consumers, since the majority of them are not aware of such laws or of their rights.

This chapter is researched and written with inputs from Mr. P M Bakshi, former Member of the Law Commission of India, New Delhi and Mr N G Wagle, Chairman, Consumer Guidance Society of India, Bombay.

UNITED NATIONS GUIDELINES FOR CONSUMER PROTECTION

I. OBJECTIVES

1. Taking into account the interests and needs of consumers in all countries, particularly those in developing countries; recognising that consumers often face imbalances in economic terms, educational levels, and bargaining power; and bearing in mind that consumers should have the right of access to non-hazardous products, as well as the right to promote just, equitable and sustainable economic and social development and environmental protection, these guidelines for consumer protection have the following objectives:
 - (a) To assist countries in achieving or maintaining adequate protection for their population as consumers;
 - (b) To facilitate production and distribution patterns responsive to the needs and desires of consumers;
 - (c) To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;
 - (d) To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers;
 - (e) To facilitate the development of independent consumer groups;
 - (f) To further international cooperation in the field of consumer protection;
 - (g) To encourage the development of market conditions which provide consumers with greater choice at lower prices.
 - (h) To promote sustainable consumption.

II. GENERAL PRINCIPLES

2. Governments should develop or maintain a strong consumer protection policy, taking into account the Guidelines set out below and relevant international agreements. In so doing, each Government should set its own priorities for the protection of consumers in accordance with the economic, social and environmental circumstances of the country and the needs of its population, bearing in mind the costs and benefits of proposed measures.
3. The legitimate needs which the guidelines are intended to meet are the following:
 - (a) The protection of consumers from hazards to their health and safety;

- (b) The promotion and protection of the economic interests of consumers;
 - (c) Access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs;
 - (d) Consumer education, including education on the environmental, social and economic impacts of consumer choice;
 - (e) Availability of effective consumer redress;
 - (f) Freedom to form consumer and other relevant groups or organisations and the opportunity of such organisations to present their views in decision-making processes affecting them;
 - (g) The promotion of sustainable consumption patterns.
4. Unsustainable patterns of production and consumption, particularly in industrialised countries, are the major cause of the continued deterioration of the global environment. All countries should strive to promote sustainable consumption patterns; developed countries should take the lead in achieving sustainable consumption patterns; developing countries should seek to achieve sustainable consumption patterns in their development process, having due regard to the principle of common but differentiated responsibilities. The special situation and needs of developing countries in this regard should be fully taken into account.
 5. Policies for promoting sustainable consumption should take into account the goals of eradicating poverty, satisfying the basic human needs of all members of society, and reducing inequality within and between countries.
 6. Governments should provide or maintain adequate infrastructure to develop, implement and monitor consumer protection policies. Special care should be taken to ensure that measures for consumer protection are implemented for the benefit of all sectors of the population, particularly the rural population and people living in poverty.
 7. All enterprises should obey the relevant laws and regulations of the countries in which they do business. They should also conform to the appropriate provisions of international standards for consumer protection to which the competent authorities of the country in question have agreed. (Hereinafter references to international standards in the guidelines should be viewed in the context of this paragraph.)
 8. The potential positive role of universities and public and private enterprises in research should be considered when developing consumer protection policies.

III. GUIDELINES

9. The following guidelines should apply both to home-produced goods and services and to imports.
10. In applying any procedures or regulations for consumer protection, due regard should be given to ensuring that they do not become barriers to international trade and that they are consistent with international trade obligations.

A. Physical safety

11. Governments should adopt or encourage the adoption of appropriate measures, including legal systems, safety regulations, national or international standards, voluntary standards and the maintenance of safety records to ensure that products are safe for either intended or normally foreseeable use.

12. Appropriate policies should ensure that goods produced by manufacturers are safe for either intended or normally foreseeable use. Those responsible for bringing goods to the market, in particular suppliers, exporters, importers, retailers and the like (hereinafter referred to as “distributors”), should ensure that while in their care these goods are not rendered unsafe through improper handling or storage and that while in their care they do not become hazardous through improper handling or storage. Consumers should be instructed in the proper use of goods and should be informed of the risks involved in intended or normally foreseeable use. Vital safety information should be conveyed to consumers by internationally understandable symbols wherever possible.
13. Appropriate policies should ensure that if manufacturers or distributors become aware of unforeseen hazards after products are placed on the market, they should notify the relevant authorities and, as appropriate, the public, without delay. Governments should also consider ways of ensuring that consumers are properly informed of such hazards.
14. Governments should, where appropriate, adopt policies under which, if a product is found to be seriously defective and/or to constitute a substantial and severe hazard even when properly used, manufacturers and/or distributors should recall it and replace or modify it, or substitute another product for it; if it is not possible to do this within a reasonable period of time, the consumer should be adequately compensated.

B. Promotion and protection of consumers’ economic interests

15. Government policies should seek to enable consumers to obtain optimum benefit from their economic resources. They should also seek to achieve the goals of satisfactory production and performance standards, adequate distribution methods, fair business practices, informative marketing and effective protection against practices which could adversely affect the economic interests of consumers and the exercise of choice in the market-place.
16. Governments should intensify their efforts to prevent practices which are damaging to the economic interests of consumers through ensuring that manufacturers, distributors and others involved in the provision of goods and services adhere to established laws and mandatory standards. Consumer organisations should be encouraged to monitor adverse practices, such as the adulteration of foods, false or misleading claims in marketing and service frauds.
17. Governments should develop, strengthen or maintain, as the case may be, measures relating to the control of restrictive and other abusive business practices which may be harmful to consumers, including means for the enforcement of such measures. In this connection, Governments should be guided by their commitment to the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices adopted by the General Assembly in resolution 35/63 of 5 December 1980.
18. Governments should adopt or maintain policies that make clear the responsibility of the producer to ensure that goods meet reasonable demands of durability, utility and reliability, and are suited to the purpose for which they are intended, and that the seller should see that these requirements are met. Similar policies should apply to the provision of services.
19. Governments should encourage fair and effective competition in order to provide consumers with the greatest range of choice among products and services at the lowest cost.
20. Governments should, where appropriate, see to it that manufacturers and/or retailers ensure adequate availability of reliable after-sales service and spare parts.
21. Consumers should be protected from such contractual abuses as one-sided standard contracts, exclusion of essential rights in contracts, and unconscionable conditions of credit by sellers.

22. Promotional marketing and sales practices should be guided by the principle of fair treatment of consumers and should meet legal requirements. This requires the provision of the information necessary to enable consumers to take informed and independent decisions, as well as measures to ensure that the information provided is accurate.
23. Governments should encourage all concerned to participate in the free flow of accurate information on all aspects of consumer products.
24. Consumer access to accurate information about the environmental impact of products and services should be encouraged through such means as product profiles, environmental reports by industry, information centres for consumers, voluntary and transparent eco-labelling programmes and product information hotlines.
25. Governments, in close collaboration with manufacturers, distributors and consumer organisations, should take measures regarding misleading environmental claims or information in advertising and other marketing activities. The development of appropriate advertising codes and standards for the regulation and verification of environmental claims should be encouraged.
26. Governments should, within their own national context, encourage the formulation and implementation by business, in cooperation with consumer organisations, of codes of marketing and other business practices to ensure adequate consumer protection. Voluntary agreements may also be established jointly by business, consumer organisations and other interested parties. These codes should receive adequate publicity.
27. Governments should regularly review legislation pertaining to weights and measures and assess the adequacy of the machinery for its enforcement.

C. Standards for the safety and quality of consumer goods and services

28. Governments should, as appropriate, formulate or promote the elaboration and implementation of standards, voluntary and other, at the national and international levels for the safety and quality of goods and services and give them appropriate publicity. National standards and regulations for product safety and quality should be reviewed from time to time, in order to ensure that they conform, where possible, to generally accepted international standards.
29. Where a standard lower than the generally accepted international standard is being applied because of local economic conditions, every effort should be made to raise that standard as soon as possible.
30. Governments should encourage and ensure the availability of facilities to test and certify the safety, quality and performance of essential consumer goods and services.

D. Distribution facilities for essential consumer goods and services

31. Governments should, where appropriate, consider:
 - (a) Adopting or maintaining policies to ensure the efficient distribution of goods and services to consumers; where appropriate, specific policies should be considered to ensure the distribution of essential goods and services where this distribution is endangered, as could be the case particularly in rural areas. Such policies could include assistance for the creation of adequate storage and retail facilities in rural centres, incentives for consumer self-help and better control of the conditions under which essential goods and services are provided in rural areas;
 - (b) Encouraging the establishment of consumer cooperatives and related trading activities, as well as information about them, especially in rural areas.

E. Measures enabling consumers to obtain redress

32. Governments should establish or maintain legal and/or administrative measures to enable consumers or, as appropriate, relevant organisations to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Such procedures should take particular account of the needs of low-income consumers.
33. Governments should encourage all enterprises to resolve consumer disputes in a fair, expeditious and informal manner, and to establish voluntary mechanisms, including advisory services and informal complaints procedures, which can provide assistance to consumers.
34. Information on available redress and other dispute-resolving procedures should be made available to consumers.

F. Education and information programmes

35. Governments should develop or encourage the development of general consumer education and information programmes, including information on the environmental impacts of consumer choices and behaviour and the possible implications, including benefits and costs, of changes in consumption, bearing in mind the cultural traditions of the people concerned. The aim of such programmes should be to enable people to act as discriminating consumers, capable of making an informed choice of goods and services, and conscious of their rights and responsibilities. In developing such programmes, special attention should be given to the needs of disadvantaged consumers, in both rural and urban areas, including low-income consumers and those with low or non-existent literacy levels. Consumer groups, business and other relevant organisations of civil society should be involved in these educational efforts.
36. Consumer education should, where appropriate, become an integral part of the basic curriculum of the educational system, preferably as a component of existing subjects.
37. Consumer education and information programmes should cover such important aspects of consumer protection as the following:
 - (a) Health, nutrition, prevention of food-borne diseases and food adulteration;
 - (b) Product hazards;
 - (c) Product labelling;
 - (d) Relevant legislation, how to obtain redress, and agencies and organisations for consumer protection;
 - (e) Information on weights and measures, prices, quality, credit conditions and availability of basic necessities;
 - (f) Environmental protection; and
 - (g) Efficient use of materials, energy and water.
38. Governments should encourage consumer organisations and other interested groups, including the media, to undertake education and information programmes, including on the environmental impacts of consumption patterns and on the possible implications, including benefits and costs, of changes in consumption, particularly for the benefit of low-income consumer groups in rural and urban areas.
39. Business should, where appropriate, undertake or participate in factual and relevant consumer education and information programmes.
40. Bearing in mind the need to reach rural consumers and illiterate consumers, Governments should, as appropriate, develop or encourage the development of consumer information programmes in the mass media.

41. Governments should organise or encourage training programmes for educators, mass media professionals and consumer advisers, to enable them to participate in carrying out consumer information and education programmes.

G. Promotion of sustainable consumption

42. Sustainable consumption includes meeting the needs of present and future generations for goods and services in ways that are economically, socially and environmentally sustainable.
43. Responsibility for sustainable consumption is shared by all members and organisations of society, with informed consumers, Government, business, labour organisations, and consumer and environmental organisations playing particularly important roles. Informed consumers have an essential role in promoting consumption that is environmentally, economically and socially sustainable, including through the effects of their choices on producers. Governments should promote the development and implementation of policies for sustainable consumption and the integration of those policies with other public policies. Government policy making should be conducted in consultation with business, consumer and environmental organisations, and other concerned groups. Business has a responsibility for promoting sustainable consumption through the design, production and distribution of goods and services. Consumer and environmental organisations have a responsibility for promoting public participation and debate on sustainable consumption, for informing consumers, and for working with Government and business towards sustainable consumption.
44. Governments, in partnership with business and relevant organisations of civil society, should develop and implement strategies that promote sustainable consumption through a mix of policies that could include regulations; economic and social instruments; sectoral policies in such areas as land use, transport, energy and housing; information programmes to raise awareness of the impact of consumption patterns; removal of subsidies that promote unsustainable patterns of consumption and production; and promotion of sector-specific environmental-management best practices.
45. Governments should encourage the design, development and use of products and services that are safe and energy and resource efficient, considering their full life-cycle impacts. Governments should encourage recycling programmes that encourage consumers to both recycle wastes and purchase recycled products.
46. Governments should promote the development and use of national and international environmental health and safety standards for products and services; such standards should not result in disguised barriers to trade.
47. Governments should encourage impartial environmental testing of products.
48. Governments should safely manage environmentally harmful uses of substances and encourage the development of environmentally sound alternatives for such uses. New potentially hazardous substances should be evaluated on a scientific basis for their long-term environmental impact prior to distribution.
49. Governments should promote awareness of the health-related benefits of sustainable consumption and production patterns, bearing in mind both direct effects on individual health and collective effects through environmental protection.
50. Governments, in partnership with the private sector and other relevant organisations, should encourage the transformation of unsustainable consumption patterns through the development and use of new environmentally sound products and services and new technologies, including information and communication technologies, that can meet consumer needs while reducing pollution and depletion of natural resources.
51. Governments are encouraged to create or strengthen effective regulatory mechanisms for the protection of consumers, including aspects of sustainable consumption.

52. Governments should consider a range of economic instruments, such as, inter alia, fiscal instruments and internalisation of environmental costs, to promote sustainable consumption, taking into account social needs, the need for disincentives for unsustainable practices and incentives for more sustainable practices, while avoiding potential negative effects for market access, in particular for developing countries.
53. Governments, in cooperation with business and other relevant groups, should develop indicators, methodologies and databases for measuring progress towards sustainable consumption at all levels. This information should be publicly available.
54. Governments and international agencies should take the lead in introducing sustainable practices in their own operations, in particular through their procurement policies. Government procurement, as appropriate, should encourage development and use of environmentally sound products and services.
55. Governments and other relevant organisations should promote research on consumer behaviour related to environmental damage in order to identify ways to make consumption patterns more sustainable.

H. Measures relating to specific areas

56. In advancing consumer interests, particularly in developing countries, Governments should, where appropriate, give priority to areas of essential concern for the health of the consumer, such as food, water and pharmaceuticals. Policies should be adopted or maintained for product quality control, adequate and secure distribution facilities, standardised international labelling and information, as well as education and research programmes in these areas. Government guidelines in regard to specific areas should be developed in the context of the provisions of this document.
57. Food. When formulating national policies and plans with regard to food, Governments should take into account the need of all consumers for food security and should support and, as far as possible, adopt standards from the Food and Agriculture Organisation of the United Nations and the World Health Organisation Codex Alimentarius or, in their absence, other generally accepted international food standards. Governments should maintain, develop or improve food safety measures, including, inter alia, safety criteria, food standards and dietary requirements and effective monitoring, inspection and evaluation mechanisms.
58. Governments should promote sustainable agricultural policies and practices, conservation of biodiversity, and protection of soil and water, taking into account traditional knowledge.
59. Water. Governments should, within the goals and targets set for the International Drinking Water Supply and Sanitation Decade, formulate, maintain or strengthen national policies to improve the supply, distribution and quality of water for drinking. Due regard should be paid to the choice of appropriate levels of service, quality and technology, the need for education programmes and the importance of community participation.
60. Governments should assign high priority to the formulation and implementation of policies and programmes concerning the multiple uses of water, taking into account the importance of water for sustainable development in general and its finite character as a resource.
61. Pharmaceuticals. Governments should develop or maintain adequate standards, provisions and appropriate regulatory systems for ensuring the quality and appropriate use of pharmaceuticals through integrated national drug policies which could address, inter alia, procurement, distribution, production, licensing arrangements, registration systems and the availability of reliable information on pharmaceuticals. In so doing, Governments should take special account of the work and recommendations of the World Health Organisation on pharmaceuticals. For relevant products, the use of that organisation's Certification Scheme on the Quality of Pharmaceutical Products Moving in International Commerce and other international information systems on pharmaceuticals should be

encouraged. Measures should also be taken, as appropriate, to promote the use of international non-proprietary names (INNs) for drugs, drawing on the work done by the World Health Organisation.

62. In addition to the priority areas indicated above, Governments should adopt appropriate measures in other areas, such as pesticides and chemicals in regard, where relevant, to their use, production and storage, taking into account such relevant health and environmental information as Governments may require producers to provide and include in the labelling of products.

IV. INTERNATIONAL CO-OPERATION

63. Governments should, especially in a regional or subregional context:

- (a) Develop, review, maintain or strengthen, as appropriate, mechanisms for the exchange of information on national policies and measures in the field of consumer protection;
- (b) Cooperate or encourage cooperation in the implementation of consumer protection policies to achieve greater results within existing resources. Examples of such cooperation could be collaboration in the setting up or joint use of testing facilities, common testing procedures, exchange of consumer information and education programmes, joint training programmes and joint elaboration of regulations;
- (c) Cooperate to improve the conditions under which essential goods are offered to consumers, giving due regard to both price and quality. Such cooperation could include joint procurement of essential goods, exchange of information on different procurement possibilities and agreements on regional product specifications.

64. Governments should develop or strengthen information links regarding products which have been banned, withdrawn or severely restricted in order to enable other importing countries to protect themselves adequately against the harmful effects of such products.

65. Governments should work to ensure that the quality of products, and information relating to such products, does not vary from country to country in a way that would have detrimental effects on consumers.

66. To promote sustainable consumption, Governments, international bodies and business should work together to develop, transfer and disseminate environmentally sound technologies, including through appropriate financial support from developed countries, and to devise new and innovative mechanisms for financing their transfer among all countries, in particular to and among developing countries and countries with economies in transition.

67. Governments and international organisations, as appropriate, should promote and facilitate capacity building in the area of sustainable consumption, particularly in developing countries and countries with economies in transition. In particular, Governments should also facilitate cooperation among consumer groups and other relevant organisations of civil society, with the aim of strengthening capacity in this area.

68. Governments and international bodies, as appropriate, should promote programmes relating to consumer education and information.

69. Governments should work to ensure that policies and measures for consumer protection are implemented with due regard to their not becoming barriers to international trade, and that they are consistent with international trade obligations.

National Consumer Policy

Mahatma Gandhi, the Father of the Nation, described the consumer as:

“A customer is the most important visitor in our premises. He is not dependent on us, we are dependent on him. He is not an interruption in our work, he is the purpose of it. He is not an outsider to our business, he is part of it. We are not doing him a favour by serving him, he is doing us a favour by giving us an opportunity to do so.”

**Final Draft of National Consumer Policy,
adopted during Consultation held at New Delhi, 3rd March 1998**

I. Preamble

1.1 The rationale behind the National Consumer Policy stems from Article 39 of the Constitution of India which has enshrined the Directive Principles to be followed by the State to ensure all-round welfare of the citizens of the country. The basic premise of the National Consumer Policy is to ensure that goods, services and technology are available to consumers at reasonable prices and acceptable standards of quality. There is a consumer dimension in almost every area of governance, and therefore a need to take into consideration consumers' interests in all policy decisions and implementation thereof. The National Consumer Policy seeks to provide guidelines to different branches of the Government and agencies at all levels in maintaining the appropriate consumer dimension while taking any step or decision which will have an impact on consumers' interests.

1.2 In view of complexity of the market place and technology and impact of liberalisation, the consumer needs to be protected. In the past, there was the system of barter and consumers did not have to choose from a large range—the allocation of resources was simpler. However, the situation has changed considerably. With the growth and dominance of the market place, consumers' interests and protection have taken a back seat. The perfect market place is a myth, and an economist's dream.

1.3. Faced with this reality the United Nations debated and adopted the Guidelines for Consumer Protection in 1985. These Guidelines also call upon the member governments to develop, maintain and strengthen a strong consumer policy, and provide for enhanced protection of consumers by enunciating various steps and measures. In 1995, the Guidelines were reviewed, and some issues, which needed further elaboration and expansion, were espoused by consumer organisations. Among the issues are access to basic needs, appropriate regulatory policies, sustainable consumption etc.

1.4 India also adopted a consumer protection legislation—Consumer Protection Act in 1986 (COPRA) which recognises the following six rights of consumers:

- Safety: The right to be protected against the marketing of goods and services which are hazardous to life and property.
- Information: The right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be, so as to protect the consumer against unfair trade practices.
- Choice: The right to be assured, wherever possible, access to a variety of products and services at competitive prices.
- Representation: The right to be heard and to be assured that consumer's interests will receive due consideration at appropriate forums.
- Redressal: The right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers.
- Consumer education: The right to consumer education.

1.5 Furthermore, from the U.N. Guidelines for Consumer Protection, 1985, two other rights of consumers are inferred:

- Basic needs: The right to basic goods and services which guarantee dignified living. It includes adequate food, clothing, health care, drinking water and sanitation, shelter, education, energy and transportation.
- Healthy environment: The right to a physical environment that will enhance the quality of life. It includes protection against environmental damage. It acknowledges the need to protect and improve the environment for future generations as well.

1.6 To promote accountability , transparency and good governance the National Consumer Policy seeks to encourage all ministries, departments and other bodies, government and non-government, to adopt “Citizens’ Charters” that will spell out the standards of service available to consumers and citizens.

II. Objectives

2.1 The Constitution of India seeks to ensure for its citizens—social, economic and political justice. However, as consumers face imbalances in economic terms, education levels and bargaining power, the National Consumer Policy aims to promote and protect consumer rights for just, equitable and sustainable economic and social development.

2.2 Taking into account the needs of and priorities for consumers the objectives of the National Consumer Policy thus are to:

- a. Strengthen production and distribution patterns which are responsive to the needs of consumers, and with the goal of promoting sustainable consumption on an equitable basis;
- b. Advocate and promote ethical conduct, transparency, consumer participation and responsiveness in the choice of appropriate technology and environmental responsibility in providing goods, services and technology to consumers at all levels;
- c. Promote the development of market conditions which provide consumers with appropriate choices at fair prices and right quality, and lesser burden on the environment;
- d. Promote assessment of consumer impact in every area of governance where consumer interests are affected;
- e. Promote participation of consumers in every area of governance, particularly in the Panchayati Raj system;
- f. Promote adoption of Citizens’ Charters for greater accountability and transparency in governance;
- g. Encourage policies and programmes to enable sustainable production and consumption patterns; and
- h. Promote regional and international co-operation in the field of consumer protection, sustainable consumption and production patterns.

III. Principles

3.1 The policy intends to:

- a. Empower consumers to have access to the basic needs of life;
- b. Protect consumers from hazards to their life and safety;
- c. Enhance the access of consumers to adequate information to enable them to make informed and environmentally benign choices according to individual as well as societal needs;
- d. Promote consumer education through formal as well as non-formal education systems so as to help consumers in their decision making;
- e. Promote accountability and transparency through adoption of Citizens’ Charters;
- f. Provide expeditious and inexpensive system of delivery of justice;
- g. Promote an independent consumer movement in the country by providing assistance to consumer and other relevant groups to form their organisations and giving them the opportunity to present their views in the decision-making process.

- h. Initiate and implement appropriate mechanisms for exchange of information on measures of consumer protection, nationally, regionally and internationally.

3.2 Bearing in mind the costs and benefits of proposed measures, the economic, social, cultural and technological diversity of the country, and the needs of its population, evolve time bound programmes for the protection of consumers.

IV. Measures

4.1 These measures will apply to indigenously produced goods, services and technology as well as to imports.

4.2 Physical safety: Protect consumers from hazards to their life and safety:

- a. Enhance the adoption of national as well as international standards for the safety and quality of goods, services and technology; and
- b. Encourage and build capacity of consumer organisations to carry out testing of essential consumer goods and dissemination of information.

4.3 Information: Access of consumers to adequate and reliable information:

- a. Government, business and voluntary organisations should develop and strengthen consumer information programmes to encourage people to act as discriminating consumers. Special attention is to be given to the development of mass media programmes to cater to the needs of the disadvantaged consumers;
- b. Enhance the access of consumers to adequate information to enable them to make informed and environmentally benign choice of goods, services and technology according to individual as well as societal needs; and
- c. Encourage formulation, adoption and wide dissemination of Citizens' Charters in all ministries, department and bodies of government, business and cooperative sectors to increase awareness, accountability and transparency.

4.4 Choice: Promote and protect consumers' interests to make informed choice of goods, services and technology:

- a. Strengthen measures to prevent restrictive and unfair business/trade practices which are harmful to consumers and the environment; and
- b. Develop, maintain and strengthen a fair competition policy with a view to provide consumers with appropriate range of choice of goods, services and technology at the lowest prices.

4.5 Representation: Represent consumers' view in the decision-making process:

- a. Provide and strengthen representation to consumer organisations in the decision-making process of the Government at all levels as well as business and co-operatives;
- b. Promote and encourage an independent consumer movement in the country by providing help to consumer groups to form their organisations and giving them the opportunity to present their views in the decision-making process; and
- c. Encourage formulation, adoption and wide dissemination of Citizens' Charters in all ministries, departments and bodies of government, business and cooperative sectors to increase representation, accountability and transparency.

4.6 Redressal: Expeditious and inexpensive consumer redressal system:

- a. Strengthen legal and administrative measures to enable individual consumers, consumers as a class and consumer organisations to obtain redressal through quasi-judicial procedures; and
- b. Encourage consumers to take recourse to alternative dispute resolution systems such as arbitration, conciliation and /or ombudsmen schemes.

4.7 Consumer education: To help consumers in their decision making:

- a. Promote consumer education as an integral part of the formal education system at primary, secondary and college levels;
- b. Encourage business to undertake publication of consumer educational material for mass distribution; and
- c. Enable consumer organisations to undertake capacity building programmes for consumers, activists and others.

4.8 Basic needs: Access of consumers to basic goods, services and technology:

- a. Strengthen measures to ensure access of consumers to basic goods and services of acceptable quantity which include adequate supply of basic goods like food and clothing, and utility services like health care, drinking water and sanitation, housing, education, energy and transportation; and
- b. Encourage the establishment and strengthening of consumer co-operatives and related trading activities as well as information about them, especially in rural areas.

4.9 Healthy environment: Sustainable production and consumption patterns:

- a. Develop and strengthen environmental testing of products and dissemination of information through governmental institutions, media and consumer organisations; and
- b. Encourage consumer organisations to review the implementation of environmental regulations by providers of goods, services and technology and verification of environmental safety claims.

4.10 International exchange of information on consumer protection:

- a. Initiate and implement exchange of information on measures of consumer protection, regionally and internationally; and
- b. Encourage consumer organisations to participate in information exchange programmes with international organisations.

V. Monitoring and Evaluation

5.1 In view of economic, social, cultural and technological diversity of the country, it is essential to adopt and strengthen monitoring and evaluation mechanisms by involving consumer and other groups, and business in the process of implementation of the aforesaid measures to achieve the objectives.

5.2 COPRA provides for establishment of the Central Consumer Protection Council at the national level and state consumer protection councils at state and union territory headquarters. Furthermore, to establish an apex National Consumer Policy Coordination Council with the Prime Minister as its chairperson, so that consumer protection issues receive the highest consideration in every area of governance.

Report of the Proceedings of the 1st National Consultation on Consumer Policy in India

Jaipur, October 18-19, 1997

Day One: 18.10.1997

Inaugural Session

Pradeep S Mehta, General Secretary of Consumer Unity & Trust Society (CUTS) started the session by introducing **I C Srivastava**, Principal Secretary, Food and Civil Supplies, Government of Rajasthan, and **S Chakravarty**, Member, Monopolies and Restrictive Trade Practices Commission.

Mehta thanked the distinguished guests for spending their valuable time in this national consultation, and then went on to clarify why the meeting was called 'consultation', not 'seminar'. He said, the meeting is a consultation on consumer policy as it wants to take stock of the implementation of the United Nations Guidelines on Consumer Policy, 1985 in India. It is not a presentation of different papers on scattered issues, but to look at the issue of consumer protection in a holistic manner.

The UN Guidelines cover eight consumer rights in five sections. CUTS has taken the responsibility to do this project on the implementation of consumer rights in India, and it has produced a report covering all rights under six chapters.

However, Mehta also clarified that the report does not come out with a score card regarding the implementation of various consumers' rights in India.

One reason for the none-to-impressive implementation of the UN Guidelines is the size of the country itself. For example, it is probably impossible to provide the right to basic needs to each and every citizen of the country. However, it is to be mentioned that there is a vast pool of 'human beings' who are not consumers in conventional economic sense (in terms of purchasing power), and for them the right to basic needs is important.

Another reason was lack of holistic policy on the part of the government itself. For example, the Ministry of Health did not develop a holistic health policy with respect to the right to health which, in turn, comes under the right to basic needs.

The third reason for imperfect implementation is lack of coherence and cogent action among different authorities concerned with consumers' rights. For example, in India, the drug policy has been developed by the Ministry of Chemicals; not that of Health.

The fourth reason with respect to non-adherence to the UN Guidelines is that of resources. But, even with adequate resources, there is improper utilisation of resources, which makes the problem of implementation more acute.

At the same time, Mehta said that the consumer dimension exists almost in every sphere of socio-economico-political activities. Therefore, the goal of the government is to develop a comprehensive consumer policy statement by taking into account all factors relevant to the protection of consumer rights. He mentioned that unfortunately not many governments in the world have a comprehensive consumer policy statement; including developed country governments. As on today, only Japan and Sweden have consumer policy legislation.

Therefore, according to Mehta, the objective of the document is to fill up the gaping holes regarding the implementation of consumer policy in India. As a matter of fact, he took the example of safety. Here is an area where practically no comprehensive policy exists in India. This is particularly true in case of services. He took the example of recent fire tragedy at the Upahar cinema house in New Delhi. According to him, various regulations with respect to fire-related safety were not enforced properly due to the multiplicity of agencies responsible to deliver their respective duties. And the problem lies here—lack of co-ordination between various agencies. Another example was that of road accidents. There is no comprehensive data base regarding the nature and cause of accidents—it requires comprehensive and broad-based information dissemination system.

Chakravarty, in his opening remarks, said that at the outset one should make clear whether we need a consumer policy or not, and if yes, what it should be? According to him, for the protection of consumers' rights, *a priori* we need a consumer policy.

In India, two major legislations regarding consumers' protection are the Consumer Protection Act (COPRA), 1986 and the Monopolies and Restrictive Trade Practices (MRTP) Act, 1969. However, at every stage of evaluation, they are looking at parts; not the whole. Again, there are more things which are not said than those which are incorporated in those acts.

Therefore, the *raison d'être* of the consumer policy is look at the root of the issue, which according to him is consumerism. However, by consumerism one should not mean to interpret it strictly in terms of the liberal concept of “more is better”. The notion of consumerism, if correctly interpreted, would lead to the protection of consumers from two things—one is fraud and the other is the prevalence of dangerous products in the market (which has both quantitative and qualitative dimensions).

On defining consumerism, he distinguished between private and public consumers. In case of public consumption, he argued that the deficiency in services should be included in the realm of the MRTP Act.

Then, he went on to present different practices through which consumers become vulnerable in the market. They are as follows:

- fraudulent/misleading trade practices,
- insufficient information regarding products and services,
- unfair, monopolistic, pejorative trade practices,
- mis/non/under representation (silence is an offence) of goods and services, and economic exploitation through setting high price level (e.g. he mentioned the merger of HLL-TOMCO).

According to him one way to protect consumers is to provide more choice to them. Thus, there are three imperatives in shaping a comprehensive (holistic) consumer policy. They are as follows:

- political will,
- bureaucracy should be empathetic to consumers' causes—it is not adequate to be sympathetic only, i.e. they have to put themselves in place of common consumers, and
- judiciary should be responsive in interpretation of law vis-a-vis natural justice.

Then he went on to elaborate on two related doctrines with respect to consumers' protection. The first one is called “caveat emptor”, i.e. it is the buyers' responsibility to protect him/herself. However, the present day notion regarding consumers' protection has metamorphised towards the second doctrine—“caveat venditor”, i.e. sellers are responsible for consumers' protection. In explaining this doctrinal change of emphasis, he quoted M K Gandhi—“Customers are not dependent on us, but we....”.

According to him, consumer policy (consumerism) is not progressing in India due to the following reasons:

- widespread poverty in the country;
- the extent of malnutrition (hunger has no choice);
- indifferent attitude on the part of the well off section of the population (shirking responsibility and duty as an informed consumer);

- inadequate organisation of consumers; and
- existence of plethora of laws along with non-responsive administration.

There are two types of consumers:

- prudent consumers, i.e. who make informed choices, and
- imprudent consumers, i.e. who make uninformed (regarding price and quality of goods and services) choices.

There is an inherent conflict of interests between the consumers and producers. This conflict arises due to the existence of costs involved in taking corrective actions. There are three types of costs incurred by the producers—decision cost, manufacturing cost and cost of regulations. The first one is negatively related with the intensity of regulations, while the other two are positively related. The equilibrium point is reached at the intersection between the manufacturing cost and decision cost, and from the corresponding total cost function, we get the minimum social cost involved in taking corrective actions as well as optimal intensity of regulations.

Therefore, there is the need for taking a balanced view on consumer protection. The following needs are to be examined for the achievement of such goal:

- need for voluntary practices;
- need to assume responsibility on the part of the supplier; and
- need for cost-benefit analysis (between consumer protection and cost of regulations).

Srivastava started his speech by stating that it was his pleasure and privilege to come to this consultation. According to him, everybody is a consumer and the mindset of the consultation should evolve around this theme.

At the outset, he remarked that we have to place the context first. In the context of poor implementation of various policies he gave the example of prevailing monoculture of crops in the country and the resultant problem of food insecurity.

He talked about the credibility of the system. At present, the administrator's word has lost its credibility due to the lack of execution of the responsibility vested in them, argued Srivastava.

Therefore, what is required is not only political will, but administrative will as well. And it is not necessary to wait for the politicians to give guidance. What is required for responsive administration is a constant interface between the people and the executor of various policies.

In this context, he opined that there is no alternative to the Panchayati Raj system, because it is the system itself which educates people by inducing them to do things of their advantages, and not to do those which are against their society. In other words, he urged upon the people at large to take up the leadership.

In doing so, the following points are to be kept in mind:

- convergence of views between different agencies/services is important;
- dissemination of information about the system, i.e. transparency;
- state departments are to be convinced to prepare Citizen's Charter (Do's and Do not's); and
- there has to be strong networking among the NGOs.

Session 1: Right to Basic Needs

The main speaker for this session was **Bharat Jhunjhunwala**, Consultant Economist.

At the outset, he gave his general opinion on the document itself, not any particular right. According to him, the document is a status report in respect of the UN Guidelines, and it looked at the Guidelines in a pro-active manner.

Then for the update and improvement of the document the following things are to be considered, opined Jhunjhunwala:

- a score card is required to be prepared regarding what has happened after 1985 as a result of the UN Guidelines;
- the document has covered large number of acts, yet some important acts and regulations are not covered, e.g. Indian Medical Council Act. Therefore, all relevant acts are to be covered comprehensively and a balanced approach is required with respect to different acts;
- there has to be a comprehensive analysis of the thinking of bureaucrats, case law, awareness level, situation of the affected people, amendments under consideration of the government etc; and
- the understanding of different government departments regarding the implementation of the UN Guidelines is to be made clear.

At this point, A K Sharma of the Office of the Directorate General of Information and Registration stated that the role of the DGIR office regarding the implementation of the UN Guidelines has not been mentioned at all. Like the MRTP Commission, the DGIR office also looked at the issue of choice and redressal. But the problem is that of infrastructure.

Prof Narainswamy of the Federation of Consumer Organisations of Tamil Nadu (FEDCOT) asked whether the government agencies are aware of the existence of the UN Guidelines. He expressed the need to send a questionnaire to the government officers. He also opined that there is a general lack of awareness about the existing redressal mechanism, and NGOs should take a lead role in this regard. The third important point, according to him, is to find out what amendments have been made to various acts, administrative measures and institutional measures in order to comply with the UN Guidelines.

On the issue of the right to basic needs, Jhunjhunwala expressed his doubts about the concept of welfare state. According to him, the concept of welfare state is actually making the poor poorer. Therefore, he urged for privatisation of basic services like health, education, supply of drinking water etc.

He also urged undertaking of a cost-benefit analysis regarding the spending of various government departments on welfare schemes. For example, he opined that as on today education has largely negative returns.

In this regard, he called upon the regulation of the market through regulation of money that is being spent on various welfare scheme.

On the question of the right to work, he argued that the issue should be approached from the angle of government enabling the people to get work rather than government providing them work *per se*.

Session 2: Right to Safety

Chitra Sirur, Co-ordinator, India Consumer Protection Programme, Consumers International started the session by saying that the importance of the right to safety as a consumer right was recognised wayback in 1961 by President Kennedy of the USA.

However, in India very little consultation regarding the matter of safety was held with the consumer groups. In other words, consumer organisations are not getting much response regarding the matter of safety from the policy makers.

At this point, **N G Wagle**, President, Consumers Guidance Society of India took over the discussion from Sirur. According to Wagle, one of the reason of poor implementation of safety related measures is the lack of manpower in the concerned departments. He cited the prevalence of high rate of adulteration of edible oils in Maharashtra, and the food department being short of safety officials.

In order to overcome this, it is necessary that standards are made in such a manner that safety is built into the standards.

Criticising the Bureau of Indian Standards (BIS), he commented that the BIS has no machinery to draw samples from the market. For example, very few persons are so far convicted for spurious ISI marking.

Therefore, the need of the hour is to make regulatory mechanism effective and implementable. On specific point of how to make regulation effective, he argued for following measures:

- on product safety, it requires better implementation and enforcement of existing laws and regulations, and
- on service safety, more comprehensive measures are needed.

On the question of whether food products can be recalled from the market, Mehta told the participants that the 1991 amendment of the COPRA gave the Food Commissioner's Office to recall hazardous food products from the market. However, according to Wagle the Commissioner does not have the power to recall products, and he urged that a recommendation in this regard be made to the Commission.

He also argued that further amendments are needed in the COPRA, 1986 as there are gaping holes in the system with regard to marketing, advertising etc.

Session 3: Right to Choice

S Chakravarty led the discussion of this session. According to him, both under the MRTP Act and in the COPRA, there are provisions related to the right to choice and consumers' protection.

He presented his arguments by giving the example of "gift price". According to him, when there is an offer of gift choice gets deflected, and it is a violation of the right to choice. Then the question is when and whether the gift offering is an offence or not. Definitionally, when the cost of the gift is included in transaction cost, it is an offence. Furthermore, when gift is against public interest it is an offence. But, when everybody gets the gift, it is not an offence. Again, the lottery based gift is an offence, and violates the right to choice.

According to Chakravarty, after the 1991 amendment, the MRTP Act does not cover the public sector undertakings. However, grievances against the public services come under the MRTP Commission.

The Commission adopts an open space policy with respect to private service operators.

The following points need to be considered to analyse the role of the MRTP Commission vis-a-vis the issue of the right to choice:

- whether a government department comes under the MRTP Commission? The answer is yes.
- Whether a government department can be sued or not? The answer is yes.
- When the service is made available to "potential users", it comes under the Commission.
- When a service is made available in lieu of 'fees', it comes under the MRTP Act.
- When a service is offered in lieu of "tax", it does not come under the MRTP Act.
- In case of sovereign services, they do not come under the MRTP Act, but non-sovereign services come under the Act.

On the question of what is the difference between a taxed service and a fee-based service, he argued that commonly tax is collected from a common body, but fee is charged for specific service.

On implementation of law, he quoted former Justice V R Krishna Iyer that law is a social order, controlling economic life. Therefore, the interpretation of any law should be based on semantic flexibility, and should be empathetic.

On the specific question of what should go into the consumer policy, particularly on the issue of the right to choice, he argued for the following:

- right to protect consumers from spurious goods and services;

- right to be informed; and
- right to get redressal and education.

He also argued that responsibility should be borne by the industry and service renders. On the issue of regulatory responsibility, he argued that first we have to look at the type of regulations and then the relationship between the MRTP Commission and consumer protection need to be clarified and furthered.

In sum, he recommended that the NGOs will have to evolve proper mechanism of regulatory responsibility and its implementation.

Session 4: Group Discussion

Mehta initiated the discussion by saying that the right to basic needs is a complex socio-economic issue and the concept of welfare state has an important role to play, especially in the context of the provision of public goods.

Sirur wanted to know about the grain bank and how does it operate. Mehta replied by saying that it is a local level institutionalised mechanism to ensure food security, particularly at the time of distress, and based on the concept of local level planning.

According to V K Parigi, the UN Guidelines did not elaborate the issue of basic needs, though it did talk about food security. Therefore, focused and specific areas with respect to basic needs are to be highlighted. In this context, he opined that the government should come out with a charter on basic needs.

He also expressed the need for politicisation of the issue of basic needs. He argued that enabling of entitlement has a sociological dimension.

At this point, Prof Narainswamy argued for the need for lobbying and advocacy to politicise the issue. He expressed that political parties can be asked to include the right to basic needs in their election manifestos.

Raghav Narsalay argued for the formation of an independent regulatory commission for the provision of basic needs to the poor.

Mehta told the participants that in India, there is a separate Human Rights Commission which has taken up the issue of poverty from the viewpoint of human rights, and he urged approaching the Commission to take up the issue of basic needs.

On the issue of the right to work, Mehta said that it is already mentioned in the Chapter on the Directive Principles of State Policy of the Indian Constitution. However, the right to work *per se* is not going to solve the problem. The issue, therefore, is to enable the people to acquire their basic needs.

According to A K Sharma, the important question is whether the rights are enforceable or not. For proper enforcement of various rights he talked about the deregulation of enforcement mechanism. However, Mehta expressed that excessive and unplanned deregulation may result in more corruption. Therefore, Mehta opined that we have to take a fresh look at the neo-liberal concept of “trickle-down”.

Mehta also argued that there are many successful models within our country, but they do not get replicated. In other words, taking cue from noted economist Prof Amartya Sen, Mehta argued that it is important to note that there can be learning *by India from India*.

At this point, Narsalay argued for a totalitarian approach to tackle the issue—integrating the role of development as well as consumers movements. Mehta differed with this by saying that the consumer movement is essentially a ‘rights’ movement, while the development movement is not a rights movement.

On the issue of the right to safety, Wagle pointed a basic problem with respect to cases coming under the Prevention of Food Adulteration Act. He said that the concerned judges are not technical person, and therefore, the onus of responsibility comes on the consumers.

He argued for the creation of the post of an assessor whereby judges can be helped by the experts/assessors in giving their verdicts.

Mehta pointed out that after the introduction of the provision of COPRA, 1986, consumers organisations could act on proving food adulteration.

At this point, Parigi expressed that the problems faced by the consumers organisations are those of manpower and expenditure associated with appointing legal experts.

Furthermore, he argued there are amendments in PFA Act (also in Drugs and Cosmetics Act), but consumers organisations are not consulted at all.

Given these problems, he urged the participants to evolve a strategy to approach the National Law School, Bangalore to give guidance to the consumers organisations to get a grasp of different legislations, acts, measures etc.

On the issue of the right to choice, Mehta argued that the following four points need to be elaborated further:

- On the question of natural monopoly, the appropriate competition authority should have the right to regulate price. In other words, there should be appropriate administrative and legislative powers to the competition authority.
- Indian rural market is flooded with spurious commodities. Appropriate mechanism is to be evolved to ensure the right to choice of rural consumers.
- In some cases, restrictive trade practices could not be overcome even with the redressal mechanism. For example, the 'Tatkal' gas (LPG) scheme. Therefore, systemic faults are to be examined in detail.
- With respect to retailers/operators union, consumers have no choice even if there is non-rational charging of prices. Such collusive actions take two forms—price cartel and quantity constraint. Therefore, the right to choice and the role of trade union is to be examined.

The discussion came out with the following recommendations regarding the right to choice:

- government departments be included under the MRTP Act through a suitable amendment;
- the word 'cartel' to be properly defined and incorporated into the MRTP Act;
- a clear distinction to be made between 'reasonable' and 'regulatory' prices;
- 'non-representation' along with the word 'mis-leading' to be incorporated into the MRTP Act;
- there should be proper co-ordination, through institutional mechanism, between the MRTP Commission and the DGIR Office;
- for diversification of activities, regional centres of MRTP Commission are to be created; and
- there are the further needs of Sub-ordinate legislation, Unfair terms of Contract Act and new Competition Law.

Day Two: 19.10.1997

Session 5: Rights to Redressal and Representation

Gurbax Singh, Faculty of Law, University of Rajasthan discussed about the right to redressal and representation. At the outset, he said that these are two different rights and should be discussed separately.

He argued that the COPRA has established a redressal forum and redressal means settlement of disputes. Though COPRA established the redressal mechanism, it is necessary to update and upgrade the provisions of COPRA to make it effective and consumer friendly.

He talked about the non-functioning of the District Redressal Forum. In order to rectify this, he called for proper training of the Members of the District Forum. He opined that normally the Members do not

hear the arguments. They just read files and pass judgements. Therefore, he argued for changes in the system of recruitment of Members to the District Forum.

On representation, he argued that there should be a separate and comprehensive policy of the government regarding representation of consumers problems and grievances.

Then, the relevant question is whether it is right 'to' or right 'of' representation. On this point, he emphatically stated that it is the right 'to' consumers to get correct information.

On enforcement mechanism, he argued that the consumer court cannot sit idle for want of fulltime members.

Mehta summed up the discussion by pointing out the following points:

- There is a systemic flaw in consumer court. The consumer court is a quasi-judicial forum. The idea is to approach dispute resolution in a commonsensical manner. That is why the President of the court is a judicial person and the other two Members are non-judicial persons. Therefore, the COPRA (and the consumer courts) needs systemic changes—to make it more accountable.
- There are several Sections in the COPRA. But, in practice, Section 27 has been widely used, and there is an under-utilisation of Section 25. The effect is that there is an atmosphere of fear of Section 27.
- Consumer courts normally impose a small penalty against a government department. As a result of this, the consumers have to go to the higher court to get proper redress, thus delaying the process of getting redressal. Therefore, proper payment has to be made earlier. Furthermore, penalty is a criminal legal procedure and not easy to impose.
- A mechanism has to be evolved to clear the pending cases.
- Governments have taken consumer courts as liability. In some cases, there is an unholy nexus between the practising judge and the party to the dispute. Therefore, both non-judicial Members as well as consumers organisations are to be trained properly for the delivery of speedy and just redressal.

Session 6: Rights to Information and Consumer Education

V K Parigi, Managing Trustee, Consumer Education Centre, Bangalore discussed about these rights.

According to him, the UN Guidelines took a pan-world view regarding these rights. But it is the responsibility of the consumer movement to make these rights country-specific. Therefore, we have to look into the specific areas where strengthening of the existing laws are needed, and how can we fill the gap (in terms of introduction of new legislations).

Parigi opined that for accurate and free flow of information, the country needs a proper regulatory framework. For example, he talked about the “Monitoring of Pesticide Code”—everything is happening against this code.

Furthermore, he argued that information *per se* is of no use—it is the qualitative aspects of information which have to be looked into. For an effective level playing field for the consumers, Parigi argued that the consumer organisations should be given the right to counter advertise, free of cost.

On consumer education, he argued that learning is different from education. For an effective consumer education system, it is necessary to build capacity of the activists. Secondly, consumer education should be introduced at the school level.

A country-wide survey on the status of consumer education needs to be carried out. For example, he argued that most information on packages are given in English, whereas a small percentage of country's

population can read and understand English. He cited the example of Tamil Nadu where all prescriptions have to be made in Tamil following a government order.

For dissemination of information, he argued for an innovative system of education and proper utilisation of media.

Session 6: Right to Healthy Environment

N G Wagle discussed about the right to healthy environment. At the outset, he expressed his displeasure that the UN Guidelines were confined to only two aspects related to environment—pesticides and chemicals.

In order to approach the issue holistically, it is necessary to take into account the issues relating to hospital wastes, aquaculture, mining, coastal regulatory zone etc.

On the question of hazardous pesticides, he argued that there should be a commission to enquire whether the pesticide is hazardous or not, and if yes, then manufacturing process should be disallowed.

He cited examples of three classes of pesticides—Aldrin, Chlordane and Heptachlor—whose manufacturing has been stopped in the US, but the unit has been shifted to Singapore and from there they are being exported to India.

He cited an example of non/mal-functioning of institutional mechanism regarding the dissemination of information on the use of pesticides. On a pesticide container, information are printed in all fourteen major Indian language, but the printed matter is so small that it is non-readable. Furthermore, he expressed shock by saying that even antidotes are written, while pesticides do not have any antidote.

While arguing about the structural problems, he said that even in case of a single pesticide four different Ministries are involved—Ministry of Chemicals for the import of pesticides, Ministry of Agriculture for the process of registration, Ministry of Health examines the matter related to the residues, and the Ministry of Environment takes the health related problems into account—the end result is lack of co-ordination and hence ineffective implementation of various laws and regulations.

On food residues, there is no authentic data in India. Neither the methodology is available nor is there any comprehensive data on toxicology.

On the issue of chemicals, he argued that the issue is little vague as it does not come into public contact directly. However, for the people residing in and outside a chemical factory, it is necessary to provide all relevant information regarding the product, particularly the antidote.

He also mentioned the following shortcomings with respect to healthy environment:

- in case of thermal power, there is no law on cooling of water;
- pesticides used for the purpose of post-harvest operations are to be monitored carefully;
- attention needs to be given for safe disposal of pesticide containers;
- there is no testing facility for repeated fumigation; and
- food additives are to be included in the list of hazardous products.

Closing Session

Mehta started the discussion by saying that at the centre there are three separate departments looking after issues directly related with the consumers. They are the Department of Civil Supplies, that of Food, and that of Consumer Affairs. He urged upon the need to form an unified system of consumer affairs.

On rights, he opined that we have enough legislations, but poor implementation of those legislations. One reason for this is improper and inadequate allocation of resources. However, more fundamental and canonical problems are as follows:

- poor data base;
- imperfect co-ordination between different consumer groups; and
- almost non-existent research facilities regarding the issue of consumer rights.

Therefore, one major policy initiative is to give due importance and representation of consumer organisations at each and every level of policy making—from designing to resource allocation to implementation.

Retired Justice V S Dave, President, Rajasthan State Commission remarked that, with years of experience behind him, his opinion is that it seems the phrase “We, the People” has gone out of the mindset of our bureaucrats—all decisions are being taken unilaterally without paying attention of what “We, the People” need and what we do not need. And the issue of consumers rights is to be approached and analysed under this framework of mind.

He expressed his preference for a holistic law (not the multiplicity of laws) for creating awareness among the people about the “Rule of Law”. In this context, he strongly advocated the creation of mobile courts for people’s participation in the process of justice.

He urged the social action groups to come out with parallel surveys on different parameters of development to create awareness of the rights and responsibility of the civil society. On another plane, he argued that for justice delivery to be people oriented and catered for the service to the people, bills should be discussed at the civil society level itself.

I C Srivastava argued that in order to tackle peoples’ problems there should be greater interface between the government and the NGOs. He opined that this type of consultation would be effective if sector-wise core groups (regarding different issues) are formed and then followed up periodically. In this respect, he argued for the formation of the State level Consumer Welfare Fund.

He urged upon the NGOs to share responsibility of implementing various government programmes/projects. He expressed the view that there is no alternative to grassroot approach to development.

In summing up the discussion, Justice (Retd) Dave suggested “Consumer 2001” conference at some later date to take up the issues and problems faced by the consumers in the coming century.

Report of the Proceedings of the 2nd National Consultation on Consumer Policy in India

New Delhi, March 3, 1998

Pradeep S. Mehta, Secretary General of Consumer Unity & Trust Society (CUTS), Jaipur initiated the discussion by welcoming N. N. Mukherjee, the Secretary in the Department of Consumer Affairs, Ministry of Food and Consumer Affairs, Government of India, New Delhi, I. C. Srivastava, Principal Secretary, Department of Food, Civil Supplies and Consumer Affairs Government of Rajasthan and other participants of the consultation. He briefly summarised about the work that CUTS has done in the context of the adoption of National Consumer Policy.

At the outset, he mentioned about the “Analyses of the United Nations Guidelines for Consumer Protection, 1985” being done by CUTS under a grant from the Consumer Welfare Fund of India. The documentation analyses existing situation in India with respect to different consumer rights, particularly taking stock of what happened after 1985.

Then he dealt with the history of Consumer Protection Act, 1986. He posed the question whether the COPRA, 1986 was a result of the UN Guidelines, 1985. The answer is both yes and no.

It is yes because it does mention consumers’ rights which are included in the UN Guidelines. On the other, it does not deal with several rights which are mentioned in the UN Guidelines. The important point to note is that the COPRA, 1986 stressed too much on redressal to consumers which, ideally speaking, covers 10 percent of the domain of consumer protection. There are other important rights of consumers (e.g. representation, basic needs, healthy environment etc.) which are to be addressed in a clear manner.

The other side of the coin is that, in some cases, various policies of the Government has gone beyond the UN Guidelines. For example, the National Housing Policy Statement, 1994 has a specific section on environmentally safe, sustainable housing. On the other, in the context of healthy environment, the UN Guidelines, 1985 talked about pesticides and chemicals only. These are few examples of what elaborated in the CUTS study.

Then, he argued on why there is a need for National Consumer Policy Statement in India when various Government Departments, in their own capacity, adopted policies with respect to various aspects of consumer protection.

The reason for the adoption of National Consumer Policy is to address the following fundamental issues:

- There are very few areas of governance which does not have direct relevance to consumers;
- Due to multiplicity of governance structure, there may be anomaly between different policies. For example, the National Drug Policy, 1994 which was a dilution of the earlier policy from the viewpoint of consumer satisfaction. The apparent reason was that the Ministry of Chemicals and Fertilisers adopted that policy by taking into account manufacturers viewpoints (e.g. profiteering) only;
- To enhance bargaining power of consumers vis-à-vis other actors of the market place; and
- To promote and enhance policy coherence between various Government Departments.

Having said that he invited Mukherjee to deliver his speech.

Mukherjee expressed that there is no denying of the need for a National Consumer Policy. Over the years, the vitality of this need gets momentum and got recognition from the Government, industry etc.

He mentioned that elements of National Consumer Policy are there in various provisions under the COPRA, 1986 and within its institutional arrangements (e.g. consumer redressal forums at the district, state and national levels, Consumer Protection Councils at national and state levels etc.).

At the same time, he urged about room for improvement and fine tuning of the system. According to him, the need for a National Consumer Policy lies here. The basic function of National Consumer Policy is to guide various Government Departments in implementation of policy objectives, measures, and during monitoring and evaluation.

According to him consumer organisations have a specific role to play in monitoring and evaluation. And here, for better co-ordination of activities between government functionaries and consumer organisations, he stressed upon the need for a separate strategy document on implementation of policy measures, and monitoring and evaluation.

As a next step, he talked about the scope for enlargement of policy objectives on the basis of score card of implementation of various measures and strategy document.

Endorsing Mukherjee's views, I. C. Srivastava discussed the importance of adoption of a National Consumer Policy from a holistic angle. In doing so, he pointed out the following factors:

- The need for the development of pressure/interest groups in implementing policy measures;
- The word 'consumer' has to be defined in an inclusive manner;
- Proper infrastructure is needed for consumer education;
- It is important to educate and orient Government officials (right up to the level of village administration) for consumer protection;
- The difference between the Consumer Protection Act and National Consumer Policy has to be made clear; and
- Regarding institutional relationship between the Government and consumer organisations on implementation of policy measures, there is the need for doing a score card on implementation over time, and that is to be complemented with the strategy document.

During floor interventions, P. D. Mayee, Joint Adviser, Industry and Minerals Division of the Planning Commission of India, New Delhi talked about different aspects of a National Consumer Policy. In particular, he mentioned the following:

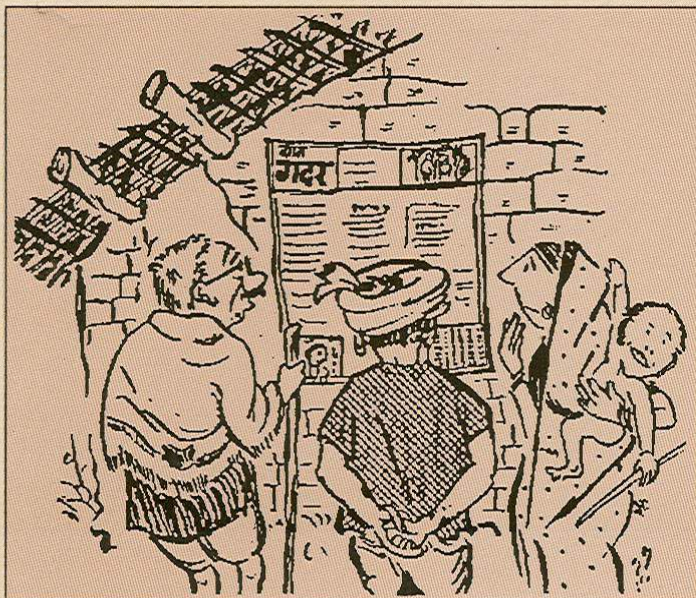
- The distinction between price and non-price factors influencing the market place has to be drawn out clearly in the National Consumer Policy Statement;
- The accountability of the Government (by stressing on social contract between the Government and its people) is *the* pillar of implementation;
- The feasibility aspect of the policy has to be addressed over time by distinguishing between what is possible and what is ideal; and
- The National Consumer Policy Statement does and should not talk about the time frame. Time frame of implementation and thereby score card with respect to various policies will form a complementary part of the strategy document.

In the afternoon session, participants of the consultation discussed the draft National Consumer Policy Statement, clause by clause. On the basis of consensus, several additions and alterations were made to the draft.

At the end the draft statement was adopted at the consultation. It was decided that the draft statement will be placed before the Central Consumer Protection Council (CCPC). And, once adopted at the CCPC, it will be placed before the Government of India for adoption and implementation. The consultation also adopted a resolution regarding the need for doing a score card on implementation and strategy document on National Consumer Policy as the next step.

ABOUT CUTS

Consumer sovereignty in the framework of social justice and equality, within and across borders



CUTS began out of a rural development communication initiative, a wall newspaper Gram Gadar (Village Revolution), in 1983. It is published regularly and reaches every nook and corner of Rajasthan, i.e. even remote villages where radio is the only medium of communication. Gram Gadar has been instrumental in providing a forum for the oppressed classes to get justice.

In 1983, we were a small voluntary group of concerned citizens operating out of a garage on a zero budget. Today, we operate out of four centres in India and one in Africa, with a budget which exceeds Rs.20mn or about US\$4mn and a staff strength of over 65 persons. The centres are located in Jaipur (head office), New Delhi, Chittorgarh and Calcutta in India, and in Lusaka, Zambia.

Our work is divided into four operational areas:

- ◆ consumer protection, which includes accountability, regulatory reforms, etc.;
- ◆ trade and development, which include investment and competition policies;
- ◆ sustainable production and consumption, including consumer safety and
- ◆ rural consumers and women's empowerment.

Over 1500 individuals and 300 organisations are its members. The organisation is accredited to the United Nations Conference on Trade and Development and the United Nations Commission on Sustainable Development.

CUTS also works with several national, regional and international organisations, such as Consumers International, International Centre for Trade and Sustainable Development, South Asia Watch on Trade, Economics & Environment, Consumer Coordination Council of India, etc. It also serves on several policy-making bodies of the Government of India.

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