CHAPTER I

INTRODUCTION

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CONSUMER MOVEMENT - HISTORICAL PERSPECTIVE

In recent years, there has been an increasing public concern over the consumer protection issues all over the world. Taking into account the interest and needs of consumers in all countries, particularly those in developing countries, the consumer protection measures should essentially be adopted.

(i) The protection from the things hazardous to health and safety;
(ii) The promotion and protection of economic interest;
(iii) Access to adequate information;
(iv) Control of misleading advertisements and deceptive representation,
(v) Consumer education; and
(vi) Effective consumer redress.¹

The consumer policy is no longer to be viewed solely at the national level. Since the world economy has become so interdependent, national consumer protection policies have now acquired international dimensions. Economic and Social

¹ UN General Assembly Consumer Protection (Resolution 38/248, dt. 9.4.86).
Council; International Co-operation and Co-ordination within the United Nations System Consumer Protection Report of the Secretary General 1983, these all efforts are mostly due to the international character of business practices, in that the marketing of goods and services is often done on a multinational basis, and, in many cases by international corporations, and also to the fact that problems encountered by consumers are often not exclusive to any one country. It is, therefore, pertinent to state briefly some recent international developments in this field.

DEVELOPMENT OF CONSUMER PROTECTION MOVEMENT IN INTERNATIONAL SPHERE

The international consumer protection movement has been growing appreciably. The increase in the volume of international trade and commerce has promoted the inter-government co-operation. The expanding role of transnational corporations in the production, distribution and promotion of goods and services have raised a number of issues which call for international co-ordination.\(^2\)

These factors have invariably promoted international

activities in the area of Consumer Protection. The majority of the consumers are of low income group and they face non-availability of food products and essential commodities of life of acceptable quality at a reasonable price. The consumer protection in developing countries is more of a necessity rather than of a matter of academic discussion. These developing countries need egalitarian consumerism, thereby meaning that essential commodities must be available to the vast majority of the people at a reasonable price so that they could improve to some extent their quality of life and protect themselves against hazardous or adulterated foodstuffs. Many international programmes deal with consumer protection and the emphasis is on providing basic goods and services. In this regard the United Nations Guidelines for Consumer Protection and the comments of the United Nations Secretary General are relevant.³

"Finally, it may be noted that international co-operation with regard to consumer protection is needed because the development of Consumer Protection Policy no longer requires that measures be taken only at the national level. Since the World economy has become so inter-dependent, National

Consumer Protection Policy has now acquired international dimensions. This is mostly due to international character of business practices. In that the marketing of goods and services is often done on multinational basis and in many cases by transnational corporations and also due to the fact that problems encountered by consumers are often not exclusive to any country. As a result, measures adopted to protect the consumers in one country can have implications for consumers in other countries. For instance consumer protection measures, such as national standards, intended to protect consumers in one country, can become barriers to international trade by making it more difficult for consumers in that country to choose among various goods and to purchase those goods at the lowest possible price, and, they may also affect consumers in exporting countries by depriving them of the income generated by exports. Another area where international co-operation is required is the exchange of information on banned and severally restricted products in order to enable importing countries to protect themselves adequately”.

In the last two decades many international organisations have been active in the area of consumer protection. The
General Assembly of the United Nations adopted guidelines\(^4\) for consumers protection. The guidelines provided a framework for Governments, particularly developing countries, to use in elaborating and strengthening consumer protection policies and legislations. They are also intended to encourage international co-operation.

The origins of the guidelines can be traced to the late 1970s when the Economic and Social Council recognised the consumer protection and put an important bearing on economic and social development. In 1977 the Council asked the Secretary General to prepare a survey of national institutions and legislations in the area of Consumer Protection in 1979 the Council requested for a comprehensive report containing proposals for measures in consumers protection for consideration by Governments. In 1981 the Council aware of the need for an international policy framework within which further efforts for consumer's protection could be pursued, requested the Secretary General to continue consultation with the aim of developing a set of general guidelines for consumer protection taking particularly into account the needs of developing countries.

Accordingly, the Secretary General carried out consultation

with Governments and international organisations and submitted draft guidelines for consumer protection to the Economic and Social Council in 1983. During the next two years there were extensive discussions and negotiations among the governments on the scope and content of the guidelines, culminating in their adoption in 1985. In July 1988, the Economic and Social Council passed a resolution (Resolution No. 61/1988) which urged all governments to implement guidelines.

The other important developments include -


The work in the area of Food and Agricultural Organization (FAO/WHO) Codex Alimentarius Commission.

United Nations General Assembly Resolution dated 17.12.1982 on protection against products consumption and use of which have been banned, withdrawn, severely restricted approved by governments.

Inter-Governmental Organizations have established special divisions to advance consumer interest in a particular function area, for example, Food and Agricultural Organization (FAO) has
been pursuing special programme for food control and providing
guidance for pursuing the consumer protection programmes. The International Labour Organization (ILO) promotes the
interests of workers and their families in their capacity as consumers with a view to providing them with basic goods at
reasonable prices in sufficient quantity and in satisfactory
quality. Other programmes also deal with welfare facilities at the
work place, strengthening of consumer co-operatives and
providing education to workers. World Intellectual Property
Organization (WIPO) has been preparing a new model law for
developing countries on Trade Marks which emphasises various
questions on consumer protections. Another international
organization known as International Organization of Consumers’
Unions (IOCU) formed in 1960 is an organization which deal with
inter-governmental organization and National Governments.
International Organizations have contributed substantially by
defining consumer protection beyond the concern of private
consumer, such as, to include the availability, quality and safety
of goods and services available to the general public. This broad
approach to the concept leads to the economic and social
development and education of basic consumer rights in the
developing countries.

After two years of negotiations in the Economic and Social
Council of the United Nations, the General Assembly adopted the consensus a set of guidelines of Consumer Protection on 9th April 1985. These guidelines are meant to provide framework for countries particularly for developing countries to use in the deliberations and strengthen policy and legislation to protect consumers and also promote international co-operation in the field. These guidelines includes -

1. Physical safety of consumers;
2. Protection of economic interests of consumers;
3. Consumers’ access to information needed to make informed choices;
4. Measures enabling consumers to obtain redress;
5. Distribution of essential goods and services;
6. Satisfactory production and performance standard;
7. Adequate business practices and informative marketing;
8. Proposal for international co-operation in the field of consumer protection.

The origins of these guidelines can be traced in the late 1970s when the Economic Social Council recognised that consumer protection had an important bearing on economic and social development. These guidelines included measures in the essential areas of food, water and pharmaceuticals emphasising for product quality control, adequate distribution facilities.
standards, labelling and education and research programmes. They also suggest that the Governments adopt appropriate measures in areas such as pesticides and chemicals. These guidelines are not binding, they serve as a beacon light to serve the cause of consumers. Therefore, it is the prerogative of each accordance with their priority and needs⁵.

The Expert Committee of World Health Organisation (WHO) defined in 1977 a list of drugs which are essential to ensure basic health needs of the people. This list was intended to help Governments in the selection and procurement of drugs at reasonable price. The guidelines provided by the Expert Committee are very important for the developing countries which have limited financial resources. The World Health Organization (WHO) concept of an essential list takes into consideration necessary modifications which may be required to meet local situations and needs.

The list does not emphasise that other drugs are not useful but simply it emphasises that these drugs are essential to ensure basic healthcare of the majority of the people.⁶

In March, 1978 at its Fourth Session of Inter-Governmental Working Group on a Code of Conduct of the

⁵ General Assembly Resolution 39/248, 16th April, 1985.
Commission on Transnational Corporations agreed upon a tentative formulation of provisions relevant to consumer protection which included as follows:

(1) Transnational Corporation should perform their operations in a way that does not cause dangers to the health and safety of consumers and maintain consistent quality of products;

(2) Transnational Corporations should disclose, to be appropriate authorities of the country in which they operate, information relating to features of their products which are directly related with the health and safety of consumers;

(3) Transnational Corporations should disclose all information relating to prohibitions, restrictions, warnings and other regulatory measures imposed in other countries on grounds of health and safety protection on products which they produce or market or propose to market and on processes which they use or propose to use in the countries concerned;

(4) Transnational Corporations should disclose appropriate information relating to experimental aspects and uses of products which they propose to use or market in the country concerned;
(5) Transnational Corporations should disclose to the public all necessary information on the contents and the possible dangers or other adverse effects of the products they produce or market or propose to produce or market in the countries concerned by means of proper labelling, informative and not misleading advertisement and other appropriate methods.

(6) Transnational Corporation should co-operate with the Governments of the countries in which they operate with a view to promote standards for protection of the health and safety of the consumers in relations with their production or marketing in the countries concerned.

Nevertheless, international consumer movement is in a continuing process to evolve equitable principles and rules for the protection of consumers and also for the control of restrictive business practices which have adverse effect on international trade, particularly of developing countries and on their economic development. Efforts have also been made in the past for framing a model law on restrictive business practices in order to help developing countries to devise appropriate legislations. In this regard, the Third Ad-hoc Group of Experts on Restrictive Business Practices of United Nations Conference on Trade and Development (UNCTAD) has focussed on a number of issues
relevant to consumer protection. Some of these issues deal with fixation of prices inclusive resale price maintenance, refusal to sell, the price policies of enterprise on an individual basis, acquisitions, mergers, and takeovers, agreements between enterprises concerning standards, and the supply of spare parts and replacements in particular for after sales service.

United Nation's Conference on Trade and Development (UNCTAD) has also played important role in the field of trade marks having intimate relation with consumer protection. At the meeting of the "Group of Governmental Experts on the Role of International Property System in the Transfer of Technology" held in October, 1977 considerable attention was given to the matter relating to implication of trade marks for consumer protection in the agreed conclusions and decision and in the "Declarations of Governmental Experts from Developing Countries Members of the Group of 77". The study prepared by United Nation's Conference on Trade and Development (UNCTAD) on the impact of trade marks, particularly foreign owned trade marks, in consumer decisions and its consequences for developing countries.

In the matter of increasing food production and raising quality promoting better food processing to meet established standards better conservation of food resources and improved
food storage, marketing and distribution systems, the Food Science Control and Consumer Protection Group of the Food and Agricultural Organisation (FAO) played important role as a continuing work in the area. The advice on food law, a complete body of basic food regulations, the improvement of food inspections and analysis programmes, the training of technical administrators, inspectors, chemists, microbiologists for government food control and food quality control in food handling processes from producer to consumer are the areas in which concentrated efforts are needed. Documentation at the international level is being developed to help countries to reach these goals and includes publication on general guidelines for food control services, including preparation of model food law, laboratory and inspection manuals specialised documents on the problems such as mycotoxins, expert inspection, training aids, etc.

The Codex Alimentarius Commission also did lot of work to set international standards and codes of practices for food stuffs. The Commission has also considered topics such as legislative aspects of food irradiation to present food loses, nutrition labeling, guidelines for good practises in advertising and claims novel food and nutritional question relating to foods. A code of ethics for international trade in food is being developed to ensure
the safety and quality of foods entering in international trade.

The programme of World Intellectual Property Organization (WIPO) also did some good work which included matter relating to consumer protection. WIPO also studied on how intellectual property can be used to improve the protection of consumers particularly in developing countries and relations between developed and developing countries.

United Nation's Industrial Development Organisation (UNIDO) has also contributed with regard to the safety of consumers by providing the required institutional machinery to promote adequate quality control procedure for improving the quality of goods and products, organization and implementation of national quality certification, marketing schemes which guarantees certain relevant quality standards. The continuing technical co-operation projects and planned activities in standardisation, quality control & quality certification all part and parcel of integrated programme of UNIDO.

United Nation's International Children's Emergency Fund (UNICEF) has also done good work relating to consumer protection. UNICEF deals with food for infants and children and their safety and nutritional value.

The European Regional Organizations have been doing actively also some work to advance the just causes of
consumers. The Council of Europe has been doing good work. The European Economic Community and the Commission of European Communities worked together to know the effects of economics integration on consumer and developed interest on matters related with consumer information and co-ordination of consumer policies in member states. The Department of Economics and Community Development (DECD) constituted a committee on consumer Policy to study governmental consumer protection policies in member countries.

The report is on the main problems faced by consumers relating to consumer credit and principle which should govern the regulation providing more consumer information and protection in the field Organization for Economic Co-operation and Development, Consumer Protection in the Field of consumer Credit (Paris, 1977). The Committee on consumer policy also publishes annual reports on consumer policy in DECD member countries, reviewing institutional development and enactment's and amendments to existing regulations with a view to provide safety and protect economic interest of consumers at large and to suggest measures for providing consumer information and education.

"The Inter-Scandinavian Committee on Consumer Matters" co-ordinates research and information on consumer protection.
It also keeps in touch with the National Consumer Councils in the Scandinavian countries.

Non-Government Organizations and many consumer groups such as labour organization, business communities and their representatives, industrial groups have organised themselves at international level to advance the cause of consumers. International Organization for Consumer's Union (IOCU) the prominent and internationally known organization has done invaluable work in the field. It is a non-profit independent foundation which is having membership form over 50 countries, as well as government financed consumer councils, labour unions and similar groups. It also enjoys consultative or liaison status with a number of International Agencies. International Chamber of Commerce established in 1920 in Paris has also deliberated on the issues of consumer protection. It also established an International Council on Advertising: Practice and drafted a Code of Advertising Practice. Its commission on marketing, advertising and distribution has evolved certain fair competition and business standards and ethics to ensure fair competitive practices. It's code of market research practice worked for laying down standard for enterprises specialising in marketing research. There are other international agencies which have promoted the interest of
consumers.

However, there is no international law of consumer protection which exists but united efforts of the international agencies will promote the development of such Public International Law.

In any case it may be noted that today a number of countries all over the world have laws to regulate and control unfair and deceptive trade practices and to provide adequate protection to the consumers. It is proposed to outline briefly some developments concerned with consumer laws in the United States, United kingdom and Australia in addition to International movement of Consumer Protection from whose experience we have been benefitted in framing the consumer laws and policy of our country.

(1) **CONSUMER PROTECTION MOVEMENT IN UNITED STATES:**

The first Anti Trust Legislation was enacted by the United States in the year as long ago as 1890 namely the ‘Sherman Act’. The Act declared every contract, combination in the form of Trust or otherwise or conspiracy in restraints of trade or commerce to be illegal. But for increased protection of consumer this Act could not respond to the wide spread pressure. To meet the demand of increased protection of the consumer two major legislations were passed in the year 1914, the Federal Trade
Commission Act and the Clayton Act. The Federal Trade Commission Act is the oldest and the most prominent statute for the protection of the consumers. The Federal Trade Commission was authorised by the Act to correct unfair methods of competition, where the Commission implementing the Act moved to protect the consumer as an objective in and of itself, rather than as an incident that would further competition.

The Federal Trade Commission Act was amended in the year 1938 by Wheeler Lea Act extending the scope of the Act to cover "Unfair or Deceptive Acts or Practices" as well as "Unfair Methods of Competitions". Thus there are three separate basis which have been provided by the amendment, namely -

Federal Trade Commission's Jurisdiction
Unfairness or Deception, or
Unfair Competitive Methods.

In the year 1975 the Magnuson Moss Warrantly - Federal Trade Commission Improvement Act further strengthened the commission's rule making and other authority over "Unfair and Deceptive Acts and Practices". The commission is organised into two Principles Operating Bureau, the Bureau of Consumer Protection and the Bureau of Competition.

The Bureau of Consumer Protection has principal
responsibility of monitoring advertising, labeling and deceptive practices.

In addition to aforesaid legislations, there are number of other legislations on consumer protection which cover Consumer Credit Protection Act which requires certain disclosures in consumer credit sales and loan, the Consumer Leasing Act which deals with consumer leases, the Fair Billing Act which contains provisions relating to credit billing practices. The Fair Packaging and Labeling Act, The Consumer Product Safety Act, the Federal Hazardous Substances Act, The Position Prevention Packaging Act and The Consumer Radiation Health and Safety Act, provide protection to the consumer in several ways.

Further the Unfair Commercial Code attempts to protect Purchasers of Goods through a requirement of "Good Faith and a Prohibition of 'Unconscionable' Practice.

The provisions of the code have been widely incorporated in subsequent Uniform or Model consumer protection statutes, e.g. Uniform Consumer Credit Code, Uniform Consumer Sales Practices Act, Uniform Residential Landlord and Tenant Act, Uniform Land Transaction Act, Uniform Simplification of Land Transfers Act, Uniform Condominium Act, Model Real Estate, Time Share Act, Model Real Estate Co-operation Act, Uniform Common Interest Ownership Act.
Every year the 15th March is observed as the "World Consumer's Rights Day". The significance of this day is that on this day in 1962 John F. Kennedy, the then President of the U.S.A. declared *four consumer's rights* in his rights in his special message to the American Congress. Later on the International Organization of Consumers Union (IOCU) added three more rights to the list. The Government of India too included these rights in its 20 point programme. These have also been incorporated in the United Nations Charter of Human Rights. These consumer rights are--

1. Right to safety
2. Right to be informed
3. Right to choose
4. Right to be heard
5. Right to redress
6. Right to consumer education
7. Right to healthy environment
8. Right to basic needs.

However, it is interesting to note that the following factors were mainly responsible for evoking the demand for consumer protection in America:

1. Information gap
2. Performance gap
3. The role of impersonal and unresponsive institutions
4. The Budget squeeze
5. The Ghetto consumer
6. Different views of the market place

(2) CONSUMER PROTECTION MOVEMENT IN UNITED KINGDOM:
In order to protect the interest of the consumer there are a number of legislations in the United Kingdom. The most significant of them are:

(1) Fair Trading Act, 1973,
(2) The Competition Act, 1980, and

Fair Trading Act, 1973 seeks to protect each consumer from consumer trade practices and unfair practices with a view to encourage competition which is fair as between one business and another, and fair towards the consumer by ensuring the trading standard are improved wherever possible and that unfair trading practices are stopped or changed whether they be abuses of a monopoly position are practices which are for example oppressive of or inequitable to consumers Part III of the Fair Trading Act, 1973 provides for the separate procedure for dealing with unfair practices. An unfair practice involves a cause of conduct which is detrimental to the interest of the consumers, whether interest in respect of health, safety or other
matters. Part III of the Fair Trading Act can be applied to the wide extremely area. There is no specific exclusion in Fair Trading Act, 1973 which consequences all the professions and all business including nationalised industries and public undertakings, are within its ambit.

The Competition Act, 1980 has been enacted to make provisions for the control of anti competitive practices in supply and acquisition of goods and the supply and securing of services to provide for the investigation of prices and charges by the Director General of Fair Trading and to make amendment with respect to the Fair Trading Act, 1973 and Restrictive Trade Practice Act, 1976.

The Consumer Protection Act, 1987 is a wide ranging piece of legislation, creating both Civil and Criminal liability. The object of the Consumer Protection Act, 1987 is that the best from the consumer protection is to promote competition supplying unsafe goods or misleading consumers about the price is an unfair competition. Fair Competition will not be achieved if consumers are given false for misleading information to base the decisions that they make in the market place. Thus if the competition is to work effectively in practice the consumers must have sufficient information for them to make effective choices. The Consumer Protection Act, 1987 deals with three aspects:
(i) Product Liability;

(ii) Unsafe Goods;

(iii) Misleading Price Indications.

(i) Product Liability: Part I of the Consumer Protection Act, 1987 provides a system of strict liability imposed upon a producer in respect of any damage caused by defective products. However, the complainant must still prove a casual relation between the damage and the defect. However, Section 4(1) of the Act enable to the producer to avoid the liability if he can prove any of six defenses laid down under the Act.

(ii) Unsafe Goods: Part II of the Consumer Protection Act, 1987 introduces a General Duty on all suppliers of consumer goods to ensure that the goods they supply are safe. A person who offers or agrees to supply or supplies any consumer goods which fail to comply with the general safety requirement, shall be guilty of an offence under Section 10 of the Act.

(iii) Misleading Price Indications: Part III of the Consumer Protection Act, 1987 makes it a general offence to give misleading price indication to consumer in respect of any goods, services, accommodation or facilities.

(3) CONSUMER PROTECTION MOVEMENT IN AUSTRALIA:
In the year 1906 Australia adopted first anti trust
legislation. The Australian Industries Act, 1906, which was influenced and was substantially similar to the Sherman Act, 1980 of the United States. The Australian Industries Act, 1906 was amended in the year 1911 with a view to overcome some difficulties but changes in attitudes. Because of two world wars and a world depression the Australian Industries Act was led to its being ignored for many years. The success of 1906 Act was that it prompted the 1965 legislation which repealed the 1906 Act named The Trade Practice Act, 1965. The Trade Practice Act, 1965 was influenced by the Restrictive Trade Practice Act, 1956 of United Kingdom. The Trade Practice Act, 1965 was replaced by the Trade Practice Act, 1974. Before 1977 there were some amendments to the Act whereas in the year 1977 the first major amendment were effected to this behalf.

Further significant amendment have since been made in the year 1978 and 1980. The Trade Practice Act, 1974 is concerned with restrictive trade practices and consumer protection. Part - V of the Act deals with consumer protection and is aimed at eliminating unfair competition in trade and commerce as well as strengthening the position of consumer. The Act prohibits false or misleading representation or advertisement, offering of gifts, prizes or other free items with the aim of not providing them, bait advertising, referral selling.
Further a corporation is prohibited to supply goods which do not comply with the prescribed consumer products, safety standards. There are many other countries which started the consumer movements.

(4) INTERNATIONAL MOVEMENT OF CONSUMER PROTECTION:

There was need for guidelines in order to provide a framework for Government, particularly those of developing countries to use in elaborating and strengthening consumer policies and legislation, which was adopted by the United Nations on the 9th day of April, 1985 intending to encourage International Co-operation in the field of consumer protection.

The origin of the Guidelines can be traced to the late 1970's, where it has been recognised by the Economic and Social Council that the consumer protection had an important bearing on account of economic and social development.

In the year 1977 the Secretary General of the United Nations was asked by the Economic and Social Council to prepare a survey of National Institution and Legislation in the area of consumer protection.

In the year 1979 the Secretary General of the United Nations has been requested by the council for comprehensive report having the contents of the proposal for the measurement of the consumer protection for the consideration by the
Government.

In the year 1981 for the need of an International Policies framework, purposing the further efforts for consumer protection, the Secretary General of the United Nations has been requested by the Economic and Social Council to continue its consultation with an aim of developing a set of General Guidelines for consumer protection, basically for the need of developing countries.

Accordingly in the year 1983 a draft guidelines submitted to the Economic and Social Council by the Secretary General of the United Nations. During the next two years there were extensive discussion among the Government on the scope and contents of the guidelines culminating in their adoption in 1985.

But in the year 1988 a resolution was passed by the Economic and Social Council urging all Governments to implement the Guidelines and the Secretary General of the United Nations was further requested by the Economic and Social Council to be continue to promote their implementation and in co-operation with United Nations Agencies to continue to provide assistance to the Government in particularly those of developing countries in implementing the Guidelines.

Basically all the important international movements include:


The work in the area of Food and FAD/WHO Codex Alimentarious Commission, and The United Nations General Assembly Resolution of December 17, 1982, on protection against product whose consumption and use have been banned, withdrawn, severely restricted or not approved by the Government.

(5) **CONCEPT OF CONSUMER AND CONSUMERISM IN INDIA:**

(I) **PROFILE OF CONSUMER:**

In order to achieve maximum results of consumerism in India, the regulatory measures should take into the vital difference, which exists in profile of consumer in rural and urban settings. Legal system aims at giving the consumer an adequate return of money spent by him on goods or services.7

Rural consumers differ from those of urban consumers. They have relatively larger percentage of people below the poverty line. A poor consumer has hardly any choice. In the rural market place there is hardly any competition. Voluntary

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Organizations or State sponsored community centers to create consumer awareness do not exist. City consumers have become vigilant and aware of their rights and remedies.

(II) **CONSUMER’S INTEREST** :

Every human being in the country wherever he is stationed in life is a consumer. It is sometimes difficult to define between the interest of consumers’ vis-a-vis interest of society as a whole. An American associated with consumer protection rightly said,

"Consumer interest is the public interest and I represent public."

Engineers, doctors, labors, students, politicians, legislators, intellectuals all are consumers. Sometimes consumers are both consumers and products simultaneously and their interests come into conflict.

(III) **CONSUMERISM**

The total effect of law in the field is described as ‘consumerism’. A study of consumerism revolves around the concept of a consumer, who need not be the complainant. A registered voluntary organization of which he may not be a

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member can take up consumer dispute. The association may receive written complaints from customers whereupon they may take up the concerned consumer cases with the retailers, traders or the erring traders. The word ‘consumer’ includes all people irrespective of their groups. Every citizen is a consumer. Therefore, a consumer is any person who engages in the process of spending money and using economic goods and services.9

Consumer protection is not the outcome of the twentieth century legislation. Even during the period of ancient Rome, protection was available to the Consumer. In the Middle Ages, established consumer Standards also played their part, a merchant of shoddy goods was dragged around the town on a hurdle with his wares tied around his neck.10

ANCIENT INDIA:

In ancient India the law provided severe punishment for adulteration of grains, food and medicines, bad quality goods and any other type of dishonest dealings in the market.11

Thus Narada and Brihaspati laid down numerous laws and regulations to safeguard the interest of buyers. After having purchased an article for a certain price, when an purchaser thinks that he has made a bad bargain, he may

11 See, Encyclopaedia Britannica, Adulteration, 1968, p 187
return it to the seller on the same day in an undamaged condition and receive his money back.\textsuperscript{12}

_Brihaspati_ is precise regarding the rescission of purchase and sale. In his opinion, the purchaser shall examine a chattel himself and show it to others for examination. When after examining and approving it, he has accepted it; he is not at liberty to return it again.\textsuperscript{13}

But a dishonest seller who sells an article fully knowing it's blemish, shall pay twice its value to the purchaser and fine of the amount to the kind.\textsuperscript{14} Moreover, if, within a period, a blemish is discovered anywhere in the commodity purchased, it shall be returned to the vendor and the purchaser shall recover the prices.\textsuperscript{15}

The great law giver, _Manu_ had suggested that selling commodities, which are rotten, less in weight or not according to sample is undesirable.\textsuperscript{16} Prices were fixed by the King, which were reviewed. _Manu_ suggested inspection of weight and measures after every six months.\textsuperscript{17}

\textsuperscript{12} Malty S.K., "Economic Life in Northern India in the Gupta Period", 1970
\textsuperscript{13} Ibid –
\textsuperscript{14} Ibid -
\textsuperscript{15} Ibid -
\textsuperscript{16} Mughal B.S., "Political Economy in Ancient India", 1960, p 223
\textsuperscript{17} Ibid
Kauṭilya in his Artha Shastra deals with the problems of controls of markets. The weights and measures were stamped by the superintendent and there was a provision of fine for unstamped weights and measures.¹⁸

Kauṭilya was very particular that the merchants should not pass on inferior goods as superior, so he says,

“When a trader sells or mortgages inferior as superior commodities, adulterated things deceitful mixtures or when he substitutes other articles for those just sold, he shall be punished with a fine of 54 panas”.¹⁹

MODERN INDIA:

During the 19th century, the basic fundamental requirement of the system was competition. But by the end of it, economists began to make explicit what was so far implied. Competition is the big stick that enforces order and fair play. It is a self-policing world. No government intervention is necessary. It is a world of desirable Laissez-faire ruled by Adam Smith’s “invisible hand”. It is a world of no economic power nobody can extort the other. Some prices may rise temporarily. But there is no reason to suppose that all prices will persistently rise or persistently fall.

¹⁸ B.P.Sinha, “Reading in Kauṭilya’s Arthashastra”. 1975, p 97

¹⁹ Ibid -
In a modern welfare State, State is not only administrator, but has also assumed the positions of a protector, provider, entrepreneur, economic controller and arbitrator.\textsuperscript{20}

Consumerism in India, has never been effectively organised but workers, businessmen, farmers, industrial labors have been organised to assert and defend their rights to protect their interest.\textsuperscript{21}

Consumerism is a human movement, since it protects rights of human beings. It is not confined to any particular section of the society or any part of the world. It is a global consumer movement, which promotes several rights of consumers and protests them through redressal compensatory agencies. Consumerism is the total effect of law, which protects the interests of the consumer.

Consumerism is a Socio-Economic movement. Consumerism in India did not necessarily take place in the past but in view of socio-economic condition it has to have it's own way to protect the rights of buyers in the world of sellers. The birth of consumerism did not take place because there was no social movement to protect the rights of the buyers in relation to

\textsuperscript{20} Fridman, "Law in a Changing Society", 1972, p 506
\textsuperscript{21} Ibid -
sellers. Now there is necessity for the consumerists to suggest structural base to generate the faith of the common man in mobilising the movement to safeguard the interest of the buyer through various social control devices.

In our country there is economic discontent due to which the consumers feel their real income is deteriorating in terms of purchasing capacity of rupee. The effect of economic conditions is more on the poor and the middle class people. The prevailing economic discontent necessarily needs change. In order to solve problems, we have to think of consumerism and law and it's instrumentalities. The task of law is to consider the position of the consumer is a commercial world and also to see that consumers' interests are protected.\(^{22}\)

(IV) **CONSUMERISM UNDER CONSUMER PROTECTION ACT, 1986:**

The following are the essentials under the consumer transactions under Consumer Protection Act -

(i) **SALE OF GOODS:**

1. There must be a sale transaction between two persons.
2. The sale must relate to goods.
3. There must be consideration and it can only be money and

\(^{22}\) Supra
neither exchange of goods nor partly money and partly goods.

4. The consideration may be paid at the time of the sale transaction or subsequently in one lump sum or by installments.

5. The user of goods, with the approval of the buyer, is also a consumer.

6. But a buyer who buys the goods for RESALE or for any COMMERCIAL PURPOSE is not a consumer. (Section 2 (d) of Consumer Protection Act).

(II) HIRING OF SERVICES:

1. The services rendered should be for consideration, i.e. money consideration.

2. The services may be paid for at the time of the service transaction or subsequently in one lump sum or by installments.

3. The beneficiary of the services with the approval of the buyer is also a consumer.

4. The services means services of any description including those connected with banking, financing, insurance, transport processing, supply of electrical or any energy, boarding or lodging or both, entertainment, amusement or the purveying of news or other services. The term 'service'
is so wide that it would include service of any kind, whether rendered by government or governmental instrumentality or non-government. Thus services relating to supply of water, electricity, telephone and postal services fall within the term 'services'.

This phrase 'services' has not been defined or explained in the Act. The Specific Relief Act, 1963, also does not use this phraseology. In Section 14(6) of this latter Act there is a mention that a contract cannot be specifically enforced if it is, "So dependent on the personal qualifications or volition of the parties or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms". Every contract of personal service will be found in the specific relief expression. The Consumer Protection Act thus throws out of its consideration a large segment of consumer difference.\textsuperscript{23}

The Act intends to deal only with the routine rut of cases and not with peculiar cases, depending upon personal factors, which include complicated situation or technical considerations.

Thus a contract to perform a surgical operation, paint a picture, deliver a lecture or supervise the construction of a house will not be attracted by the Act. That other party to the contract is not a consumer in these cases.

\textsuperscript{23} IILJ / Vol. 30/3/1988 . 325
Another important factor is whether the term services should be used in relation to the goods or independent thereof so as to include even services connected with the sale of immovable property. As stated earlier the Act applies, unless expressly excepted to "all goods and services". This expression uses the term "all". Also the term service (S. 2(0)) is without the prefix "their". Furthermore, the term service, as defined in the Act, "means service of any description". Thus the term goods and services are independent of each other. The services may not related to the goods. They may arise with sale of immovable property. The only condition is that services are paid and not rendered free of charge. The phrase "contract for personal service" requires clear cut interpretation.\textsuperscript{24}

(V) CONSUMER :

S 2(d) Consumer means any person who, -

i) 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 includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised or under any system of deferred payment when such use is made with the approval of such person who obtains such goods for resale or for any commercial

\textsuperscript{24} IILII/Vol. 30/326
purpose; or

ii) Hires any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hired the services for consideration paid or promised or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person.

(VI) **SERVICE**:

S 2 (1)(o) defines ‘service’, thus: "service" means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financial insurance, transport processing, supply of electrical or other energy, board or lodging, or both, 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.*

**SPLITTING OF THE DEFINITION OF SERVICE:**

The definition of service in Section 2(1)(o) of the Act can be split up to into three parts—the main part, the inclusive part and the exclusive part. The main part is expalantory in nature and defines services of any description which is made available to the
potential users. The inclusive part expressly includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news of other information. The exclusionary part excludes rendering of any service free of charge or under a contract of personal service.\(^{25}\)

**DIFFERENCE BETWEEN 'CONTRACT OF SERVICE' AND CONTRACT FOR SERVICE:**

A 'contract for services' implies a contract whereby one party undertakes to render services i.e. professional or technical services, to or for another in the performance of which he is not subject to detailed direction and control but exercises professional or technical skill and uses his own knowledge and discretion. (See: Oxford Companion to Law). A 'contract of service' implies relationship of master and servant and involves an obligation to obey others in the work to be performed and as to its mode and manner of performance. (See: Stroud's Judicial Dictionary, 5th Ed. Simons Vs. Health Laundry Co.,\(^{26}\) and Dharangadharara Chemical Works. We entertain no doubt that Parliamentary draftsman was aware of this well accepted

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\(^{26}\) (1910)1 KB 543.
distinction between 'contract of service' and 'contract for service' instead of the expression 'contract of service', in the exclusionary part of the definition of 'service' in Section 2(1) (o). The reason being that a employer cannot be regarded as a consumer in respect of the services rendered by his employee in pursuance of a contract of employment.27