CHAPTER - II
HISTORICAL BACKGROUND

In early period of the development of human society, man was near the nature and was completely dependent upon natural resources and products for his need. An enormous increase in population and greater demands of the people to lead a better and comfortable life, the consumption rate increased manifold. There is always a scarcity of products in the market resulting in enormous increase of price of essential commodities beyond the reach of a common man. The mass production and intense competition has further generated a fundamental imbalance in the market place leaving the consumer confused. The consumers are vulnerable to unfair deals by the supplier of goods and services. Unaware consumers are paying the price for the irresponsible action of the industry and the short sighted policies of the government. These circumstances led to the development of voluntary organizations. The consumer felt the need to unite and seek redressal for their grievances, fight for their rights and demand a measure of accountability from the government and the business community. Most of the consumer groups, particularly in India, and abroad, started as a group of people organizing to solve regional and local problems but today the voluntary organizations are quite forceful and have moved on to larger issues.¹

2.1. Origin, Growth and Evolution of Consumer Movement in India

Consumer protection is not a new phenomenon in India. This has been *inter alia*, one of the prominent socio-economic problems inherited by India with its independence in 1947. Since, then, various consumer oriented enactment were made by the National and State Governments from time to time to tackle this malady which bear ample testimony to its existence, growth and ramification.

Indian consumers are exploited by the sellers at the market place. Most of the consumer's in India are illiterate, living below the poverty line who becomes a victim at the hands of trader. The consumer below the poverty line suffer the most from fraud, excessive prices, exorbitant credit charges, poor quality of merchandise and service. Protection of consumer is not a new concept. From time immemorial Indian consumers were protected through various scripts written in ancient India. Historically speaking, the problem has much deeper roots in the ancient Indian jurisprudence, perhaps a little beyond the imagination of modern jurists, law makers, and policy planners. In this chapter, an attempt has been made to briefly examine the historical perspective of consumer protection in India. Development of consumer movement in India can be broadly divided in to two categories. They are Consumer Jurisprudence in India pre and post independence scenario. Pre independence era mainly speaks about the role played by the British Government to protect the consumer in the market place. Post independence scenario deals with the various enactments made by the Parliament from time to time to protect the interest of consumers.\(^2\)

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Consumerism is as old as the mankind itself and therefore in order to trace its origin and development one has to peep into the history for a chronological analysis of law on the subject. For this purpose it would be convenient to divide the present study into the following periods:

They are:

2.1.1. Ancient period
2.1.2. Medieval period
2.1.3. Modern period:
   2.1.3.1. Pre-Independence and
   2.1.3.1. Post-Independence

2.1.1. Ancient Period

Indian society, since its very beginning appears to be duty conscious. During ancient period the consumers were a better protected lot and punishments were prescribed even for the breaches of the contracts. Fraud was also taken as a serious offence and customer had not only a right to replace the defective goods or take back the price but also had a right to rescind or set aside the contract.

The chief functions of the king were of a military and judicial character. He was the protector of his people, laws and the destroyer of their enemies. He was himself immuned from punishment and wielded the rod of chastisement (danda). It has to be clearly understood that the power of administering justice to the people was a duty of the king and not the royal privilege. Hindu king was not above the law but law was above and superior to him. He has to perform his judicial duties in accordance with the preset principles proposed by the Sages in the Shastras. As the supreme judge of the
land, he was controlled by the rule of law and was not free to follow his personal whims and notions of justice.³

Historically, consumer considerations date back to the Vedic age (5000 BC-2500 BC). The Vedic age in India was a glorious period of cultural evolution. Matters relating to civil rights and criminal offences are elaborately discussed in the Vedas. Four broad types of relevant criminal offences were prominent in the ancient period: a) Adulteration of food-stuff, b) Charging of excess of prices, c) Fabrication of weights and measures, d) Sale of forbidden articles.

For all these offences statutory measures and punishments were recommended from time to time by leading texts of the time. Some of the prominent texts of the time were:

i) Manusmriti (800 BC – 600 BC).

ii) Kautilya’s Arthashastra (400 BC – 300 BC) - Kautilya wrote the Arthashastra, a treatise on economics. His work is of great merit and originality and contains material of superb thought. Kautilya wrote the Arthashastra in an elegant style. He dealt with administrative law, civil law, constitutional law, criminal law and international law.

iii) Yajnavalkyasmriti (300 BC – 100 BC) - It is very systematic and is considered to be an authority in the realm of Hindu Law as well as of vyavahara (behaviour) and personal rights of a man.

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iv) Naradasmriti (100 AD – 200 AD) – It has clearly delineated the channels of civil and criminal law.

v) Brihaspatismriti (200 AD – 400 AD) – It gives an elaborate description of civil and criminal law. It mentions the offences very clearly and also mentions the punishment and penalty to be imposed on the violators of the law.

vi) Katyayanasmruti (300 AD – 600 AD) – It deals extensively with the substantial and procedural law as well as with the rules of evidence. Various other matters concerning judicial trial are also mentioned in this.

According to the Arthashastra a superintendent of weights and measures was appointed to maintain control over fabrication of weights and measures. Constant watch and periodical checking was indispensable.

The Arthashastra provides that:

a) A trader is considered to be a cheat and would be fined heavily if found using unstamped weights and measures.

b) Pressing and forging false weights and measures was also fined.

c) In case the trader used correct weights and measures, but through the trick of his hand lessened or enhanced the weight and measure of an article for his own benefit, he was a greater offender than one who simply used false weights and measures and was penalized for this.4

Kautilya’s Arthashastra specifically provided for the appointment of a superintendent of weights and measures to maintain and to have control over weights and measures with a view to minimizing the likelihood of fraud being committed. It prescribed that at the end of every four months, weights and measures and balances used by the traders were to be re-examined and re-stamped by the officers so that there might be no fraudulent manipulation in them.

According to the Manusmriti, it was obligatory on the king to fix the rates for the purchase and sale of all marketable goods, having duly considered from where they have come (distance), their destination (place to which it should go after sale), transport charges, value of goods (original), incidental expenses and margin of profit. Such fixation, according to it, should be done once in five nights or fortnightly and publicly. It provided that all weights and measures must be duly marked by the king and should be re-examined every six months.\(^5\)

On the issue of excessive price charging by the traders, the Yajnavalkyasmruti stated that sale and purchase should be conducted daily according to the value fixed by the King. It was even punishable to demand a higher price. According to it, if any merchant or person dealt in goods which were forbidden from being sold, the articles were to be forfeited to the king. It also recommend that a person who deals in false gold and also one who indulges in selling unclean meat should be maimed and also be made to pay

\(^5\) Supra Note 2, p 46.
the highest embracement. It also mentions the malpractice of adulteration and accordingly recommends punishment for the offence.

The *Naradasmriti* made special reference to rogues who forged weights and measures. The *Brihaspatismriti* also mentioned cheats, forgers, and fraudulent traders. It also contains instances of the practice of adulterating good articles with those of inferior quality and manufacture of false gold and gems. The deceivers who manufactured imitation articles of small value and caused them to appear very valuable were to be punished severely. The *Katyayanasmruti* and *Matsya Purana* imposed fines upon traders who used false weights and measures. The *Vishnusenasmriti* (591 A.D.) also refers to cases involving weights and measures and mentions an expert on matters pertaining to weights and measures whose view was necessary in cases involving such matters. From this text it appears that the weights and measures prevalent in the locality were to be examined by state officials twice a year. Similarly *Somadeva* made specific reference to the crime of falsification of weights and measures. The *Agni Purana* laid down that merchants dealing fraudulently with honest men either in respect of the quality or price of a commodity should be punished and their goods should be confiscated to the state. Punishment was also reserved for those merchants who did not purchase foreign articles at the price fixed by the King and those who bought them cheaply and sold at a higher price.⁶

⁶ Supra Note 2, Pp46-47.
2.1.2. Medieval period

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.\(^7\)

Sultan Alauddin Khilji established separate shopping centres in Delhi for grain, cloth, sugar, dried fruits, herbs, butter, and oil, horses, slaves and cattle, and miscellaneous commodities. The supply of grain was ensured by collect tax in kind in the producing areas and keeping it in the royal store houses. Hording of grain was forbidden. Elsewhere the growers were ordered to sell their grain for cash in their fields at fixed prices and were not allowed to take any grain home for private sale. The market controller, the state intelligence officers, and the sultan's secrete agents each submitted independent reports on these shopping centres to the sultan. Even a minor violation of the rules was not tolerated. The shopping centre for cloth, known as the sara-i-adl, was established near one of the royal palaces on the inner side of the baba un gate. All goods, including foreign imports, were first taken there and prices fixed. Every merchant was registered with the commerce ministry and had to sign a bond guaranteeing a regular supply of the goods in which they traded.

The shopping centre for general commodities was under the direct control of the commerce ministry. Ala-ud-din's Minister of Commerce was

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\(^7\) A. Rajendra Prasad, (Journal of Consumer and Commercial Law, University of Houston: 2008) p34.
also the Superintendent of Weights and Measures and the controller of Commercial Transactions. He was assisted by Superintendents for each commodity, prices and weights and measures were checked by sending the children employed in the royal pigeon-house to buy petty articles. The brokers had been given a special place in the market system. They arranged for the supply of goods as middlemen between customers and small-scale producers. They also acted as clearing agents for their clients, paid customs duty, transported merchants' goods to warehouses, and arranged their sale.8

2.1.3. Modern period:

This period has been categorised in two categories to make it very effective such as 1) Pre-Independence and 2) Post-Independence.

2.1.3.1. Pre-Independence

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 regime (1765-1947) also known as the 'Colonial Era', 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

8 Supra Note 2,Pp48-49.
local custom] which accorded with indigenous understanding. The borrowed elements underwent more than a century and a half of pruning in which 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. 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, the Usurious Loans Act of 1918, and the Agriculture Procedure (Grading and Marketing) Act of 1937. These laws provided specific legal protection for consumers.

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, 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, 1860 has a number of provisions to deal with crimes against consumers. It deals with offences 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.

Consumer protection legislation enacted after India’s independence from Britain include: the Essential Commodities Act, 1955, the Prevention of Food Adulteration Act, 1954 and the Standard of Weights and Measures Act, 1976. The benefit of these acts is that they do not require the consumer to prove mens rea. Rather, “the offences are of strict liability, and not dependent on any particular intention or knowledge.” 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.” 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.

In addition to the remedies under contract and criminal law, consumers have rights under tort law. Based on its numerous legal intricacies, however, tort law is not the ideal remedy for injured consumers in India. For example,
the traditional doctrine of negligence imposes heavy responsibility on the plaintiff to prove each of its required elements. These traditional legal requirements naturally encourage injured consumers to pursue legal remedies under different laws.\(^9\)

The government of India has been vigilant against the wicked tendencies of traders damaging and dubbing the interests of common consumers. The following legislations give sufficient light on the efforts of the government to save the consumers from malpractices in different trades:

**Indian Penal Code, 1860:-**

The Indian Penal Code, 1860 contains certain provisions which are worth noting in connection with consumer protection and satisfaction. It provides penalties for offences i) relating to weights and measures, ii) affecting the public health, iii) concerning counterfeiting the property mark.

Fraudulent use of false instrument for weighing: 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 fine or with both. Thus, it is evident that intention to commit the offence must be there.\(^{10}\)

IPC Sections 265, 266 and 267 deals with the fraudulent use of false weight or measure, being in possession of false weight or measure and making or selling false weight or measure respectively shall be punished with

\(^9\) Supra Note 7,p134.  
\(^{10}\) IPC Sec. 264.
imprisonment of either description for a term which may extend to one year, or with fine, or with both.

From the above provisions, it is obvious that offences in Ss. 264-267 are based on the doctrine of *mens rea*. The knowledge regarding the false weight or measure or their fraudulent use is necessary to constitute the same as an offence.

Adulteration of food or drink intended for sale: - 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 be 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 Rs. 1000, or with both. The term adulteration refers to mixing with any substance, whether wholly different, or of the same kind but of inferior quality.\(^{11}\)

Sale of noxious food or drink: - 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 state 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 Rs.1000 or with both.\(^{12}\)

Adulteration of Drugs :- 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 to make it noxious, intending that it

\(^{11}\) Ibid. Sec. 272.
\(^{12}\) Ibid. Sec. 273.
shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purposes, as if it had not undergone such 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 Rs.1000, or with both.\(^{13}\)

Sale of Adulterated Drugs: - 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 Rs.1000, or with both.\(^{14}\)

Sale of a drug as a different drug or preparation: - 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 for a term which may extend to six months, or with fine which may extend to Rs.1000, or with both.\(^{15}\)

Fouling water of public spring or reservoir: - Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with

\(^{13}\) Ibid. Sec. 274.

\(^{14}\) Ibid. Sec. 275.

\(^{15}\) Ibid. Sec. 276.
imprisonment of either description for a term which may extend to three months, or with fine which may extend to Rs.500, or with both.16

Making atmosphere noxious to health: - Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to Rs. 500.17

Offences Concerning Counterfeiting the Property Mark: - Whoever sells, or exposes, or has in possession for sale, any goods or things with a counterfeit property mark affixed to or embossed upon the same or to or upon any case, package or other receptacle in which such goods are contained, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.18

Indian Contract Act, 1872:-

The law of contract has completed about one hundred forty years of its glorious existence. It contains various provisions which regulate the rights and liabilities of the contracting parties inter alia and also protect the consumers’ right.

The deceived party whose consent was induced by misrepresentation can avoid the contract.

“Misrepresentation” means and includes-

16 Ibid. Sec. 277.
17 Ibid. Sec. 278.
18 Ibid. Sec. 486.
1) The positive assertion in a manner not warranted by the information of the person making it, that which is not true though he believes it to be true;

2) Any breach of duty which without an intent to deceive, gains an advantage to the person committing it, or pay any claim under him, by misleading another to his prejudice of anyone claiming under him;

3) Causing however innocently a party to an agreement to make a mistake as to the substance of the thing which is the subject matter of agreement.\(^\text{19}\)

“Fraud” means and includes any of the following acts done with “intent to deceive” or to induce a person to enter into a contract-

i) The suggestion that a fact is true when it is not true and the person making the suggestion does not believe it to be true;

ii) Active concealment of a fact by a person who has knowledge or belief of the fact;

iii) Promise made without any intention of performing it;

iv) Any other act fitted to deceive;

v) Any such act or omission as the law especially declares to be fraudulent.\(^\text{20}\)

**Sale of Goods Act, 1930:-**

The Sale of Goods Act came into force on 1st July, 1930. This Act protects the rights and interest of the consumers. Some of its important

\(^{19}\) Indian contract Act.1872, Sec.18.

\(^{20}\) IPC Sec. 17.
provisions are highlighted below:

Section 12 of the Act defines condition and warranty as under:

(1) A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.

(2) A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to right to treat the contract as repudiated.

(3) A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.

According to Section 15, where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description, and, if the sale is 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.

Section 17 speaks about contract of sale by sample, which provides that:

(1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

(2) In the case of a contract for sale by sample there is an implied condition -

(a) that the bulk shall corresponded with the sample in quality.

(b) that they shall have a reasonable opportunity of comparing the bulk with the sample.
(c) that the goods shall be free from any defect, rendering them un-
merchandable, which would not be apparent on reasonable examination.

Chapter VI of Sale of Goods Act deals with the remedies available to
seller as well as buyer in case of breach of contract. Sections 57 to 61 specially
give protection to buyer/consumer. Section 57 provides that where the seller
wrongfully neglects or refuses to deliver the goods to the buyer, the buyer
may sue the seller for damages for non-delivery.

Section 59 provides remedy for breach of warranty as it says that:

(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.

Under section 60 where either party to a contract of sale repudiates the
contract before the date of delivery, the other may either treat the contracts as
subsisting or wait till the date of delivery, or he may treat the contract as
rescinded and use for damages for the breach.

Section 61 provides for interest by way of damages and special damages.

The Act is consumer oriented in the sense that it provides equal
opportunity to sue for damages and claim interest in the case of breach of
contract. The doctrine of "ca\textit{veat emptor}" has no governing effect now.\textsuperscript{21}

\textbf{The Drugs and Cosmetics Act, 1940:-}

The main object of the Drugs and Cosmetics Act, 1940 is to prevent
sub-standard drugs and cosmetics in order to maintain high standards of
medical treatment and to implement the constitutional guarantee to implore
public health by prohibiting consumption of injurious drugs as contained in
Article 47 of the Constitution of India.\textsuperscript{22}

In order to prevent sub-standards in drugs for the purpose of
maintaining good standards in medical treatment, Section 9 of the Act defines
misbranded, adulterated and spurious drugs. According to this section, a
drug is misbranded -

(a) If it is so coloured, coated, powdered or polished that damage is
concealed or if it is made to appear of better or greater therapeutic
value than it really is; or
(b) If it is not labelled in the prescribed manner; or
(c) If its label or container or anything accompanying the drug bears any
statement, design or device which is false or misleading in any
particular.

Section 9-A provides that a drug shall be deemed to be adulterated -

(a) If it consists, in whole or in part, of any filthy, putrid or decomposed
substance; or
(b) If it has been prepared, packed or stored under in sanitary conditions

\textsuperscript{21} Supra Note 4, p35.
\textsuperscript{22} Supra Note 4, pp35-36.
whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health; or

(c) If its container is composed in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(d) If it bears or contains, for purposes of colouring only, a colour other than one which is prescribed; or

(e) If it contains any harmful or toxic substance which may render it injurious to health; or

(f) If any substance has been mixed therewith so as to reduce its quality or strength.

Section 9 B defines a spurious drug as a drug-

(a) If it is imported under a name which belongs to another drug; or

(b) If it is an imitation of, or is a substitute for another drug or resembles another drug in a manner likely to deceive or bears upon it or upon its label or contained the name of another drug unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity with such other drug; or

(c) If the label or container bears the name of an individual or company purporting to be the manufacturer of the drug, which individual or company is fictitious or does not exist; or

(d) If it has been substituted wholly or in part by another drug or
substance; or

(e) If it purports to be the product of a manufacturer of whom it is only truly a product.

The Act in section 13 envisages the various offences and also provide for punishment in relation to the above mentioned drugs.

2.1.3.2. Post-Independence

The Constitution of India was adopted by the Constituent Assembly on 26th November 1949 and signed by the President Dr. Rajendra Prasad. It came into force on 26th January 1950. Independent India went for a socialistic pattern of society and opted for planned development through industrialization and more especially through five year plans. In the post-independence period, the Government of India assumed an active role in the socio-economic development of the country. The Preamble of the Constitution lays stress, *inter alia* on socio-economic justice. Some of the Articles specially meant for protecting consumer’s life and property.23

Constitutional remedy is available to every citizen to enforce fundamental rights by way of writs issued by the apex court. This article guarantees the right to move the Supreme Court for the enforcement of fundamental rights. Article 32(2) empowers the Supreme Court to issue writs, orders or directions for the enforcement of the fundamental rights.24

Apart from the Fundamental Rights, Articles 38 to 51 contains the Directive Principles of State Policy which lay down certain economic and

24 Indian Constitution Art. 32.
social goals to be pursued by the various Governments in India. The State to
direct its policy towards securing.\textsuperscript{25}

(a) that the citizens, men and women equally, have the right to an
adequate means of livelihood;

(b) that the ownership and control of the material resources of the
community are so distributed as best to sub serve the common good;

(c) that the operation of the economic system does not result in the
concentration of wealth and means of production to the common
detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the
tender age of children are not abused and that citizens are not forced
by economic necessity to enter avocations不适 suited to their age or
strength;

(f) those children are given opportunities and facilities to develop in a
healthy manner and in conditions of freedom and dignity and that
childhood and youth are protected against exploitation and against
moral and material abandonment.

The Government of India enacted a plethora of legislations to
safeguard the interest of consumers. The following are the legislations, which
were passed after independence.


\textsuperscript{25} Article 39 of the Constitution of India.

iii) Drugs and Magic Remedies Act, 1955.


**The Prevention of Food Adulteration Act, 1954:**

This Act contains specific provisions protecting the consumer's interest. The Act lays down the circumstances under which an article of food shall be deemed to be adulterated. They are:

(a) If the article sold by a vendor is not of the nature, substance or quality demanded by the 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 is insect-
infected 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 colouring matter other than that prescribed in respect thereof if
present in the article, or if the amounts of the prescribed colouring
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
standards or its constituents are present in quantities not within the
prescribed limits of variability, which renders it injurious to health;

(m) If the quality or purity of the article falls below the prescribed
standards or its constituents are present in quantities not within the
prescribed limits of variability but which does not render it injurious to
health.26

26 The Prevention of Food Adulteration Act, 1954, Sec. 2.
The Act prohibits the importing of certain articles of food---No person shall import into India—

(i) any adulterated food;
(ii) an misbranded food;
(iii) any article of food for the import of which a license is prescribed, except in accordance with the conditions of the license; and
(iv) any article of food in contravention of any other provision of this Act or any rule made there under.\(^{27}\)

The Act prohibits the manufacturing, sale, etc., of certain articles of food--- No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute-

(i) any adulterated food;
(ii) any misbranded food;
(iii) any article of food for the sale of which a license is prescribed, except in accordance with the conditions of the license;
(iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority in the interest of public health;
(v) any article of food in contravention of any other provision of this Act or of any rule made there under;
(vi) any adulterant.\(^{28}\)

**The Essential Commodities Act, 1954:**

According to Section 2 (a) of the Act “essential commodity” means any of the following classes of commodities:—

(i) cattle fodder, including oilcakes and other concentrates;
(ii) coal including coke and other derivatives;

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\(^{27}\) Ibid. Sec. 5.

\(^{28}\) Ibid. Sec. 7.
(iii) component parts and accessories of automobiles;
(iv) cotton and woollen textiles; (via) drugs.

Explanation. — In this sub-clause, “drug” has the meaning assigned to it in clause (b) of section 3 of the Drugs and Cosmetics Act, 1940 (23 of 1940);

The Act provides that contravention of certain orders made under the provisions of the Act can be punished *inter alia* with imprisonment which may extent to seven years and the subject property may be forfeited.\(^\text{29}\)

**The Monopolies and Restrictive Trade Practices Act, 1969:-**

The Preamble of the Act says an Act to provide that the operation of the economic system does not result in the concentration of economic power to the common detriment, for the control of monopolies, for the prohibition of monopolistic and restrictive trade practices and for matters connected therewith or incidental thereto.

The Act defines "restrictive trade practice\(^\text{30}\)" is a trade practice which has, or may have, the effect of preventing, distorting or restricting competition in any manner and in particular,

(i) which tends to obstruct the flow of capital or resources into the stream of production, or
(ii) which tends to bring about manipulation of prices, or conditions of delivery or to affect the flow of supplies in the market relating to goods or services in such manner as to impose on the consumers unjustified

\(^29\) Sec. 7 of the Essential Commodities Act, 1954.
\(^30\) Sec. 2(o) of the MRTP Act, 1969.
costs or restrictions;

Section 36-A imports an exhaustive way the protection to consumers from unfair trade practices, practiced by unscrupulous traders, manufactures, producers and business men.

**The Standard of Weights and Measures Act, 1976:**

The preamble of the Act says an Act to establish standards of weights and measures, to regulate trade or commerce in weights, measures and other goods which are sold or distributed by weight, measure or number, to provide for matters connected therewith or incidental thereto.

This Act prohibits the manufacturers any use of non-standard weight and measures. This Act along with standard of weights and measures (packaged commodities) Rules,1977, made it compulsory that the names and addresses of the manufacturer or packer, name of the commodity, net quantity, month and year of manufacture and sale price of the commodity to specified on the package.31

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2.2. **Origin, Growth and Evolution of Consumer Movement at International Sphere:**

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

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developments concerned with consumer laws in the United States, united kingdom and Australia from whose experience we have been benefited in framing the consumer laws and policy of our country.32

The International Consumer Protection Movement has been growing appreciably. The increase in the volume of international trade and commerce has promoted the inter-governmental co-operation. The expanding role of transnational corporations in the production, distribution and promotion of goods and services has raised a number of issues which call for international co-ordination. These factors have invariably promoted international activities in the area of consumer protection.33

European Consumer Protection statutes began to appear in the 15th and 16th centuries and were based on the principle of deterrence. For instance, vendors of adulterated milk in Austria were required to drink their own entire product. Similarly, French consumers were allowed to throw rotten eggs at those who had sold them. In United States of America the constitution empowers the congress to "fix the standard of weight and measures" and various State laws were passed to allow inspection of foods, tobacco, liquor, leather, lumber, and gunpowder etc.

During most of the middle ages, consumers were protected to some degree by the moral strictures of the Catholic Church, self-regulations by craft guilds and consumers' own knowledge of products and local sellers. The laws did not favour the consumers, but neither did they favour the

33 Supra Note 2,p-10.
seller; there was essentially no law covering consumer transaction. Gradually the European kings over-saw a shift in legal doctrine that favoured sellers, in their efforts to encourage the growth of trade. The dominant rule of the market place became "caveat emptor" or buyer beware. The supply and demand conditions that underlay the doctrine of caveat emptor and limited Government intervention on behalf of consumers changed rapidly in the latter decades of the 19th century.34

2.2.1. United States of America

The growth of consumerism in United States of America can be better understood by briefly discussing three eras of consumer activism in United States of America. This followed the application of rules like Caveat Emptor or buyer beware and the law of supply and demand. However the industrial revolution in the United States of America has brought radical changes in the then prevailing practices.

1) The First Era of Consumer Activism: - The Industrialization of American life entertained many benefits but it had its dark side as well. Particularly two negative aspects contributed to the first wave of consumerism in United States of America. The first problem was achieving the right amount of competition in various markets. The second problem was the safety and the quality of the new branded goods that were being sold in national rather than local market. The 1870s witnessed introduction of first popular Coca Cola, Wriggley’s Chewing Gum, Boxes of Kellog brothers, Corn Flakes and

Chocolate Bars. One can add to this list, Kodak Cameras and Uneeda Biscuits. There was optimal level of competition towards the end of 19th century and the beginning of 20th century. As already pointed out a greater necessity was felt to regulate the competition at the same time to take care of the safety and quality of the new goods. Many men in public life such as Supreme Court Justice Louis Brandeis, Wisconsin Senator and Governor Robert La Follete and President Theodore Roosevelt were engaged in regulating the competition. They represented consumer interest and were sympathetic to consumer well being they were instrumental in organizing the progressive movement and reacting to the growing concentration of business power in both the market place and political arena.

There was formation of trust, initiatives and referendums for laws protecting female and child labourers, tariff reforms and most importantly the rights of consumer. In 1887, the Interstate Commerce Commission was established to regulate the rail road industry, setting the precedent for independent regulatory agencies and in 1894 the Federal Trade Commission was established to regulate the products. In 1848, the Import Drugs Act was passed to deal with the counterfeit, contaminated, dilute and decomposed drugs being sold in the United States of America. The efforts of the anti-adulteration movement culminated in 1906 with the passage of the Pure Food and Drug Act and the Meat Inspection Act. Thus the first wave of consumer activism in the USA was a part of the broader progressive movement.35

2) The Second Era of Consumer Activism: - The first era of consumer activism ended in 1910s. It was an outgrowth of the massive changes brought by the early stages of the industrial revolution. The period of 1920s and 1930s marks the second era of consumer activism and it may be conceived as response to the broadening impact of industrialization revolution, it goes beyond the factories and transportation systems to whom the domain of consumption itself. The state of American consumer was aptly described as operating in a world of conflicting, claims, bright promises, fancy packages, soaring words, and almost impenetrable ignorance. It can bee seen that the authors offer consumer might drastically reduced the cost. A new organization called “consumers research Inc.” was formed with financial support from the state and it started disseminating the product testing and information. The establishment of consumers’ unions constitutes one of key events in the second era of consumerism in America. Another landmark development which occurred about at the same time involved the attempt to provide consumer representation in the federal government. The Consumer Advisory Board within the National Recovery Administration (NRA) and the consumer council within the department of agriculture provided such an opportunity for consumer representation. The Federal Food, Drug and Cosmetics Act, 1938 replaced the Food and Drug Act, 1906. An important amendment was made to the Federal Trade Commission Act of 1914 in 1938 empowering the Federal Trade Commission to regulate deceptive practices in addition to the unfair once. This had the effect of given
the federal trade commission jurisdiction over a wide range of harmful business practices, including deceptive advertising.\textsuperscript{36}

3) The Third Era of Consumer Activism: - The decade following the World War II was not hospitable to any form of social protests, including consumerism. Nevertheless due to increase of consumer prices owing to inflation between 1946 and 1956, it offered difficult choice to the consumers among the new and technologically complex products. Still the Consumer activism per se absent from the American scene until the 1960s primarily because consumers were relatively satisfied. Given this kind of contentment with the American standard of living, it is not surprising that the opening salvos in the third era of consumer activism were aimed not so much at the goods people consumed but the method by which the products were promoted. In 1957 a book written by Vance Packard entitled “The Hidden Persuaders”\textsuperscript{-} indicated the advertising industry for using psychological techniques to manipulate consumers. The attack on advertising was intensified in 1958 with the publication of Keeneth Galbraiths “The affluent Society”. This author was less concerned by the methods of advertising but by its social effects. He contented that advertising played a key role in making the United States of America an “Unbalanced Society” in which the pursuit of private goods overwhelmed the provision of public rules such as schools, hospitals and museums.\textsuperscript{37}

4) Federal Initiative: - In USA the consumer protection laws constituted only

\textsuperscript{36} Ibid.Pp5-6.
\textsuperscript{37} Ibid,Pp7-8.
a part of the other statutes relating to commerce, trade or general administration. But after the US President, John F. Kennedy given the "President's Message on protection" in 1961, pro-consumer legislations were adopted with specific purposes relating to the availability of safe services as well as products, covering the areas of consumer credit protection, fixation of fair price, supply of perishable agricultural commodities, packaging and stocking of goods, alcohol administration, aviation etc. In this respect, the enactment of Consumer Product Safety Act of 1972 has been landmark legislation.


2.2.2. Great Britain

The common law, relating to consumer protection in England and other European countries was initially based on the concept of product liability.

The classic case of “Donogue v. Stevenson” has given rise to the law of negligence relating to consumers. This was concerned with the nature of the duty owed by the manufacturer to the ultimate consumer of his products. In this instant case, the appellant and her friend went to a cafe. The friend purchased a bottle of ginger beer and gave it to her. After she consumed the content of the bottle, the friend poured out the remainder of the bottle revealing a decomposed snail. She consequently suffered shock and severe “Gastro enterities”. Even, though the appellant was not a party to the contract i.e., the purchase of goods, but still the manufacturer was held liable on the ground that the manufacturer owed duty of care to the ultimate consumer.

Thus, where the consumer has suffered any loss or injury by a manufacturer’s products, the manufacturer was held liable if negligence could be proved against them. The principle laid down in 'Donogue v. Stevenson' was made applicable also the suppliers, distributors, retailers, packagers, bottlers and repairers over a period of time.

By the end of 19th century, the warranty of merchantability had been developed and incorporated as exception to the caveat emptor rule in the Sale of Goods Act, 1893. Slowly and gradually the doctrine of 'caveat emptor' took the back seat. With the advent of the more and more legislations like the Restrictive Trade Practices act, 1956 and Weights and Measures Act, 1963, 1976 and 1979, as regards the regulation and control of the monopolies in United Kingdom was concerned, the Monopolies Restrictive Trade Practices (Inquiry and Control) Act of 1948 was the first law to cover that area. A
commission called monopoly and restrictive trade practices commission’ was set up under the Act and was renamed as the Monopolies Commission in 1956. This particular body has been vested with the power to investigate the merger's also under another statute called the Monopolies and Mergers Act, 1965. These legislations have been consolidated by the Restrictive Trade Practices Act, 1976.

With a view to ensure fair trading the Fair Trading Act, 1973 was enacted. The Director General of fair trading has been vested with many powers including the power to look into violation of resale price maintenance, or laid down instructions or quantities or description of goods etc.

At present the Consumer Act, 1987 is the primary legislation dealing with consumer protection in United Kingdom. It is a comprehensive legislation containing 35 sections. It contains provisions with respect to the liability of person for damages caused by defective goods and consumer safety. This Act consolidates with amendments, the Consumer Safety Act, 1978, the Consumer Safety (Amendment) Act, 1986; it also makes provisions with respect to the giving of misleading price indications, laying safety requirements, power to obtain information and other allied matters.39

2.2.2. Japan

Consumer organization in Japan differs considerably from that in other countries. First, it is extensive and increasingly well organized, particularly in consumer boycott activity. Second, it is largely made up of women -500 house

39 Supra Note,32,pp13-14.
wives groups for example, comprise the biggest organization, called shufuren. Though its quarterly magazine, shufuren keeps its members informed of policy decisions and also of which manufacturers are on its blacklist. Shufuren is active in product testing as well as in boycotts, which in fact, remains its main work.\(^\text{40}\)

2.2.3. Australia

In Australia, the first anti-trust legislation was adopted in 1906 the Australian Industries Preservation Act, 1906. The Act was influenced by, and was substantially similar to the Sherman Act, 1890 of the United States. Although the Act was amended in 1911, to overcome some difficulties but changes in attitudes, two world wars and a world depression led to its being ignored for many years. It was hardly the success of the 1906 Act that promoted the 1965 legislation, namely, the Trade Practices Act, 1965. This Act repealed the 1906 Act. The 1965 Act was influence by the Restrictive Trade Practices Act 1965 of the United Kingdom. Finally, the Trade Practices Act 1974 was passed which replaced the 1965 act. There were some minor amendments to the Act, before 1977, but the first major amendments were effected in 1977. Further significant amendments have since been made in 1978 and 1980. The Act is concerned with restrictive trade practices and consumer protection.

The Trade Practices Act, 1979 also deals with consumer protection and is aimed at eliminating unfair competition in trade and commerce as well as

strengthening the position of consumers. It prohibits false misleading representation or advertisements, offering of gifts, prizes, or other free items with the intention of not providing them, bite advertising, referral selling, further a corporation is prohibited to supply goods which do not comply with the prescribed consumer products safety standard.\textsuperscript{41}