CHAPTER- II

HISTORICAL EVOLUTION OF CONSUMER PROTECTION
LAW IN INDIA

2.1. Introduction:

Consumer protection is not a new problem for India. Historically speaking however the problem of Consumer Protection is not a recent phenomenon this legal mechanisms have been devised to protect gullible consumers from unscrupulous traders. In the west, for instance, the seeds of consumer protection can be traced in the Talmudic legal jurisprudence. Arthur Silverstein wrote, 31 two specific biblical references warned against the misuse of weights and measures. The gravity of such misconduct was emphatically expressed in the Talmud. “The punishment (i.e. divine) for (false) measures is more rigorous than that for (marrying) forbidden relatives.” Moreover weights and measures were of particular concern to the sages because most transactions required their use, especially such necessities as grain, oil, and wine. Talmudic law specified the type of weights to be employed, procedures of weighing, general merchant rules to be applied, and methods of enforcement.32

Similarly, regarding the provisions on fraud and merchantability in the Talmudic law, Silverstein has further written-

The Doctrine of caveat emptor was almost totally rejected in Talmudic law; the seller was obliged to inform the buyer of all defects. It was especially forbidden to deceive people by creating a false impression, i.e. an intentional misrepresentation.

Consumer Protection has its deep roots in the rich soil of Indian civilization, which dates back to 3200 B.C. In ancient India, human values were cherished and ethical practices were considered of great importance. However, the rulers felt that the welfare of their subjects was the primary area of concern. They showed keen interest in regulating not only the social conditions but also the economic life of the people, establishing many trade restrictions to protect the interests of buyers. This chapter examines the historical perspective of consumer protection in India from the Vedic

age (ancient period) to the modern period. It also briefly analyzes the development of consumer law in India. Finally, an attempt is made to discuss the legal framework of the Indian Consumer Protection Act of 1986 which led to the evolution of a new legal culture in India.

2.2. Consumer Protection in Ancient India: A Historical Background:-

In ancient India, all sections of society followed Dharma-shastras ("Dharma"), which laid out social rules and norms, and served as the guiding principle governing human relations. The principles of Dharma were derived from Vedas. Vedas were considered the words of God, and law was said to have divine origin which was transmitted to society through sages. Thus, Vedas were the primary sources of law in India.

Many writers and commentators of the ancient period documented the living conditions of the people through their innovative and divine writings, including Smriti (tradition) and sruti (revelation), and also prescribed codes to guide the kings and rulers about the method of ruling the State and its subjects. Consumer protection was also a major concern in their writings.

Among the Dharmas, the most authoritative texts are a) the Manu Smriti; b) the Yajnavalkya Smriti; c) the Narada Smriti; d) the Bruhaspati Smriti; and e) the Katyayana Smriti. Among these, Manu Smriti was the most influential.

2.2.1 Manu Smriti

Manu Smriti describes the social, political and economic conditions of ancient society. Manu, the ancient law giver, also wrote about ethical trade practices. He prescribed a code of conduct to traders and specified punishments to those who committed certain crimes against buyers. For example, he referred to the problem of adulteration and said “one commodity mixed with another must not be sold (as pure), nor a bad one (as good) not less (than the property quantity or weight) nor anything that is at hand or that is concealed”. The punishment “for adulterating unadulterated

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33 Historical evolution of consumer protection and law in India: A. Rajendra Prasad.
34 Codes of morals. They also deal with the rules of conduct, law and customs.
35 Shraddhakar Supakar, Law of Procedure and Justice in India, 38 (1986). Veda means knowledge. There are four Vedas: the Rigveda, the Yajurveda, the Samaveda and the Atharvaveda.
36 Ibid. at 39
37 Ibid. at 41.
commodities and for breaking gems or for improperly boring (them)” was the least harsh. Severe punishment was prescribed for fraud in selling seed corn: “he who sells (for seed-corn that which is) not seed-corn, he who takes up seed (already sown) and he who destroys a boundary (mark) shall be punished by mutilation.” Interestingly, Manu also specified the rules of competency for parties to enter into a contract. He said “a contract made by a person intoxicated or insane or grievously disordered (by disease and so forth) or wholly dependent, by an infant or very aged man, or by an unauthorized (party) is invalid.”

During the ancient period, the king had the power to confiscate the entire property of a trader in two instances: (1) when the king had a monopoly over the exported goods; and (2) when the export of the goods was forbidden. There was also a mechanism to control prices and punish wrongdoers. The king fixed the rates for the purchase and sale of all marketable goods. 39 Manu said “man who behaves dishonestly to honest customers or cheats in his prices shall be fined in the first or in the middle most amercement.” There was a process to inspect all weights and measures every six months, and the results of these inspections were duly noted.

All these measures show how effective ancient society was in regulating the many wrongs of the market place. These measures also show how developed the system was in identifying the market strategies of traders. Thus, Manu Smriti effectively dealt with various consumer matters, many of which remain of great concern in modern legal systems.

2.2.2 Kautilya’s Arthashastra

The Arthashastra and yajnavalkyasmriti also mention the malpractice of adulteration and accordingly recommend punishment for the offence. The Arthashastra for instance, recommended imposition of a fine of twelve panas on a trader who adulterated grains, fat, medicine, perfumes, salt and sugar and by mixing things of a similar nature.

Manu Smriti, Kautilya’s Arthashastra is considered to be a treatise and a prominent source, describing various theories of statecraft and the rights and duties of subjects in ancient society. 40 Though its primary concern is with matters of practical

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39 Rajendra Nath Sharma, Ancient India According to Manu 142 (1980)
administration, consumer protection occupies a prominent place in Arthashastra. It describes the role of the State in regulating trade and its duty to prevent crimes against consumers.

Between 400 and 300 B.C., there was a director of trade whose primary responsibility was to monitor the market situations. Additionally, the director of trade was made responsible for fair trade practices. The director of trade was required to be "conversant with the differences in the prices of commodities of high value and of low value and the popularity or unpopularity of goods of various kinds whether produced on land or in water [and] whether they arrived along land-routes or water-routes, [and] also [should know about] suitable times for resorting to dispersal or concentration, purchase or sale." The director of trade advised to "Avoid even a big profit that would be injurious to the subjects. He should not create a restriction as to time or the evil of a glut in the market in the case of commodities constantly in demand." 

During this period, several measures were taken to maintain official standards of weights and measures. Kautilya observed, "The superintendent of standardization should cause factories to be established for the manufacture of standard weights and measures." He further said "[the superintendent] should cause a stamping [of the weights and measures] to be made every four months. The penalty for unstamped [weights] is twenty seven panas and a quarter. [Traders] shall pay a stamping fee amounting to one kakani every day to the superintendent of standardization." 

According to Kautilya, "the trade guilds were prohibited from taking recourse to black marketing and unfair trade practice." Severe punishments were prescribed for different types of cheating. For example, "for cheating with false cowrie-shells, dice, leather straps, ivory-cubes or by sleight of hand, [the punishment shall be] cutting-off of one hand or a fine." The rights of the traders were also well protected. Kautilya said, "On the subject of the return of an article purchased or payment of

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42 Kangle Part II, supra note 19, at 127.
43 Id.
44 Id. at 134.
45 Id. at 137.
46 Supakar, supra note 3, at 107.
price thereof, there was fixed rule of time, after which an article could not be returned.”

During **Chandragupta’s period**, in which Kautilya lived, good trade practices were prevalent. For example, “Goods could not be sold at the place of their origin, field or factory. They were to be carried to the appointed markets (panya sala) where the dealer had to declare particulars as to the quantity, quality and the prices of his goods which were examined and registered in the books.” Every trader was required to take a license to sell. A trader from outside had to obtain permission. The superintendent of commerce fixed the whole-sale prices of goods as they entered the Customs House. He allowed a margin of profit to fix retail prices. Speculation and cornering to influence prices were prohibited. Thus, the State bore a heavy responsibility for protecting the public against unfair prices and fraudulent transactions. There were severe punishments for smuggling and adulteration of goods. For example, public health was guarded by punishing adulteration of food products of all kinds, including grains, oils, alkali, salts, scents and medicines.

Also during Chandragupta’s period, easy access to justice for all, including consumers, was considered of great importance. The king was the central power to render justice. According to Kautilya, “The king should look to the complaints of the people [of the town and village] in the second part of the day. The mobile and circuit courts worked at night, when necessity arose. They also must have worked on holidays in urgent matters.” The king was required to pay full attention to the truth and he was primarily responsible for administering justice. Everyone could approach the king’s court for justice. However, standing was strictly followed. The king only entertained cases if the aggrieved presented a valid complaint. The king was directed not to “foster litigation by starting an action without a complainant, and moreover, [the king was told that] no complaint should be taken notice of when it proceeded from a person altogether unconnected with the person aggrieved.” In addition to this, different set of courts were prevalent in ancient India.

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48 Supakar, supra note 3, at 202.
49 Chandragupta Maurya ranks as one of the India’s greatest rulers. The period dates back to 323 B.C
51 Ibid. at 140.
52 Supakar, supra note 3, at 114-15.
The court system during Kautilya’s time was well organized. There were two different benches comprising judges and magistrates to try civil and criminal cases. In civil matters, the judges themselves were empowered to take cognizance of the cases of disadvantaged persons who could not approach the court, for example, the cases concerning ascetics, women, and minors, old, sick and helpless people. Thus, rendering justice was regarded as one of the essential duties of the rulers, and care was taken to ensure that justice was accessible to all. Indeed, this emphasis on justice for all remains a cornerstone of India’s legal system.

2.3. Consumer Protection in Medieval and Modern Periods:

In the medieval period, consumer protection continued to be of prime concern of the rulers. During Muslim rule, a large number of units of weights were used in India. During the Sultanate period, the prices used were determined by local conditions. During the rule of Alauddin Khalji, strict controls were established in the marketplace. In those days, there was unending supply of grain to the city and grain-carriers sold at prices fixed by the Sultan. There was a mechanism for price-enforcement in the market. Similarly, shop-keepers were punished for under weighing their goods.

In the modern period, the British system replaced the age old traditional legal system of India. However, one of the outstanding achievements of British rule in India was “the formation of a unified nationwide modern legal system.” During the British period, the Indian legal system was totally revolutionized and the English legal system was introduced to administer justice. However, it is important to note that the traditions and customs of the Indian legal system were not ignored. “The law itself underwent considerable adaptation. The British institutions and rules were combined with structural features [e.g. a system of separate personal laws] and rules [e.g. Dharma, and local custom] which accorded with indigenous understanding. The borrowed elements underwent more than a century and a half of pruning in which

54 Maulana Hakim Syed Abdul Hai, India-During Muslim Rule 127 (Mohiuddin Ahmad trans., 1977).
57 Ibid. at 88.
58 Ibid. at 89.
60 supra note.3
British localisms and anomalies were discarded and rules [were] elaborated to deal with new kinds of persons, property and transactions.” To administer justice, “they were confronted [with] the problem of the value suitable to attach in practice to the [Indian traditions and customs].” Despite the challenges of combining the British and Indian legal systems, “the fabric of modern Indian Law is unmistakably Indian in its outlook and operation” and consumer protection is not an exception to this perception.

2.4. Legal Provision for Consumer Protection before Consumer Protection Act, 1986:

Some of the laws which were passed during the British regime concerning consumer interests are: the Indian Contract Act of 1872, the Sale of Goods Act of 1930, the Indian Penal Code of 1860, the Drugs and Cosmetics Act of 1940, Civil Procedure Code 1908, and the Agriculture Procedure (Grading and Marketing Act) of 1937. These laws provided specific legal protection for consumers.

2.4.1 Indian Contract Act, 1872:

Under this Act, all agreements are contracts if they are made by the "free consent" of the parties competent to contract, for a lawful consideration and with a lawful object and are not expressly declared to be void under the Act. Consent is said to be free when it is not caused coercion, Undue influence, fraud, misrepresentation or mistake in certain cases, When consent to an agreement is caused by coercion, Fraud, misrepresentation or undue influence, the agreement is a Contract voidable at the option of the party whose consent was so Caused while the agreement is void where both the parties are under mistake as to matter of fact.61

Many a time’s violation of a consumer rights may arise out of a contract between two parties. for e.g. I may be the buyer of a car T.V. set which proves defective, or I give a garment to the dry cleaner and he either loses that or causes a damage to the same , or I deliver some goods to a carrier and he fails to deliver them at the destination or the consignment is damaged by him during transit ,or I purchase a pressure cooker which happens to be subject to some manufacturing defect and it bursts causing damage to persons and property , or a gas stove purchased by me being

61 Law of Contract :Dr. Avtar singh. Eastern Book Company Lucknow Pg. no. 2
defective makes the gas to leak resulting in fire, personal injuries to person and damages to the property.

In any of the above situations I have a choice to bring an action in a civil court or consumer forum, if I am a consumer & my case covered by the consumer protection Act. One will always prefer to file a complaint under the Consumer Protection Act as one can get a cheaper and much quicker relief through that forum.

• Guarantee and Exclusion of contractual liability:

Generally when a person purchases an article there is a guarantee card accompanying the article? Though a guarantee card appear to protect the buyer’s interest but that invariably limits or excludes the manufacturer’s liability, which an innocent buyer is not able to appreciate. For example, the guarantee card accompanying a gas stove or a pressure cooker may stipulate that “the manufacturer shall be responsible only for repairing the product in case of a manufacturing defect.”

Generally a question arises as to how for the pre-drafted terms of the contract, known as standard form contracts, are binding. It has been held in various cases that if the standard form contract contains unreasonable terms the same may not be binding. Moreover, when one of the parties having a greater bargaining power has taken an undue advantage of the weaker position of the other party, the contract may be said to have been made under undue influence as define under section 16 of the Indian contract act and the contract may be voidable u/sec. 19-A of the act at the option of the weaker party.62

E.g. The dry cleaners lost a new sari given for dry cleaning by a customer. The sari was priced at 220/- but the defendants offered to pay 50% of the price, as printed on the receipt. Limiting price was held to be unreasonable & the dry cleaners were required to pay full compensation of Rs. 220/- to the customer.63

2.4.2. The Code of Civil Procedure, 1908:

Section 94:- Under this Statute, in order to prevent the ends of justice from being defeated the Court may, if it is so prescribed:

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63 Lily white v. Munuswami, A. I. R. 1966 Mad.13
a) Issue a warrant to arrest the defendant and bring him before the court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security, commit him to the civil prison;

b) Direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment of any property;

c) Grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold;

d) Appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;

e) Make such other interlocutory orders as may appear to the Court to be just and convenient.\(^{64}\)

**Section 95:** compensation for obtaining arrest, attachment or injunction on insufficient grounds: - It is further provided that-

(1) Where, in any suit in which an arrest or attachment has been affected or a temporary injunction granted under the last preceding section,-

- It appears to the Court that such arrest, attachment or injunction was applied for on insufficient grounds, or
- The suit of the plaintiff fails and it appears to the Court that there was no reasonable or probable grounds for instituting the same,

The defendant may apply to the Court, and the Court may, upon such application, award against the plaintiff by its order such amount\(^{65}\), (not exceeding fifty thousand rupees),\(^{66}\) as it deems a reasonable compensation to the defendant for the (expense or injury {including injury to reputation} caused to him).\(^{67}\)

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\(^{64}\) The code of civil procedure,1908. Act no.V Bharti Seth.pg. no.106.

\(^{65}\) ibid 1 page no. 107.

\(^{66}\) For words “not exceeding one thousand rupees” substituted by C.P.C.(amendment)Act No.46 of 1999.

\(^{67}\) Subs. by Act 104 of 1976, section 31, for the words “expenses or injury caused to him”. 
[Provided that a Court shall not award, under this section, an amount exceeding the limits of its pecuniary jurisdiction.]

(2) An order determining any such application shall bar any suit for compensation in respect of such arrest, attachment or injunction.

Section 115:-Revision:-

(1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-

(a) To have exercised a jurisdiction not vested in it by law, or

(b) To have acted to exercise a jurisdiction so vested, or

(c) To have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit;

[Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favor of the party applying for revision, would have finally disposed of the suit or other proceedings.]

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

(3) A revision shall not operate as a stay of suit or other proceeding before the court except where such suit or other proceeding is stayed by the High Court.

Explanation: - In this section, the expression "any case which has been decided" includes any order made, or any order deciding an issue, in the course of a suit or other proceeding.

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68 section 115 renumbered as section 115(1) by C.P.C. (amendment) Act no.104 of 1976, section 43.
70 Added by CPC (amendment) Act no.104 of 1976, section 43.
Order I Rule 8 One person may sue or defend on behalf of all in same interest:71

(l) Where there are numerous persons having the same interest in one suit:-

a) One or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;

b) The Court may direct that one or more of such persons may sue or be such, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

(2) The Court shall, in every case where a permission or direction is given under sub-rule {1}, at the plaintiff’s expense, give notice of the institution of the suit to all persons so interested, either by personal service, or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.72

(3) Any person on whose behalf, or for whose benefit, a suit is instituted, or defended under sub-rule (1), may apply to the Court to be made a party to such suit.

(4) No part of the claim in any such suit shall be abandoned under sub-rule (1), and no such suit shall be withdrawn under sub rule (3), of rule 1 of Order XXIII, and no agreement, compromise or satisfaction shall be recorded in any such suit under rule 3 of that Order, unless the Court has given, at the plaintiff’s expense, notice to all persons so interested in the manner specified in sub-rule (2).

(5) Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defense, the Court may substitute in his place any other person having the same interest in the suit.

(6) A decree passed in a suit under this rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted, or defended, as the case may be.

71 Inserted by CPC (amendment) Act no. 46 of 1999.
72 Subs. By CPC (Amendment) Act no. 104 of 1976, section 52.
Explanation:-For the purpose of determining whether the persons who sue or are sued, or defend, have the same interest in one suit, it is not necessary to establish that such persons have the same cause of action as the persons on whose behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be.

2.4.3. The Sale of Goods Act, 1930.

The Sale of Goods Act, 1930 grants protection to a buyer, who could be the consumers of good, purchased by him. Sec.14 to 17 of this act contains various implied conditions, i.e. stipulations essentials to the main purpose of the contract and also implied warranties i.e. stipulations collateral to the main purpose of the contract. Even if the parties are silent in their contract, there are following implied conditions.

1) There is an implied condition that the seller has right to sell the goods.

2) In a sale by description there is an implied condition that the goods shall correspond to the description.

3) When the goods are sold by sample as well as by description it is not sufficient that the bulk of the goods corresponds with the sample, if the goods do not also correspond with the description. Sometimes there may be a difference between the sample, and the description of the goods.

4) There is also an implied condition that the goods are suitable for the purpose for which the buyer wants them.

Section 14 Implied undertaking as to title:

In a contract of sale, unless the circumstances of the contract are such as to show a different intention there is-

(a) An implied condition on the part of the seller that in the case of a sale, he has a right to sell the goods and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass;

(b) An implied warranty that the buyer shall have and enjoy Quiet possession of the goods;

73 Sale of goods Act 1930 no. 3 of 1930 civil minor acts: A.K. banerjee
(c) An implied warranty that the goods shall be free from any Charge or
encumbrance in favour of any third party not declared or known to the buyer
before or at the time when, the contract is made.

**Section 16: The implied condition as to the quality or fitness of the goods:**

It says that there is no implied warranty or condition as to the quality or fitness
for any particular purpose of goods supplied under a contract of sale, except as
follows:

1. Where the buyer, expressly or by implication, makes known to the seller the
particular purpose for which the goods are required, so as to show that the
buyer relies on the seller’s skill or judgment, and the goods are of a
description which it is, in the course of the seller’s business to supply (whether
he is the manufacturer or producer or not), there is an implied condition that
the goods shall be reasonably fit for such purpose:

Provided that, in the case of a contract for the sale of a specified article under
its patent or other trade name, there is no implied condition as to its fitness for
any particular purpose.

2. Where goods are bought by description from a seller who deals in goods of
that description (whether he is the manufacturer or producer or not), there is an
implied condition that the goods shall be of merchantable quality: provided
that, if the buyer has examined the goods, there shall be no implied condition
as regards detects which such examination ought to have revealed.

3. An implied warranty or condition as to quality or fitness particular purpose
may be annexed by the usage of trade.

4. An express warranty or condition does not negative a warranty or condition
implied by this Act unless inconsistent therewith.

**Section 17:- Sale by Sample:**

As regards sale by sample, it provides that in the case of a contract for sale by
sample there is an implied condition:

a. That the bulk shall correspond with the sample in quality;
(b) That the buyer shall have a reasonable opportunity of comparing the bulk with the sample;

(c) That the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

Section 57:- Damages for non-delivery:

Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for none-delivery.

Section 58:- Specific performance:

Subject to the provisions of the Specific Relief Act, 1877 (1 of 1877), in any suit for breach of contract to deliver specific or ascertained goods, the Court may, if it thinks fit, on the application of the plaintiff, by its decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. The decree may be unconditional, or upon such terms and conditions as to damages, payment of the price, or otherwise, as the Court may deem just, and the application of the plaintiff may be made at any time before the decree.

Section 59:- Remedy for breach of warranty:

(1) Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may-

(a) Set up against the seller the breach of warranty in diminution or extinction of the price or

(b) Sue the seller for damages for breach of warranty.

(2) The fact that a buyer has set up a Breach of warranty in diminution or extinction of the price does not prevent him from suing for the same breach of warranty if he has suffered further damage.
Section 60:- Repudiation of contract before due date:

Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting or wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

Section 61:- Interest by way of damage and special damage:

(1) Nothing in this Act shall affect the right of the seller or the buyer to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.

(2) In the absence of a contract to the contrary, the court may award interest at such rate as it thinks fit on the amount of the price-

(a) To the seller in a suit by him for the amount of the price from the date of the tender of the goods or from the date on which the price was payable;

(b) To the buyer in a suit by him for the refund of the price in a case of a breach of the contract on the part of the seller-from the date on which the payment was made.

2.4.4. The Indian Penal Code, 1860:

Under the Code, there are several provisions aimed at protecting the interest of consumers such as:

Fraudulent use of false instrument for weighing: Section 264:

Whoever fraudulently uses any instrument for weighing which he knows to be false shall be punished with imprisonment of either description for a term which may extend to one year, or with line, or with both.

Fraudulent use of false weight or measure: Section 265:

Whoever fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.
Being in possession of false weight or measure: Section 266:

whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Making or selling false weight or measure: - Section 267:

Whoever makes, sells or disposes of any instrument for weighing or any weight, or any measure of length or capacity which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both. 74

Adulteration of food or drink intended for sale:-Section 272:

Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will he sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both.

Sale of noxious food or drink: Section: 273:

Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a slate unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Adulteration of drugs: Section 274:

Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or make it noxious, intending that it shall he sold or used for, or knowing it to be likely that it will be sold or used for any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term

74 Indian penal code 18: Ratanlal & Dhirajlal pg.202 to 203.
which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

**Sale of adulterated drugs: Section 275:**

Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

**Sale of drug as a different drug or preparation: Section 276:**

Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation, as a different drug or medical preparation, shall be punished with imprisonment of either description or a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. 75

2.4.5. *The Specific Relief Act, 1963:* 76

Under this Act, enactment underlines the various reliefs to be granted by the Civil Court.

**Section 4:** clearly postulates that Specific relief can be granted only for the purpose of enforcing individual civil rights and not for the mere purpose of enforcing a penal law.

**Section 5:** lays down that a person entitled to the possession of specific immovable property may recover it in the manner provided by the Code of Civil Procedure, 1908. Immovable property can be recovered under Order 21 and Rules 35 are 36 in execution of a decree providing for the delivery of the property. Such a degree can be passed in ejectment suit. A plaintiff suing for ejection can succeed only on the basis of his own title.

75 Ibid pg. no. 208 to 210. Act no. 10 of 1955
76 The Specific Relief Act, 1963 — act no. 47 of 1963
Section 6:- of the Act provides that (1) if any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit. (2) However, such suit shall be brought within six months from the date of dispossession. It is a summary and speedy remedy since such a right of possession receives protection from the statute. The question of ownership or title to the property is irrelevant in a suit of this kind. Even if the defendant has a superior title, he must first put the plaintiff hack in possession and later file his own suit on the basis of title.

Section 7:- Recovery of specific movable property: A person entitled to the possession of specific movable property may recover it in the manner provided by the code of civil procedure, 1908(5 of 1908)

Specific performance of any contract may in the discretion of the Court, be enforced under section 10:

(a) When there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done or

(b) When the act agreed to be done is such that the compensation in money for as non-performance would not afford adequate relief.

Specific performance of part of a contract: - section 12:

(1) Except as otherwise hereinafter provided in this section, the Court shall not direct the specific performance of a part of a contract.

(2) Where a party to a contract is unable to perform the whole his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award Compensation in money for the deficiency.

(3) Where a party to a contract is unable to perform the whole of his part of it and the part which must be left unperformed either-

(a) Forms a considerable part of the whole though admitting of compensation in money or

(b) Does not admit of compensation in Money.
2.4.6. The Drugs and Cosmetics Act, 1940

Section 18: prohibition of manufacture and sale of certain drugs and cosmetics:- provided that no person shall himself or by any other person on his behalf-(a) [Manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale] or distribute-

i) Any drug which is not of a standard quality, or is misbranded, adulterated or spurious;

ii) Any cosmetic which is not of a standard quality or is misbranded or spurious;]

iii) Any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof [the true formula or list of active ingredients contained in it together with the quantities, thereof;]

iv) Any drug which by means of any statement, design or device accompanying it or by any other means, purports or claims [to prevent, cure or mitigate] any such disease or ailment, or to have any such other effect as may be prescribed;

v) Any cosmetic containing any ingredient which may render it unsafe or harmful for use under the Directions indicated or recommended;

vi) Any drug or cosmetic in contravention of any of the provisions of this Chapter or any rule made there under;

(b) [Sell or stock or exhibit or offer for sale,] or distribute any drug [or cosmetic] which has been imported or manufactured in contravention of any of the provisions of this Act or any rule made there under;

(c) [Manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale] or distribute any drug[ or cosmetic,] except under,

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77 Subs. By act 68 of 1982 section 14 (w.e.f.1st February,1983)
78 Subs. By act 68 of 1982 section 14 (w.e.f.1st February,1983)
79 Subs. By act 11 of 1955 section 9
80 Subs. By act 68 of 1982 section 14 (w.e.f.1st February,1983)
81 Subs. By act 68 of 1982 section 14 (w.e.f.1st February,1983)
82 Subs. By act 68 of 1982 section 14 (w.e.f.1st February,1983)
83 Subs. By act 68 of 1982 section 14 (w.e.f.1st February,1983)
84 Subs. By act 68 of 1982 section 14 (w.e.f.1st February,1983)
85 Subs. By act 68 of 1982 section 14 (w.e.f.1st February,1983)
86 ibid.
and in accordance with the conditions of, a license issued for such purpose under this Chapter IV.

For fifty-five years, the Sale of Goods Act of 1930 [SGA] was the exclusive source of consumer protection in India. The SGA, drafted with precision, is “an admirable piece of legislation.” It is also praised as a “Consumer’s Charter.” The main protection for the buyer against the seller for defective goods is found in Section 16 of the Act. It provides exceptions to the principle of Caveat emptor (“let the buyer beware”) and the interests of the buyer are sufficiently safeguarded. Phrases such as “skill and judgment of the seller”, “reliance on sellers skill”, and the test of “merchantable quality” provide effective remedies to buyers. Courts interpreted these rules in the consumer’s favour. The SGA was the exclusive consumer legislation until 1986, with the passage of the Consumer Protection Act of 1986, designed to supplement the remedies already provided under the SGA.

Consumer protection was also provided within India’s criminal justice system. The Indian Penal Code of 1860 has a number of provisions to deal with crimes against consumers. It deals with offenses related to the use of false weights and measures, the sale of adulterated food or drinks, the sale of noxious food or drink, and the sale of adulterated drugs.


2.4.7. The Prevention of Food Adulteration Act, 1954

Act to make provision for the prevention of adulteration of food. The Act also prescribes a set of officers to check the Quality and quantity of food in public establishments.

88 S.16 of Sale of Goods Act No. 3 of 1930; India Code (1930), ch.2 pg.16.
89 Borrie and Diamond, supra note 46, at 66.
90 Indian Penal Code, No. 45 of 1860, ch. 13 pg. 264-67.
91 Id. at ch. 14 pg. 2
92 Act no. 37 of 1954 as amended by act 22 of 1995
Section 2:-Under this Act an article of food shall be deemed to be adulterated:

(a) if the article sold by a vendor is not of the nature, substance or quality demanded by purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be;

(b) if the article contains any other substance which affects, or if the article’ is so processed as to affect, injuriously the nature, substance or quality thereof;

(c) if any inferior or cheaper substance has been substituted wholly or in part for the article so as to affect injuriously the nature, substance or quality thereof;

(d) if any constituent of the article has been wholly or in part abstracted so as to affect injuriously the nature, substance or quality thereof;

(e) if the article had been prepared, packed or kept under Insanitary conditions whereby it has become contaminated or injurious to health;

(f) if the article consists wholly or in part of any filthy, putrid, rotten, decomposed or diseased animal or vegetable substance or insect-infested or is otherwise unfit for human consumption;

(g) if the article is obtained from a diseased animal;

(h) if the article contains any poisonous or other ingredient which renders it injurious to health;

(i) if the container of the article is composed, whether wholly or in part, of any poisonous or deleterious substance which renders its contents injurious to health;

(j) if any coloring matter other than that prescribed in respect thereof is present in the article, or if the amounts of the prescribed coloring matter which is present in the article are not within the prescribed limits of variability;

(k) if the article contains any prohibited preservative or permitted preservative in excess of the prescribed limits;

(l) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability, but which renders it injurious to health;

(m) if the quality or purity of the article falls below the prescribed standard or its constituents are resent in quantities not within the prescribed limits of variability but which does not render it injurious to health.
2.4.8. Prevention Of Black-marketing And Maintenance Of Essential Commodities Act The Community, 1980:

An Act to provide for detention in certain cases for the purpose of prevention of black marketing and maintenance of supplies of commodities essential to the community and for matters connected therewith. In order to prevent unethical trade practice like boarding and black-marketing etc, against the thirty four commodities. The Prevention of black-marketing of Supplies of Essential Commodities Act, 1980 is being implemented by the State Governments to detain persons whose activities are found to be prejudice to the maintenance of supplies of commodities essential.

2.4.9. The Essential Commodities (Special Provisions) Act, 1981:

An Act to make certain special provisions by ways of amendments to the Essential Commodities Act, 1955, for a temporary period for dealing more effectively with persons indulging in hoarding and black-marketing of, and profiteering in, essential commodities and with the evil of vicious inflationary prices and for matters concerned therewith or incidental thereto. Whereas for ensuring the availability of essential commodities at fair prices, it is necessary to curb the hoarding and black-marketing of, and profiteering in, such commodities;

And whereas for dealing more effectively with persons indulging in such anti-social activities and the evil of vicious inflationary prices it is necessary to make certain special provisions by ways of amendments to the Essential Commodities Act, 1955 , for a period of [fifteen years].

2.4.10. The Cigarettes (Regulation of Production Supply and Distribution Act), 1975:

An Act to provide for certain restrictions in relation to trade and commerce in, and production, supply and distribution of, cigarettes and for matters connected therewith or incidentally thereto.

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93 Act no 7. 1980.
94 Act no 18 of 1981
95 subs. For “ten years” by the Essential commodities (special provision) Amendment Act, 34 of 1993, section 2.
96 Act no. 49 1975
2.4.11. The Multi-State Cooperative Societies Act, 1984:-  

An Act to consolidate and amend the law relating to Cooperative Societies with objects not confined to one State and serving the interests of members in more than one State, to facilitate the voluntary formation and democratic functioning of cooperatives as peoples institutions based on self-help and mutual aid and to enable them to promote their economic social betterment and to provide functional autonomy and for matters connected therewith or incidental thereto.  

2.4.12. The Standards of Weights and Measures (Enforcement Act), 1985:-  

An Act to provide for the enforcement of the standards of weights and measures established by or under the Standards of Weights and Measures Act, 1976 and for matters connected therewith or incidental thereto.  

2.4.13. The Narcotic Drugs and Psychotropic Substances Act, 1985:-  

An Act to consolidate and amend the law relating to narcotic drugs, to many stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances to provide for the forfeiture of property derived from, or used, in, illicit traffic in narcotic drugs and psychotropic substances.  


An Act To Provide for the establishment of a Bureau for the harmonious development of the activities of standardization, marking and quality certification of goods and for mattes connected therewith or incidental thereto. This Act prescribes standards for the weights and measures used in trade. These standards ought to be certified by the Bureau of Indian Standards (BIS) and contain the "ISI" (Indian Standard Institute) mark. This also prescribes rules for packaged commodities. The rules explain the details that a package should contain like the maximum retail price (MRP), weight of the commodity, date of manufacture and expiry.

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97 Act 51 of 1984  
98 Act 39 of 2002  
99 the standards of weights and measures (enforcement act) 1985.  
100 Act no.61 of 1985  
101 Act no. 63 of 1986
2.4.15. Monopolies and Restrictive Trade Practices Act, 1969: 102

This Act establishes a Central Commission to initiate suo moto action against restrictive and unfair trade practices and also to hear and pass orders on complaints. The aim of this Act is to stop any trade practice that may have the effect of preventing, distorting or restricting competition or causes loss or injury to consumers.

2.4.16. The Drugs and Magic Remedies (Objectionable Advertisements Act), 1954:- 103

An Act to control the advertisement of drugs in certain cases, to prohibit the advertisement for certain purposes of remedies alleged to posses’ magic qualities and to provide for matters connected therewith.

Benefit of these Acts is that they do not require the consumer to prove mensrea. Rather, “the offenses are of strict liability, and not dependent on any particular intention or knowledge.” 104 Criminal law in the field of consumer protection has acquired much significance, as consumers are less inclined to go to civil court for small claims. It has been said that “the functional value of criminal law in the field of consumer protection is a high one and it has a respectable pedigree.” 105 Another view is that there has been an attempt to look at consumer protection as “a public interest issue rather than as a private issue” to be left to individuals for settlement in court. But these laws are not the ideal remedy for the consumers in modern period.

The orthodox legal requirements under those laws forced the policy makers to craft specific legislation to protect consumers. As a result, the Consumer Protection Act of 1986 was enacted with the objective of providing “cheap, simple and quick” justice to Indian consumers.

102 MRTP Act 1969.
103 Act no.21 of 1954.
105 It is said, due to the congestion of courts with heavy arrears, it may take 5 to 15 years for a claimant to wade through the different levels of courts in tort litigation in India.
2.5. The Indian Consumer Protection Act of 1986 and the Evolution of a New Legal Culture:\textsuperscript{106}

The Indian legal system experienced a revolution with the enactment of the Consumer Protection Act of 1986 [“CPA”], which was specifically designed to protect consumer interests. The CPA was passed with avowed objectives. \textit{It is intended to provide justice which is “less formal, [and involves] less paper work, less delay and less [expense].”} The CPA has received wide recognition in India as poor man’s legislation, ensuring easy access to justice. However, the CPA simply gives a new dimension to rights that have been recognized and protected since the ancient period. It is rightly said that “the present-day concern for consumer rights is not new and that consumer’s rights like the right to have safe, un-adulterated and defect-free commodities at appropriate prices has been recognized since ancient times.”

Two decades of experience with the operation of the CPA shows its popular acceptance and the legal preference of injured consumers to enforce their rights under it. The CPA commands the consumer’s support because of its cost-effectiveness and user-friendliness. In fact, the CPA creates a sense of legal awareness among the public and at the same time, brings disinterest to approach traditional courts, especially on consumer matters. It has changed the legal mindset of the public and made them think first of their remedies under the CPA, regardless of the nature of their case. In short, the CPA has instilled confidence among the “teeming millions” of impoverished litigants. The way in which the consumer fora are flooded with cases and the mode in which these cases are being disposed of creates an impression of “judicial populism” in India in the arena of consumer justice.

The greatness of the CPA lies in its flexible legal framework, wider jurisdiction and inexpensive justice. One can find in the CPA a mixture of principles of torts and contracts. Simply speaking, it is “a shorthand term to indicate all the many different aspects of general law.” Basically, the CPA liberalizes the strict traditional rule of standing and empowers consumers to proceed under the CPA. Consumer groups, the central or any state government are all empowered to lodge

complaints under the CPA. This liberalization shows the care that has been taken to represent and fight for the cause of weak, indifferent and illiterate consumers. The novelty of the CPA is the inclusion of both goods and services within its ambit. The consumer can bring suit for defective products as well as for deficiency of services. In the event of any deficiency, all services, whether provided by the government or private companies, can be questioned under the CPA.

The CPA also liberalized rigid procedural requirements and introduced simple and easy methods of access to justice. To proceed under the CPA, the consumer need only pay a nominal fee and need not send any notices to the opposite party. A simple letter addressed to the consumer forum draws enough attention to initiate legal action. Another major procedural flexibility is the option the consumer has to engage a lawyer. If the consumer prefers, he can represent himself. The simple measures of action drive consumers to avail themselves of the benefits of the CPA.

The CPA initiated a legal revolution by ushering in the era of consumers and developing a new legal culture among the masses to take recourse under the CPA regardless of their grievance. The Consumer Disputes Redressal agencies, the National Commission, the State Commission, and the District Fora are working together in a way that is revolutionizing the present Indian legal system and challenging the traditional system of delivering justice. With easy access to the courts guaranteed by the CPA, consumers now wage legal battles against unscrupulous traders or service providers without any hesitation. The Indian government is also taking an active interest in protecting consumer rights and promoting effective consumer movements. In 2003, the Planning Commission of India identified “Consumer Awareness, Redressal, and Enforcement of the Consumer Protection Act of 1986” as a priority, and as a result, a national action plan was prepared.

The consumer fora created by the CPA have proven to be effective, disposing of thousands of cases with few legal formalities, and leading the way toward well-founded consumer jurisprudence in India. The traditional Indian legal system, in addition to a huge backlog of cases, is experiencing a litigation explosion in the area of consumer protection. According to one report, the total number of consumer cases pending in different fora was 359,469 cases as of June, 2004. Around 45,798 cases have been filed before the national commission since its inception. At present, 8,884 cases are pending disposal. The huge backlog of consumer cases before consumer
fora is forcing the Indian legal systems to think of “alternatives” for speedy disposal of consumer cases. India, home to the majority of the world’s consumers, is committed to working for the welfare of consumers through new legal innovations.

2.6. **Position of the Consumers in Rural Area:**

Those days when in rural based economics, the needs of human beings were few and these were sought to be fulfilled through exchange of goods and methods of self-reliance. It is obvious that few of us will prefer firewood in place of gas or bullock cart in place of car. At that time the needs were very few of the rural people, therefore the chances of cheating was also few. But now a day’s one can’t live without keeping touch with the global developments. The style of life has changed making scientific and technological instruments a necessity for the decent living so much so that the disadvantages attached to them are not taken into consideration by the consumers.

2.7. **Conclusion:**

Consumer Protection is always a matter of great concern. In ancient India, effective measures were initiated to protect consumers from crimes in the market place. Ancient law gives ably described various kinds of unfair trade practices and also prescribed severe punishments for wrong doers. Mainly, acts of adulteration and false weights and measures were seriously dealt with. In ancient India, the king was the supreme authority to render justice, but his authority was circumscribed by the rules of Dharma. In the medieval period, some Muslim rulers developed well organized market mechanisms to monitor prices and the supply of goods to the markets. During the British period, the modern legal system was introduced in India. There were many other laws for the protection of consumer. For e.g. Sale of goods Act, Specific relief Act, Indian penal code etc. though these law were there for protection of consumers still the consumer were not protected from the exploitation of business malpractices.

Consumer protection Act imposed in 1986 in India. However, before the Act implemented, according to the other laws if the consumer has to make any complaints he should only go to the regular court for a remedy. Going to the regular court was both expensive and time consuming. This was an additional burden on the innocent
buyer. This has hampered the consumer physically, psychologically and economically. For this reason consumer use to bear the loss and kept silent.

Under the sale of goods act the doctrine of ‘Caveat Emptor’ or ‘Buyer Beware’ was applicable. This doctrine held the buyer totally responsible, although the seller was aware of the defect or deficiency. This doctrine stated, “the buyer must keep his eyes and ears open and mind active while buying”. The buyer has to be responsible and cautious.

Under the Civil procedure code or Criminal procedure code there are provisions to get justice but these procedure are lengthy and time consuming that will never provide justice to consumer. For many years the cases were pending in the court.

Many times for many years pending cases which are there in court, the proof for the same gets spoiled or destroyed and it becomes difficult for the consumer to present the same in the court, it reduces the chances of getting justice.

According to Indian penal code there are some provisions and punishment for protection of consumer like fraudulent weight and measures, adulteration etc.

However case registered according to Indian penal code, are pending for many years. Some cases results have been given, if the buyer successful wins the battle he would generally get a remedy in the form of punitive and deterrent measure i.e. the guilty seller would be punished and it would create fear in the mind of likeminded sellers. However this did not satisfy the innocent buyer who has already suffered physically, mentally and monetarily.

Because of the above difficulties, the innocent buyer was reluctant to seek remedy, although he was the injured party, resulting in the seller resorting to more and more unfair trade practices.

Therefore, a need was felt to provide the innocent consumer a remedy, which was quick, easy, least costly, effective and compensatory in nature, keeping these in view, the consumer protection act, 1986 was enacted.