Chapter-1
CONSUMER MOVEMENT IN INDIA - AN OVERVIEW

MEANING OF CONSUMER PROTECTION

As early as in 1934, Mahatma Gandhi taught us the basic concept of Consumer Protection, he said:

"A Customer is the most important visitor in our premises. He is not dependent on us. We are dependent on him. He is not an interruption in our work. He is the purpose of it. He is not an outsider on our business. He is a part of it. We are not doing him a favour by serving him. He is doing us a favour by giving us an opportunity to do so."

NEED AND IMPORTANCE OF CONSUMER PROTECTION

Who is a Consumer? A consumer is a person who buys, hires, possesses or acquires goods, services, rights for his own sake or for his family. The consumer may be an individual or an association or a family. Every person is a consumer in one transaction or the other. A consumer is an individual who uses goods and services and one who purchases goods and services for his final consumption and not for the purpose of manufacture or resale. Broadly speaking, consumer means a person who under a contract or otherwise, receives or accepts goods, property, services. He spends money for getting in return something which will be of use or of convenience to him. In case of failure, he can enforce his rights and claim the relief. In a modern welfare State satisfaction of the consumer is one of the main functions of the State. In a mixed economy the State has 4 functions - as provider, as regulator, as entrepreneur and as umpire. All these aim at helping the citizen consumer in one way

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1. W. Friedman: The State and the Rule of Law in a Mixed Economy.
or the other. So the consumer is entitled to a relief, a protection, in case he is not able to get what he wants/desires in his deal.

The term consumer has been defined in section 137(2) of the British Fair Trading Act, 1973 as "one who does not contract in the course of a business carried on by him but who deals with some one who does". Section 4B of the Australian Trade Practices Act, 1974, also defines the word consumer by and large in the same sense. Under Indian conditions consumer protection and public distribution system go hand in hand.

**CHANGING CONSUMER PROFILE**

Indian marketing scene has also undergone significant metamorphosis during the last three decades. The rapid industrialisation and increased gross domestic production of the country have not only expanded the market size, but have also brought about several changes in the profile of the Indian consumers.

"Concomitant socio-cultural changes and fast diffusion of technology in the country have provided an added impetus to the changing scenario. Taken together, all these changes have considerably affected the decision making processes as well as the consumption patterns of the Indian populace."

In particular, as a result of the greater exposure to the foreign culture, the Indian consumer has started demanding a variety of new products which hitherto were unheard in the country.

While on the one hand, these changes have greatly facilitated the tasks of marketers by providing a larger market for the existing as well as the new products, these changes on the other hand have also considerably complicated the
tasks of the marketers in terms of requiring greater attention to the consumer needs (rather than simply resorting to selling concept) and carefully adapting the products to suit the widely varying life styles and socio-cultural subtilities in vogue in the country.

RAPID GROWTH OF URBAN POPULATION

Increased mobility of the populace from rural to urban areas has been one of the most important phenomena of the changing Indian marketing scene. Due to a relatively faster development of the urban areas, there had occurred a considerable movement of the population from rural to urban areas. Apart from the increased mobility from rural to urban areas, a substantial movement of population has also taken place within the urban areas from smaller to bigger towns.

EXPANSION OF THE MIDDLE CLASS HOUSEHOLDS

For a long time, Indian society remained characterised by the presence of two major social classes, viz. rich and poor. But during the last three decades, there has occurred an unprecedented growth of the middle class people, particularly in the urban and sub-urban areas. This class is basically comprised of people such as industrial workers, teachers, lawyers, engineers, doctors, draftsmen, contractors, office workers and the lower and middle level executives working in both the public and private sector business enterprises.

Increased industrialisation, greater urbanisation and fast development of the tertiary sectors such as banking, insurance, hospitals, educational institutions, etc., have been among the important reasons underlying rapid growth of the middle class people.

Because of certain specific characteristics of the middle class people such as receipt of regular monthly income,
bigger literacy level, greater tendency to imitate the life styles of people belonging to higher social classes and the like, marketers interest in this market segment has grown manifold. Further, because of having attained satisfaction of their basic needs, middle class people generally tend to be highly career-oriented and status conscious. As a result, it is not uncommon for those people to spend a substantial portion of their income on non-food items such as clothing, education, entertainment and a variety of household appliances. Toothpaste, toilet soap, shaving cream and safety razor blades, hair oil, perfume, facial cream and powder, lipstick, nail-polish, etc., constitute important items of their shopping list.

In addition to heavy use of personal care items, middle class people are equally conscious of proper maintenance of their house which is reflected in a higher portion of their income being spent on curtains, household furniture, crockery, fans, cooker, refrigerators, stereo system, T.V., V.C.R. and many other convenience and status-symbol products. A variety of electric as well as non-electric household appliances such as pressure cookers, electric mixers/grinders, toaster, electric kettle, geyser, gasstoves, etc., have become indispensable items for the middle class people, possession of a scooter or car by the lower-middle and upper-middle class people respectively has become almost a necessity as well as a status-symbol for them.

Several changes have taken place in regard to their expenditure on food items too. It may, for instance, be observed that a major portion of their income is now spent on items such as tea, coffee, milk-powder, squashes, biscuits, bread and butter, snacks, soft drinks etc.
PLIGHT OF CONSUMERS

The plight of the consumer in developing countries—
with a lot of socialistic ideologies, social controls and
Public Sector monopolies—may not be that of a sovereign
who can exercise his will and free choice, but that of a
hapless non-entity ignored by the business and neglected
by the State. This hapless non-entity called 'the consumer'
does nor possess resources or authority to influence and
shape the destiny of goods and services produced for him.
Theoretically, he has the power; in effect he is only an
ignored and neglected non-entity. His position is very similar
to that of an ordinary citizen in political democracy sans
groups, political parties and organisations. Organized groups
of such people may exhibit their dormant power through demands
and demonstrations. In theory, both 'people' and 'consumers'
are sovereign but ineffective in the exercise of their powers
without mass movements and powerful organizations—often
political—to express their reactions to the policies and
practices of organizations with resources and authority.

Business practices appear quite strange in developing
economies with political democracy. Public sector monopolies
charge the consumer for their inefficiencies. Public sector
employees ignore both the customers and the tax-payers (their
owners) and are only concerned with themselves. The coopera-
tive sector, though they do not exploit the workers as they
used to do in tune with their traditional capitalist ideolo-
gies, do not care much for the consumer.

CONSUMER NEEDS PROTECTION

As a citizen of the country a consumer is entitled
to expect that he would get the right type of goods of the
right quality at the right time and at the right price. In
practice, however, we find that the common consumer is the
most harassed and the most helpless creature in a scarcity
The main reason for this plight is that in India consumers have not yet organised themselves into powerful movements not have they effective and alert protection agencies to secure redressal of their grievances.

In a vast country having a multiplicity of languages, customs and traditions, with large scale illiteracy, unemployment and poverty, spread of consumer education and organisation of an effective consumer movement are bound to be a difficult task. But these very factors make it all the more necessary that the subject of consumer protection should be accorded highest priority by all concerned.

We should bear in mind three important aspects of consumer protection. There are, firstly, the physical protection of the consumer; secondly, protection of the economic interest of the consumer; and thirdly, protection of public interest. The first aspect would include measures to protect consumers against products that are unsafe or injurious to health and hygiene. The second aspect would cover measures to protect the consumer against deceptive and other unfair trading practices and to provide him adequate means to get his grievances redressed. The third aspect would cover measures to prevent abuse of monopoly position or restrictive practices.

In order to ensure that all these aspects of consumer protection are properly safeguarded, it is necessary to develop a general awareness amongst all concerned about the rights of the consumer. It is necessary for everybody to recognise that every consumer has the following rights:

1. The right to safety, i.e., a right to be protected against things which are hazardous to life and health;
2. The right to be informed, i.e. a right to know facts about what he is buying;
The right to choose, i.e., a right to be assured of a variety of quality goods at fair price;

The right to be heard, i.e., a right to protect effectively against deception, malpractices and bad services.

CONSUMER MOVEMENT IN OTHER COUNTRIES

Before studying the consumer movement in India, it will be worthwhile to study the growth of consumer movement and legal protection of consumer in certain selected countries. For this purpose, both countries having developed and developing economies have been selected.

(i) UNITED STATES OF AMERICA

Consumerism in an identifiable form started only in the United States. Legislation aimed at protection of consumers were enacted as early as in the first decade of the present century. Consumer movement dates as far back, as from 1890. The growth of the consumer movement has markedly been steady, firming itself on the substratum of lobbying, boycott and public interest activities. In the 1930s main focus of consumer groups was directed towards increasing the supply of information to consumers. There are now a number of federal laws including the Fair Packaging and Labelling Act, Truth in Lending Act and the Consumer Product Safety Act. By far, the Federal Trade Commission Act is a remarkable legislation in the area of consumer protection. Many local Governments have enacted 'consumer-laws' - a sympathetic response to Congressional concern for consumer-called 'baby FTC Acts'. Alongside, the consumer groups and association intensified their activities. Many more agencies, federal, State and local have come into existence. Ralph Nader, an individual has become an institution in the history of consumer movement. Ralph Nader's activities are world famous and his contribution to the cause of consumer is comparable to the contribution of Mother Theresa to the cause
of the weak, disabled and the poor. Nader's critical report in 1969 on the FTC's consumer protection efforts - meeting the lion in his den - has been instrumental in enlarging powers of the FTC besides catalysing a top level house-cleaning in FTC.

**Federal Trade Commission Act**

As the Federal Trade Commission Act, is the principal legislation in the field of consumer protection it is worth attempting a brief study of it. The FTC Act is codified in 15 USC 11-45 and 47-58. Under the Act, "unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce are declared unlawful." Also:

(a) It shall be unlawful for any person, partnership or corporation to disseminate, or cause to be disseminated any false advertisement:

(1) By United States Mails, or in or having an effect upon commerce by any means, for the purpose of including or which is likely to induce, directly or indirectly the purchase of food, drugs, devices or cosmetics; or

(2) By any means, for the purpose of inducing or which is likely to induce directly or indirectly the purchase in or having an effect upon commerce of food, drugs, devices, or cosmetics.

(b) The disseminating or causing to be disseminated of any false advertisement within the provisions of this section shall be unfair or deceptive act or practice in or affecting commerce within the meaning of Section 45.

A review of the Federal Trade Commission's case law reveals the following criteria for deciding whether a practice is deceptive.
(1) If they have "capacity" or "tendency" to deceive even if actual deception is not found.
(2) If the "ignorant, the unthinking and the credulous" and "the least sophisticated" would be deceived.
(3) If a consideration of the entire representation and not just the specific claims finds the practice deceptive.
(4) If a word or term is ambiguous and one meaning is false.
(5) If necessary qualification to an overly broad representation are not made. If material facts are not disclosed, or if these disclosures or qualifications are too inconspicuous.
(6) Even if competitions engage in the same practice.
(7) Even if deception is subsequently clarified.
(8) Even if immediate customer is not deceived, e.g. where a manufacturer's label is not deceptive to a retailer but is to the ultimate consumer.
(9) Unless the claim is merely "Puffing" that is a permissible exaggeration or the claim is purely fanciful or a spoof calculated to amuse and with no capacity to deceive.

In 1972, the Supreme Court ruled that "unfairness" is broader than deception and the Court suggested that F.T.C. use, among others, the following criteria for determining a practice as unfair:

(a) Whether a practice offends a public policy? Is it within at least the penumbra of some common law, statutory or other established concept of unfairness?
(b) Whether the practice is immoral, unethical, oppressive or unscrupulous?
(c) Whether the practice causes substantial injury to consumers?
Advertisements have been a principal medium of misleading a consumer and F.T.C. has built a sizable case law too. Millstein observed sardonically,

"Advertising has single-handedly transformed the average American into a passive lazy greedy sensual, culturally deprived whose head has become a T.V. tube and whose motto is consume." 3

**Federal Trade Commission**

The Federal Trade Commission was created by the Federal Trade Commission Act of 1914. It was established in the year 1915. Initially, its establishment was not intended so much for benefit of the consumer, as to ensure competition in industry. The original statute gave the commission authority to act with respect to "unfair methods of competition in commerce". In 1938, Section 5 was amended to extend the jurisdiction of the Commission to cover "unfair or deceptive acts or practices in commerce". This amendment gave rise to the question of constitutionality, in that the phrase in commerce was held to confer less than constitutionally permissible jurisdiction over interstate commerce. A subsequent amendment to Section 5 makes it now reads as "unfair methods of competition in or affecting commerce, are declared unlawful".

According to the Senate Commerce Committee Report, the expansion of the commission's jurisdiction is "intended to permit more effective policing of the market place by bringing within reach practices which are unfair or deceptive and which, while local in character, nevertheless have an adverse impact upon interstate commerce". Thus, in the course of time the F.T.C. has become more concerned with protecting the consumer.

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The commission is a large organization. The Bureau of Competition, the Bureau of Consumer Protection are major operating units. The Bureau of Economics of the Commission conducts in-depth studies of various aspects of the economy as well as the competitive impact of certain business practices. This function largely aids the work of the other Bureaus. The commission has also an office of Scientific Inquiry which conducts scientific tests. The main office of the Commission is in Washington, D.C. and its regional offices are located in major cities, like Atlanta, Boston, Chicago, Cleveland, Dallas, Los Angeles, New York, San Francisco and Seattle.

The commission is one of the oldest regulatory agencies. Its members are called upon to exercise the trained judgement of a body of experts appointed by law and informed by experience.

The commission through members of its staff has been promoting F.T.C. State and Municipal relationships. The Commission also promoted the idea of States having statutes similar to the F.T.C. Act. Pursuant to this a number of cities as also certain districts like Columbia, Puerto Rico have since passed certain enactments. The Commission has also encouraged legislation for consumer protection at the Municipal level. Initially F.T.C. had constraints in obtaining the requisite finance for its purpose but in the 70's its resources were substantially increased.

Advisory Opinions

The Commission's advisory opinion programme was initiated in the year 1962, with the object of encouraging voluntary compliance with the law and to lessen possibilities of violations. A digest of such opinions appears in the Code of Federal Regulations.
Anyone can request advice from the F.T.C. with respect to a course of action proposed to be pursued, setting out the full facts and indicating the advice sought. A request ordinarily would not be considered by the Commission if, (a) the course of action was being engaged in by the requesting party; (b) where the same, or substantially same, course of action was involved in an investigation, proceeding, order or decree initiated or obtained by the Commissioner or another governmental agency; (c) where to give advice would require extensive investigation, clinical study, testimony or collateral inquiry. The requesting letter must expressly negate (a) and (b). Advisory opinion may be rescinded or modified by the Commission where it is considered to be in public interest. The recipient must be given notice and he will not be prosecuted by the Commission where he has relied upon the opinion and has promptly discontinued the practice on notification of withdrawal of approval.

Semi-Judicial Action by F.T.C.

The F.T.C. has attacked specific violations of statutes entrusted to its care. It has acted in a dual capacity as prosecutor and judge. Usually the complaint during the necessary investigation is assigned to an Administrative Law Judge who will preside over an adjudicative hearing, though the Commission itself can preside over. The matter proceeds in accordance with a comprehensive set of practice rules much as a trial in the courts. Staff attorneys support the complainant, defendants ordinarily are represented by counsel. A corporation, can be represented by an officer. There is no bar to the respondent appearing himself.

Semi-Legislative Action by F.T.C.

A substantial part of the work of the Commission has been directed to specific situations and there is an impressive number of bound volumes known as F.T.C. decisions. Special office or Assistant Director for rule making has been created.
Trade Regulations Rules have been framed by the Commission since 1962. Trade Regulation Rules may have nationwide effect or be limited to industries or area and have served as a method of treating unfair trade practices on an industry basis. The power of the Commission to promulgate Trade Regulation Rules tested and upheld in National Preliminary Refinaries Association Vs. F.T.C. 482 f 2d 672 (1973).

Rule making authority is expressly given to the Commission under certain statutes. The Commission's rules provide that the rule making may begin at the Commission's initiative or may be proposed by outside petition. The rule appears in the Federal Register and would be made available to interested parties, to the extent possible. In 1975, the Act was amended to give express authority to the commission to promulgate rules. The amendment also authorises the Commission under certain conditions to provide compensation for a person's cost of participating in a rule making proceeding.

**Trade Practice Rules and Guides**

The Commission has issued a number of Trade Practice Rules with respect to various industries, aimed at securing voluntary compliance. Industry Guides are defined as administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. It is also said that guides are a restatement of the law in Layman's language of previous cases decided by Commission and the courts. This may be promulgated at the instance of the Commission or upon application by some person or group. There is no hard and fast rule as to having public hearing before issuance of a guide. Guides do not have the force of law and failure to abide by them is not considered to be an automatic law violation. They are designed to encourage voluntary abandonment of unlawful practices by members of an industry. After the issuance of a guide, the Commission's staff make a concentrated effort to secure compliance. Thereafter refusal
to abide by a guide invites the filing of a complaint by the Commission. There is difference between Trade Regulation Rules and Industry Guides. While Industry Guides are merely interpretative, violations of Trade Regulation Rules are considered violations of the statutory provision from which the rule is derived.

"The following examples illustrates the difference between industry guides and trade regulation rules. Assume that the Commission issues a trade regulation requiring that all aspirin advertisement include the statement, "ALL ASPIRIN IS ALIKE". If the F.T.C. decided to prosecute a violation of the rule, the complaint would charge a failure to include the required legend rather than allege a "deceptive practice". All the Commission would have to prove the conclusion which underlies this hypothetical rule that the commission of the required language is a deceptive act. If on the other hand, the Commission merely issues an industry guide on aspirin advertising, an action by the F.T.C. would have to be based on violation of the statute, not violation of the guide. The Commission would have to prove the commission of a deceptive act or practice rather than merely a violation of the industry guide."  

**Enlargement of the Powers of F.T.C.**

Until 1973 the only procedure available for enforcement of the Act was the cease and desist order. Under this procedure whenever the F.T.C. has reason to believe that any person is violating Section 5(a) and that action by the commission would be in the public interest it may issue a complaint and notice of hearing. In most instances before a complaint is issued, the party involved is given an opportunity to consent to a formal, "cease and desist" order or it may be permitted to agree informally to discontinue the  

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practice. "Consent" to such an order refer to future practices. It does not admit of violations in the PAST. In case it is not settled by a consent order or an informal agreement, a complaint is issued and a public hearing is held before an Administrative Law Judge of the F.T.C. This is a trial type hearing.

After taking testimony the Administrative Law Judge drafts an initial decision for the Commission. If the Commission is of the opinion based on the record of the hearing that the act or practice in question is violative of Section 5(a) it issues an order directing the party charged to "cease and desist" from the act or practice. Unless the party subject to cease and desist order files a petition for review with an appropriate Court of Appeals of the United States, the cease and desist order becomes final on the 60th day after it is served. In case, review of a cease and desist order is sought, the order of the Commission does not become final until affirmation is obtained from the Court of Appeals or by the Supreme Court of the United States if taken to that Court for review. Some cases have taken years from the filing of the original complaint, to a cease and desist order becoming final.

In 1969, "Nader's Raiders" published a very critical report of the F.T.C.'s consumer protection efforts. Shortly thereafter an American Bar Association Special Commission studied the F.T.C. Although couched in somewhat more subdued terms than the Nader book, the report of the ABA's Special Commission supported the findings of Nader's Raiders. Both report noted the need for additional statutory authority to permit the FTC to carry out its consumer protection responsibilities.

Until 1975, there was no civil penalties except where there was second violation. The FTC could only recover civil
penalties from a person, partnership or corporation which violated a cease and desist order that had been previously issued against it. Section 5(m)(1) of the FTC Act as amended imposes civil penalties for first violations in two instances:

(i) Knowing violation of Trade Regulation Rule; and
(ii) Knowing violation of a cease and desist order issued against another person.

Section 19 of the amended Act also authorizes the FTC in two situations to seek damages for persons injured by unfair or deceptive acts or practices. The Commission may bring civil actions in federal or State Court in order to obtain redress for consumers or other persons, partnerships or corporations which have been injured: (1) by violation of existing Commission's Trade Regulation Rules defining unfair or deceptive violation resulted in a cease and desist order and where a reasonable man would have known under the circumstances that the Act or practice was dishonest or fraudulent.

An action under Section 19 for redress does not prevent the Commission from also bringing an action under Section 5(a) for a civil penalty. Similarly, civil penalty actions brought by the FTC under Section 5(a) do not affect the Commission's authority to seek redress under Section 19. Thus, for example, if a person violates a trade regulation rule defining an unfair or deceptive act or practice with constructive knowledge can, without first resorting to a cease and desist order proceeding, file an action in federal court for civil penalties and for redress of the injury resulting from the rule violation.

(ii) UNITED KINGDOM

In the United Kingdom 'consumer protection' as a theme of separate study and attention was relatively unknown until the 50s. Much of the law on protection of consumers was found
in the Sale of Goods Act, 1893 and some other legislations of food, drugs, weights and measures etc. The usual court procedures and proving the 'mens rea' kept the lawyers so as to blend economic advantages in dispensing justice; they were more content with interpreting the law than with beholding new horizons. Common law did not recognise according of any special status or protection to the consumer.

The origin of all laws aimed at consumer protection now in England can be traced to the blessings that common law conferred on the cartels between the First and Second World Wars. After the shortlived post-war boom, the United Kingdom suffered for most of the twenties. Much of her exports were affected by her choice to return to gold standard in the year 1925 which meant a hike of 10% in the local price level above that in the United States. Then came the blow, the crash of the Wall Street in 1929 and the financial crash in 1931 when the gold standard was given up. 'Rationalisation' assumed thematic significance and thus came price-fixing, quotas in many industries, and cartels. When the Second World War broke out, the cartels and other trade associations took over the war time administration of many industries. Much of the legislation in that period was aimed at encouraging amalgamations and enforcing restrictive practices in some of the industries in the grip of depression. This led to adoption of similar practices in other industries as well and as a consequence, on the threshold of the World War II there were hardly a few goods or services in which free competition in the economic sense survived. Competition is a luxury for any country engaged in war and thus came the practices injurious and pernicious to competition. When the war was nearing the close, the 1944 White Paper "Employment Policy" stated.

"There has in recent years been a growing tendency towards combines and towards agreements, both national and
international by which manufacturers have sought to control prices and output, to divide markets and to fix conditions of sale. Such agreements or combines do not necessarily operate against the public interest, but the power to do is there. The Government will, therefore, seek power to inform themselves of the extent and effect of restrictive agreements, and of the activities of combines; and to take appropriate action to check practices which may bring advantages to sectional producing interests but work to the detriment of the country as a whole.  

The echo of the sentiment in the white paper was the enactment of the Monopolies and Restrictive Practices Inquiry and Control) Act, 1948. Time was ripe after the close of the war, to deflect economic theory in favour of unrestricted competition. Again common law could not rise to the occasion and the only method available was legislation. The enactment of Restrictive Trade Practices Act, the Consumer Protection and Home Safety Acts and The Fair Trading Act heralded the real era of legislative framework for consumer protection. This was the beginning of the end, to consumer action in contract or tort only for breach of his rights.

The laws in England in the field of consumer protection can be divided into two broad categories. In the first category fall the general laws which confer as a matter of routine rights to sue a person for breach of the provisions thereof. In the second category fall special consumer protection laws, the most directly concerned of which, is the Fair Trading Act, 1973 - hailed as potentially the most comprehensive measure ever passed.

Those in the general category deal with subject such as inaccurate quantities, statement of and control of prices, food quality and hygiene, false descriptions, unsolicited

goods and services, licensing and labelling of dangerous products, road safety, protection to insurance policy holders, hallmarking of precious metals, handling stolen goods, obtaining money by cheating etc.

The institutional framework for consumer protection in England can be broadly sketched as under:

**Central Government**

The Central Government (as opposed to local Governments) has a number of agencies and Departments in furthering activities concerned with consumer protection. The Department of Prices and Consumer Protection is concerned with administering the Weights and Measures Act, Consumer Protection Act, Fair Trading Act, Prices Act, Consumer Credit Act, Hall Marking Act, Trade Descriptions Act, Unsolicited Goods and Services Act and Deals with all aspects of competition policy including European Community Competition Rules. There is then the office of Fair Trading, Home Office Department of Health and Social Security, Ministry of Agriculture Fisheries and Food, Department of Trade etc. The price Commission and the Director General of Fair Trading are important instrumentalities worth separate cognizance.

**Local Government**

The local Government in fact enforce the whole gamut of laws in aid of the consumers, so to say. Besides, they have what are called 'Consumer Advice Centres'. Local Price Survey Schemes are also at work.

**Bodies Sponsored Directly by Government**

There are separate bodies sponsored by Government. The National Consumer Council a non-statutory independent body was established in the year 1975, with an initial Government grant of 3,00,000 and 4,50,000 in 1976-77. This
council does not directly deal with consumer complaints but seeks by making representations and by representing consumers in public and other bodies, to influence policies affecting consumers.

The Consumer Protection Advisory Committee, established under the Fair Trading Act examines trade practices referred to it by any Minister or particularly the Director General of Fair Trading and decides whether a particular practice adversely affects the economic interests of consumers.

Voluntary Organizations

Voluntary organizations no doubt have been quick to get established performing diverse functions. Citizens Advisory Bureau, Consumers' Association, Local Consumer Groups, National Federation of Consumers Groups are a few engaged in constructive work in consumer education guidance and redressal. There is also a Research Institute for Consumer Affairs.

The role of British Standards Institution (BST) is most commendable. BST is an independent, non-profit making and non-political body. Its main function is to evolve standards so as to assume satisfactory characteristics of various goods. It enjoys a high degree of reputation in standard-setting. BST is funded by sale of standards, subscriptions, testing fees, licence fees and a grant from the Department of prices and consumer protection.

Other Organizations

Other organizations functioning in the U.K. do further the ultimate goal of consumer protection. The Design Council, Advertising Association, Housewife's Trust, The Good House Keeping Institute, Electrical Association for Women, etc. are a few worthy of special mention.
Nationalised Industry and the Consumer

Nationalised Industries or Public Corporations are not a rarity in the United Kingdom. The nationalised industries enjoy a monopoly. The colossal capital investment, the need to conserve certain resources and the need to oversee safety and equitable distribution of certain goods have justified State Monopolies. Though the Public Corporations are accountable to the Government, the need to take into confidence the consumers in certain aspects of their functioning has been rightfully recognised. The various councils at work include the following:

Coal Consumers Council; Transport Consultative Committee; Consultative Committee for Electric Supply and Gas Broadcasting Councils.

Fair Trading Act, 1973

According to its preamble, this is "an Act to provide for the appointment of a Director General of Fair Trading and of a Consumer Protection Advisory Committee and to confer on the Director General and the Committee so appointed, on the Secretary of State, on the Restrictive Trade Practices Court and on certain other Courts new functions for the protection of consumers; to make provision in substitution for the Monopolies and Restrictive Trade Practices (Inquiry and Control) Act, 1948 and the Monopolies and Mergers Act, 1965, for the matters dealt with in those Acts and related matters, including restrictive labour practices; to amend the Restrictive Trade Practices Act, 1956 and the Restrictive Trade Practices Act, 1968, to make provision for extending the said Act of 1956 to agreements relating to: services and to transfer to the Director General of Fair Trading the functions of the Registrar of Restrictive Trading Agreements; to make provision with respect to selling and similar trading schemes; to make new provision in place of Section 32(2)"
to (4) of the Trade Descriptions Act, 1968; and for purposes connected with those matters."

The Act deals with consumer protection and competition law. Primarily Parts-II and III of the Act are concerned with consumer protection. Part-II can be said to essentially deal with procedure for introducing new regulations to safeguard the economic interests of consumers and Part-III deals with effective methods of enforcing the rights.

Section-1 of the Act provides for the appointment of the Director General of Fair Trading (D.G. for short). Section-2 envisages the following functions for the D.G. namely,

(a) Keeping under review the carrying on of commercial activities in the United Kingdom which relate to goods supplied to consumers in the United Kingdom, or produced with a view to their being so supplied or which relate to services supplied for consumers in the United Kingdom, and to collect information with respect to such activities and the persons by whom they are carried on with a view to his becoming aware of and ascertaining the circumstances of consumers in the United Kingdom, and to

(b) receive and collate evidence becoming available to him with respect to the above activities and which appears to be evidence of practices which may adversely affect the interests (whether they are economic interests or interests with respect to health, safety or other matters) of consumers in the United Kingdom,

(c) giving of information and assistance to the Secretary of State with reference to the above matters,

(d) having regard to evidence becoming available to him with respect to any course of conduct on the part of
a person carrying on a business which appears to be detrimental to the interests of consumers in the U.K. and to be regarded as unfair to them, with a view to considering what action he should take under Part-III of the Act.

Section-3 of the Act provides for establishment of the Consumer Protection Advisory Committee.

**Part-II of the Act - Scheme of Protection**

The object of Part-II, an important plank of the Fair Trading Act is the protection of consumers against "consumer trade practices" which adversely affect their economic interests. According to Section-13, "Consumer Trade Practice" means any practice which is for the time being carried on in connection with the supply of goods (whether by way of sale or otherwise) to consumers or in connection with the supply of services for consumers and which relates:

(a) to terms or conditions (whether as to price or otherwise) on or subject to which goods or services are or are sought to be supplied, or

(b) to the manner in which these terms or conditions are communicated to persons to whom goods are sought to be supplied, or

(c) to promotion (by advertising, labelling or marking of goods, canvassing or otherwise) of the supply of goods or of the supply of services, or

(d) to methods of salesmenship employed in dealing with consumers, or

(e) to the way in which goods are packed or otherwise got up for the purpose of being supplied, or

(f) to methods of demanding or securing payment for goods or services supplied."
"Consumer" as per Section 137 means any person who is either:

(a) a person to whom goods are or are sought to be supplied (whether by way of sale or otherwise) in the course of a business carried on by the person supplying or seeking to supply them, or seeking to supply them. or

(b) a person for whom services are or are sought to be supplied in the course of a business carried on by the person supplying or seeking to supply them.

"Practice" means any practice whether adopted in pursuance of an agreement or otherwise.

"Supply" in relation to the supply of goods, includes supply by way of sale, lease, hire-purchase and in relation to buildings or other structures, includes the construction of them by a person for another person.

"Goods" includes buildings and other structures and also includes ships, aircraft and hovercraft but does not include electricity.

Under Section-14 the power to refer consumer trade practices to the Consumer Protection Advisory Committee is conferred on the Secretary of State, or any other Minister or by the Director General of Fair Trading.

There is an important rider on the Director General's power (contained in Section-16) in that where the trade practices are carried on by Statutory Corporations exclusively engaged in the activities mentioned in Part-I of Schedule-5 to the Act (gas for non-industrial purposes, natural gas, electricity, carriage of passengers by road and rail, carriage of goods by rail, postal services etc.)
the Director cannot refer such a practice without the consent of the appropriate Minister. Section-15 provides that no reference can be made under Section-14 to the Advisory Committee where a consumer trade practice is carried on in connection only with supply of certain services (specified in Schedule-4) and that a monopoly situation exists or may exist in relation to the supply of services of that description. Schedule-4 specifies legal services, medical services, dental services, ophthalmic services, veterinary services, services of professional engineers, etc.). The purpose of the reference is to enable the advisory committee to investigate and report whether the consumer trade practice specified in the reference adversely affects the economic interests of consumers in the United Kingdom. The Director General shall assist the Committee upon the latter's request but subject to the limitations on disclosing any information relating to a current business without the consent of the person carrying it on. The Advisory Committee is required to submit a report on the reference(s). Section-17 of the Act deals with a particular type of reference by the Director General and includes proposed recommendations to the Secretary of State to exercise his 'order-making' powers. The reference under Section-17 can be made by the Director General where it appears to him that a consumer trade practices, has the effect or is likely to have the effect:

(a) of misleading consumers as to, or withholding from them adequate information as to, or an adequate record of, their rights and obligations under relevant consumer transactions, or

(b) of otherwise misleading or confusing customers with respect to any matter in connection with relevant consumer transaction, or

(c) of subjecting consumers to undue pressure to enter into relevant consumer transactions, or
(d) of causing the terms or conditions on or subject to which consumers enter into relevant consumer transactions, to be so adverse to them as to be inequitable.

"Relevant consumer transaction" means any transaction to which a person is, or may be invited to become, a party in his capacity as a consumer in relation to that practice.

The Director General while making recommendations in a reference under Section-17 must have regard to the adverse effect on consumers' economic interests and the particular class of relevant transaction. Schedule-6 to the Act illustrates the scope of the possible recommendations viz.:

- Prohibition of the specified consumer trade practice either generally or in relation to specified consumer transactions.
- Prohibition of specified consumer transactions unless carried out at specified times or at a place of a specified description.
- Prohibition of the inclusion in specified consumer transactions of terms or conditions purporting to exclude or limit the liability of a party to such a transaction in respect of specified matters.
- A requirement that contracts relating to specified consumer transactions shall include specified terms or conditions.
- A requirement that contracts or other documents relating to specified consumer transaction shall comply with specified provisions as to lettering (whether as to size, type, colouring or otherwise).
- A requirement that specified information shall be given to parties to specified consumer transactions.

Unlike other references under Section-14, a reference under Section-17 must be published in London, Edinburgh,
Belfast Gazettes. The Advisory Committee may determine its own procedure in going ahead with the reference under Section 17. It shall take into account representations by persons or bodies having substantial interest in the subject matter of the reference and also allow wherever practicable, opportunity to such persons/bodies for being heard orally. The assistance of the Director General may also be sought by the Advisory Committee.

The Report of the Committee has to be submitted within three months of the reference although this may be extended by the Secretary of State. The report of the Advisory Committee must:

- state the Committee's conclusion as to whether the particular consumer practice adversely affects the economic interests of consumers.
- if so, whether the adverse effect is due wholly or partly, to the 'effects' specified in the reference.
- whether the Committee agrees or disagrees with the proposed recommendation in the reference either with or without modification.

The report has to be laid before both Houses of Parliament if not already presented by commands of the queen and the report is also to be published with the omission of any matter whose publication would be against the public interest. The secretary of State can make an order thereafter, containing such provisions as he thinks appropriate. The Order does not take effect unless a draft has been approved by both Houses of Parliament. The penalties for contravention of the order are contained in Section-23 i.e. a fine not exceeding 400 on summary conviction or fine or imprisonment for up to two years or both on conviction and indictment.
Section-129 provides that no prosecution proceedings can be commenced more than three years after the offence or one year after discovery by the prosecutor whichever is earlier.

The enforcement of the order of the Secretary of State is primarily entrusted to the local weights and measures authorities.** Provisions exist for powers to enter the premises, inspect the seize goods and documents and payment of compensation for goods seized.

The whole scheme and object of Part-II of the Act, discussed so far, has been succintly put by James P. Ganningham in the following words:

"In effect, Parliament in Part-II has instituted a substantial delegation of its law-making powers. The Director puts up a proposal. Where both the Director and the Cinnuttee are ub substabtuak agreement, the Secretary of State has power to act. There are however two constitutional safeguards. The Secretary of State is, as any other Minister, answerable to parliament. If parliament is not satisfied with regard to any draft order, it can refuse approval. But nevertheless this does represent a substantial shift of effective power away from parliament and towards the administrative machine"* (Emphasis supplied).

A closer study of Part-II would reveal that references and report other than Section-17 reference need not be published, nor are there any consequential powers flowing therefrom. But when a Section-17 reference and consequently a report is made, the Secretary of State is empowered to extend the Criminal Law subject to approval of his order by Parliament.6

Part-III of the Act - Scheme of Protection

Part-III of the Act, unlike Part-II is concerned with enforcing legal obligations, civil and criminal with the ultimate object of securing compliance with those obligations. At the outset, it is pertinent to note that while Part-II mainly concerns itself with 'economic interests of consumers' Part-III concerns itself with 'economic interest as well as interests of health, safety and other matters'. Again Part-III does not bar jurisdiction of the Director General to intervene even where the public corporations are involved. (Under Part-II a reference with respect to any public corporation can be made only after consent of the appropriate Minister). Now, a brief study of Part-III.

The focal point of Director General's powers is the presence of 'persistent unfair conduct' i.e. where the person carrying on a business has in the course of that business persisted in a course of conduct which:

(i) is detrimental to the interests of consumers, whether the interests are economic interests or in respect of health, safety or other matters; and

(ii) is to be regarded as unfair to customers.

A course of conduct shall be regarded as unfair to customers.

(i) If it consists of contraventions of one or more enactments which impose duties, prohibitions or restrictions enforceable by criminal proceedings, whether any such duty prohibition or restriction is imposed in relation to consumers as such or not and whether the person carrying on the business has or has not been convicted of any offence in respect of any such contravention.
(ii) If it consists of things done or omitted to be done in the course of that business in breach of a contract or in breach of a duty (other than a contractual duty) to any person by virtue of any enactment or rule of law and enforceable by Civil proceedings whether (in any such case) Civil proceedings in respect of the breach of contract or breach of duty have been brought or not. Cases of such contraventions may come to the notice of the Director General by way of complaints received from the customers or other persons or other information collected or furnished to him whether by virtue of this Act or otherwise.

It is necessary to note that a person in business should have 'persisted' in the course of conduct. An 'isolated' act therefore will not be sufficient for the Director General to act. The first duty of the Director General is 'to use his best endeavours by communication with that person or otherwise, to obtain from him a satisfactory written assurance that he will refrain from continuing that course of conduct and from carrying on any similar course of conduct in the course of that business'.

By virtue of Section-38, where the persistent unfair conduct is in relation to a company, and the persistent unfair conduct has been so persisted with the consent or connivance of an "accessory", i.e. (a) a director, manager, secretary or the similar of the company or a person purporting to act in any such, capacity, or (b) an individual or a body of persons; (corporate or unincorporate having a controlling interest in the company) a written assurance can be obtained from such "accessory". The assurance by the "accessory" is to the effect that he will refrain:

- from continuing to consent to or connive at the course of conduct in question;
- from carrying on any similar course of conduct in the course of any business which may at any time be carried on by him; and
- from consenting to or conniving at the carrying of any such course of conduct by any other body corporate in relation to which at any time when that course of conduct is carried on he fulfils the relevant conditions.

Where the Director General is unable to obtain the "written assurance" as aforesaid or where the person having given the written assurance has failed to observe it, he may bring proceedings against him before the Restrictive Practices Court (Section-35). The purpose of the proceedings is to obtain an order of the Court against the respondent or an undertaking from him. The Court may make an order against the respondent in cases where it is satisfied that the respondent has persisted in a course of unfair conduct and it is not satisfied with the undertaking offered by him provided further that without an order, the respondent is likely to continue with the original course of conduct. The order shall direct the respondent to (a) to refrain from carrying that course of conduct and (b) to refrain from carrying on any similar course of conduct in the course of his business. Likewise, the order of the Court can be made against an "accessory" also if the Director General's efforts to secure a written assurance have failed or where the assurance was given but was not observed.

The proceedings before the Restrictive Practices Court are civil proceedings. So convictions in criminal proceedings are admissible as evidence. A respondent may be a small trader and costs of compelling him to appear before the Restrictive Practices Court (in London or Edinburg) in terms of travel, legal representation etc. would be prohibitive. To alleviate such hardship, Section-41 provides for bringing the proceedings before the appropriate local court, where the respondent
or an accessory is an individual or a company with an issued capital of up to 10,000. Also provision exists for legal aid under the Legal Aid Act, 1974 for the proceedings before the Restrictive Practices Court.

A notable feature of the provisions of Part-III is that where an order is made against a company, the court can direct that order to apply to all other companies in that group. Where the group is increased by the addition of a new company, or a company against which was made joins a group, the Director can apply to the Court under Section 40(3) for the order to be extended to the new company or group, the Director can apply to the Court under Section 40(3) for the order to be extended to the new company or group which the company has joined. This is a salutary provision continued to foreclose evading of the order through new companies in the group.

Again Cunningham succinctly observes "Part-III of the Act could be a most effective weapon against the unscrupulous trader. It can be used against the largest and the smallest concerns... where the individual consumer does not have the resources, or the individual transaction is too small to justify action, the Director can act if it is not an isolated transaction but one in a persistent course of conduct." 7

(iii) **EUROPEAN ECONOMIC COMMUNITY (EEC)**

The EEC has a Council of Ministers, the Commission, the European Parliament and European Court. The European Parliament's role is advisory and consultative. The Commission mainly supplies the bureaucracy of the system.

The European Court has exclusive jurisdiction in the interpretation of community law and between Member-states.

inter se and also between member-states and their nationals or their nationals inter se. The court is the Supreme Tribunal for interpreting various treaties constituting the E.E.C. A regulation or decision of it is binding on the members. In England, Community Law has supremacy over national law by virtue of the provisions of Section-2 of the European Communities Act, 1972. The community law is self-executory as regards rights, powers, obligations and restrictions arising from treaties are concerned.

Usually the Commission prepares preliminary drafts of a directive or regulation after consulting Governments, trade associations, representatives of consumers and other appropriate bodies. The draft is then sent to various Councils of Ministers and the Community's Economic and Social Committee before finalisation.

With the Commission, there is:

- An Environment and Consumer Protection Service, advised by Consumer Consultative Committee,
- Consumer protection and information programme. The programme lists five fundamental rights of the consumer viz.:

(a) right to protection of health and safety,
(b) right to protection of economic interests,
(c) right to advise, help and redress,
(d) right to information and education.

Already directions have been issued by the Commission in respect of certain products like fruit juices, preserved milk, poultry health, cosmetics, toys, chocolate etc. Outside the EEC there is a Council of Europe established in 1949 - its Consultative Assembly adopted a draft on consumer protection and assistance in 1973. However, the Council of Europe is rather overshadowed by the EEC.
(iv) CANADA

The first ever step to control restrictive business practices was contained in a statute making it a criminal offence and this was latter incorporated in the Criminal Code in 1892. Now that the legislation in Canada in regard to restrictive business practices is consolidated in the Combines Investigation Act, 1969. Misleading advertisement and other deceptive marketing practices are subjects of identified study in the Act. The provinces too attempted specific enactments aimed at consumer protection. It was in 1974 that Ontario and British Columbia passed comprehensive Unfair Trade Practices Acts covering a wide variety of unfair and unconscionable practice prevalent in the Canadian retail market. In 1975 Alberts passed a similar legislation.

The Combines Investigation Act prohibits a number of misleading advertising and deceptive marketing practices which tend to reduce the rationality of consumer purchasing decisions. Promise of performance efficiency, guarantee efficiency etc. of products not based on adequate and proper tests, misrepresentations as to prices, bait and prosecution summary conviction fine and imprisonment. Several defences are also available. There is a Restrictive Trade Practices Commission. Director of Investigation and Research is an important authority. The following is the list of the types of "unfair" practices under the provincial statutes of Alberta, British, Columbia and Ontario:

i. Misrepresentation as to sponsorship approval performance, characteristics accessories, uses, etc.

ii. misrepresentation as to suppliers' sponsorship status etc.

iii. misrepresentation as to standard, quality, grade etc.

iv. misrepresentation that the goods are new or unused.

v. misrepresentation to the reason for availability of the goods.
vi. misrepresentation that the goods have been supplied in accordance with a previous representation.

vii. misrepresentation that the goods are available where the supplier has no intention of supplying the goods.

viii. misrepresentation concerning a specific price advantage.

ix. misrepresentation as to the purpose of a solicitation.

x. misrepresentation as to the existence of rights, remedies or obligations.

xi. misrepresentations as to salesman's authority to negotiate final terms.

British Columbia and Alberta also prohibit:

(i) representations that a consumer might reasonably concludes that goods are available in greater quantities than is the fact.

(ii) advertisement giving less prominence to the price of the transaction than to any part thereof.

(iii) quotations which turn out to be materially less than the final price charged.

Ontario and British Columbia prohibit representations containing an ambiguity as to material facts or the non-disclosure of a material fact, if the representation is deceptive or misleading. 

(v) JAPAN

Before World War II there was no policy to control restrictive business practices in Japan nor was there conscious efforts to promote competition. Government aid, assistance and leadership fostered many modern industries. Big combines developed and exerted strong influence on industries. After World War II there was however a great change, the so called Ziaabatsus were totally dissolved and in 1947.

an Act concerning prohibition of private monopoly and maintenance of fair trade was enacted. In 1949, it was felt that this Act was an obstacle in the reconstruction of the war-torn economy and hence the law was relaxed. In 1963, there was a further relaxation because of depression which set in after the Korean War. Depression Cartels, Rationalisation Cartels and resale price maintenance agreements became permissible under certain conditions. In 1956, the Act against delay in payment to contractors was enacted and in 1962, the Act against unjustifiable premiums and misleading representations was enacted. In 1977 an amendment to the Anti-monopoly Act of 1947 was passed to strengthen the provisions against anti-competitive practices.

Chapter-V of the Act prohibits an entrepreneur from employing unfair business practices. Where there is a violation the Fair Trade Commission may pass a cease and desist order. The unfair business practices have been notified and particularly the following are worth mention:

- Supplying or receiving without good cause commodities, funds or other kinds of economic benefits at prices which discriminate between customers in different places or between customers inducing or coercing directly or indirectly, customers of a competitor to deal with oneself by offering undue advantages, threatening undue advantages in the light of normal business practices.

- Trading with customers on conditions which are unduly unfavourable in the light of normal business practices by making use of one's predominant position over the said customers.

Apart from this there are notifications on specific unfair business practices in the Marine Transportation Industry, restriction on premium offers by lotteries or prize competition, restriction on premium offers to consumers,
misleading representation concerning country of origin of goods. The Act against Unjustifiable Premiums and Misleading Representations in an Act to specifically protect the consumers' interest in general. Under section-4 of the Act, No entrepreneur shall make such representation by which, (1) the quality, standard or any other matter relating to the substance of a commodity or service will be misunderstood by consumers in a general to be much better than the actual one or than that of other entrepreneurs who are in competition with the entrepreneur and which is likely to induce customers unjustifiably and to impede fair competition; (ii) any representation by which price or any other term of sale of a commodity or service will be misunderstood by consumers in general to be substantially more favourable to customers than the actual one or than that of other entrepreneurs who are in competition with the entrepreneur, and which is likely to induce customers unjustifiably and to impede fair competition; (iii) in addition to those mentioned above, any representation by which any matter relating to transactions as to a commodity or services is likely to be misunderstood by consumers in general and which is designated by Fair Trade Commission as tending to induce customers unjustifiably and to impede fair competition.

As per Section-2 "representation" shall mean advertisement or any other representation which an entrepreneur makes or uses as a means of inducement of customers with respect to the consents of the commodity or service which he supplies or the terms of sale or any other matter concerning the transaction and which is designated by the Fair Trade Commission as such. The Act provides for a cease and desist order by the Commission in case there exists any violation of the Act.

The law provides for investigation by Fair Trade Commission and also liability to indemnify the person injured.
(vi) **AUSTRALIA**

The law in Australia is primarily of American parentage. "Consumer protection in Australia is markedly American in its roots. There is irony in the realisation that the country which gave us Coca-Cola, General Motors and the Big Mac has also inspired us to small claims justice, corrective advertising and truth in dealing, we seem both to have adopted America's institutions and to have inherited at least a smattering of its pluralism". 9

In Australia Consumer Protection Law is to be found in the law enacted by the Australian Common Wealth Parliament, State Legislations, and in the Common Law. The Restrictive Trade Practices Act, 1974 is the law of parliament of Australia. Various state laws provides for:

(i) prescription of standards of goods and services to be provided to consumers;
(ii) prohibition or regulation of undesirable practices;
(iii) prescription of terms to be implied into contracts made with consumers;
(iv) establishments of bodies to receive complaints from consumers, to investigate those complaints and to take action (including necessary action in the Courts) to rectify and justified complaints;
(v) establishment of machinery to promote the education of consumers; and
(vi) licensing and non-going regulation of the types of persons who may be permitted to supply certain types of goods and services to consumers.

In determining whether a State Act will provide a remedy for an aggrieved consumer it is necessary to find


out whether the Trade Practices Act applies; if it does not, the remedy lies in the State Act or the common law. This is because of the federal character of the Constitution in Australia where under the Common Wealth, Parliament has powers to legislate only with respect to those matters set out in the Constitution. This is probably the reason why every provision in the Restrictive Trade Practices Act begins with the words "a corporation shall not, in trade or commerce."

Part-V of the Restrictive Trade Practices Act deals specifically with consumer protection. The following are prescribed:

- Likely or actual misleading or deceptive conduct;
- False representations that goods are of particular standard, quality, grade, composition, style or model or have had a particular use;
- False representations that services are of a particular standard, quality or grade;
- False representations that goods are new;
- Representation that goods or services have sponsorship accessories, uses or benefits they do not have;
- Making false or misleading statements with respect to price, need for goods, existence, exclusion, or effect of any condition, warranty, guarantee, right or remedy;
- False advertisements seeking a person or persons for employment containing a statement false or misleading;
- Offering of gifts, prizes or other free items (with the intention of not providing them or not providing them as offered) in connection with promotion of the supply or use of goods and services;
- Misleading conduct as to the nature, the manufacturing process, the characteristics, the suitability for their purposes or the quantity of any goods;
- Bait advertising;
- Referral selling i.e. the consumer will get a rebate, commission or other benefit, in return for giving the corporation the names of prospective customers;
- Accepting payment without intending to supply the goods or services;
- Coercion at the place of residence i.e. by physical force, undue barassment in connection with supply of goods and services;
- Pyramid selling;
- Sending of unsolicited credit cards and assertion of right to payment for unsolicited goods or making entry in a directory;

Offence against provisions of Part-V is punishable on conviction:

(i) by fine not exceeding $10,000 in case of person not being a body corporate; or
(ii) by fine not exceeding $50,000 in the case of a body corporate.

Provision exists for grant of an injunction by the Federal Court of Australia.

(vii) REPUBLIC OF KOREA

Republic of Korea has what is called the 'Monopoly Regulation and Fair Trade Law'. According to english translation available, one of the purposes of the law is to encourage fair and free competition and thereby to stimulate creative business activities and to protect consumers. The following have been designated unfair trade practices under Article-15:

- Unreasonably discriminating against certain customers;
- Trading with a purpose of unreasonably eliminating competitors;
- Unreasonably inducing or coercing the customers of competitors into trading with him;
- False or exaggerated advertising of commodities or services or deceiving a customer with regard to the quality or quantity of a commodity.

Under the law, the Minister of the Economic Planning Board, may direct any entrepreneur found to violate Article 15 to suspend the said Act, to purge the contract, of the offending clauses and to take other necessary measures against the said Act.

The law also provides for establishment of a Fair Trade Commission, with five Commissioners appointed by the President upon the recommendation of the Minister of the Economic Planning Board. The Minister of the Economic Planning Board may advise the erring entrepreneur to correct his actions, before referring the matter for deliberation and decision of the Commission. Where the entrepreneur agrees to take corrective action, the Minister may take corrective measures. If he feels that the contents of the advice are important he may notify the Fair Trade Commission before he conveys the said advice. Provisions exists in the law for an entrepreneur not satisfied with the advice of the Minister, to object to the advice stating the reasons therefor. Also law suits can be instituted when the Minister disposes of the objection. The law provides for liability for damages and award of compensation to any person injured by the Act(s) of an entrepreneur in violations of the provisions of the law.
(viii) **NEW ZEALAND**

Perhaps the most interesting developments from the point of view of consumers' protection have taken place in recent years in New Zealand where the influence of the consumers' movement is reflected not only in legislation but also in the organisation of consumers. In 1959 a Consumers' Council was established under the Ministry of Industry and Commerce. By 1966 to the Council was added a Consumers' Institute. The Council was also taken out of the administrative control of the ministry. The Council invites the public to become subscribing members of the Institute. In 1966 the Institute had a membership of 55253 and by 1971 it rose to 77024. With a view to focussing people's attention and mobilising public opinion, the Council fosters the growth of local consumers' associations and these associations seek a common bond of interest with the Consumers' Institute.

The Institute's principal aim is to educate the public of the relative advantages (and disadvantages) of the different available brands or models of products and make clear which would give the majority of consumers the best value of money. In fact, this comparative testing of goods and services is the activity of the Institute that comes most to public notice. The findings of the tests are communicated to the manufacturers concerned and the result has been that in a number of cases many improvements have been effected by the manufacturers themselves. The Institute also publishes useful literature. The impact of these activities can be easily imagined from the point of view of the consumers.

(ix) **LATIN AMERICAN COUNTRIES**

In line with developments in the United States, jurists in Latin American countries have been moving towards concepts akin to that of "strict liability", i.e. where harm can be shown to have been done, the producers can be deemed liable even when there was no negligence or intent to defraud.
A theory of general or collective rights is also being introduced. This gives redress in cases where total damages may be significant but spread over a large number of potential claimants whose harm suffered as individuals may be relatively small. Environmental cases and some management practices can be affected by this (as for example, compensation for airline seats lost through company overbooking).

These developments have occurred slowly over the last 10 years so that in Latin American countries there is now a patchwork of laws and special regulations covering different aspects of consumer protection. But the particular aspects covered differ widely.


Other countries have moved strongly to redress specific abuses: Chile and Peru, for example, regard price control for "essential commodities" as part of consumer protection and Panama has strict measures on consumer credit agreements. Argentina is also considering methods of consumer redress at the neighbourhood level. In Brazil, consumer groups are pressing for recognition of consumer rights in the new constitution.

In March 1987, in Montevideo, the U.N. organized a Consumer Protection Seminar for Latin American and Caribbean countries, attracting key government officials (who came on an individual basis, not in their official capacity) from 20 Latin American and Caribbean countries to discuss the guidelines. The outcome; the adoption by consensus of recommendation to governments to implement the consumer guidelines as soon as possible. Countries were also called on standards.

CONSUMER MOVEMENT IN INDIA - A BRIEF OVERVIEW

Consumerism has not reached the take-off stage in India yet. The consumer has not become organised unlike in many other countries in the West. Consequently the exploitation to which the consumer is subjected to by the organised class continues unchecked. Perhaps it is true to say of our country that, "consumer protection is a cause which only a comparatively wealthy nation can afford to worry about a country which has already answered its citizens' more pressing needs for food and shelter, and which begins to offer them an element of choice." Though in this vast country of millions there are beginnings of a consumer resistance movement here and there, that has not made any impact so far because of the absence of mass education on the consumers' rights and the need for the consumer to organise himself effectively to save himself from the onslaught of powerful forces interested in keeping him continually exploited.

We are living in an age of unprecedented inflation. The consumer price index has risen from 382 points in May 1980 to 439 points in June 1981 (base year 1960-100). In 1989 rate of inflation has been estimated at 10% the highest in the decade. The price increase is an irresistible inducement for malpractice on a large scale and the burden of such inflation is accentuated by the burden of all such malpractices. In the absence of an effective forum to fight the evil and in the absence of a powerful organisation to resort to mass agitation, the consumer continues to be the helpless victim. Experience in other countries of measures to meet such situations at the official and the unofficial level is little known to the common man so much so, he resigns himself to face the inevitable and feels that he is destined to the mercy of those who exploit him.
Consumers' prime concern is not only the fast escalating prices and the absence of price control. There are many matters of equal importance, such as the quality of the goods that he is induced to purchase, correctness of the measure and the availability of goods for purchase.

In this country as in many other countries the producer and the manufacturer have powerful organisations to secure their interest. There are equally powerful lobbies in the government to see that no harm befalls them. The trading community is equally well-organised. The labour, particularly the urban industrial labour, has a striking power and its methods of collective bargaining has saved it to a considerable extent from being unduly exploited. The producer and the manufacturer secure their margin of profits, the middlemen theirs. The organised labour clamours for higher wages. When, as a result of collective bargaining, such higher wages have to be conceded the management naturally does not allow that to cut into its profits. The consequent price increase is passed on to the consumer. The vast masses of the labour class are also part of the consumer class. When prices of goods go up and consequently living index goes up the organised working class clamours for more wages. When higher wages and along with it higher profit to the management are conceded there is further price increase. This is a vicious circle in which the ultimate victim is the unorganised class, the consumers.

The tax policy of the State and Central Governments is not oriented towards securing at least consumer goods at a reasonable price. From our experience over these years it would seem that the objective of taxation is only to secure more revenue for the government and the approach quite often is to find more resources by ingeniously finding out more avenues of taxation. Taxation by the State should not be viewed merely as a source of revenue. The economic impact
of each measure of taxation, particularly the rise in the living cost to the different classes of people must be thoroughly studied before any measure of taxation is adopted. This is particularly true of Sales-Tax. Ultimately any irrational system of taxation plays a significant role in the increase in price of goods.

A national policy of wage control, price control and production control coupled with a rational approach in the matter of taxation of consumer goods alone can contain undue price increase. These controls will be possible only by a control on the profit margin—direct and indirect—of the producer and the manufacturer. Absence of such control and absence of a rational national policy on wages and income has resulted in anomalous growth. The benefit of rise in wages to sectors which have an effective agitational machinery and significant striking power at their command has led to gross inequality in incomes and standard of living even among the working class to the detriment of the less vociferous and the less organised sector, let alone the unorganised sector.

The economic theory of the price being dependent upon supply and demand is in practice a myth. Ours is a free country where everyone is free to embark upon a lawful venture subject of course to regulations by the State. But theory apart, in practice it is not easy to enter the domain occupied by established vested interests. A new entrant would not find it easy to establish himself and what is more, he would not find a market easily. The market is not free but is influenced by very powerful forces. The consumer does not have a free choice as he is coerced into accepting goods well-advertised by well-established business houses. Notwithstanding the real availability of goods sufficient to meet the demand, it has the established markets in goods that control the price.
Strikes, lock-outs, wages increase, increase in profit margin, price rise, control of production, supply and marketing must all be considered as matters in which it is not the labour and the management, the producer and the trader that are solely concerned. The consumer must be an integral part of this scheme.

Today it is the sellers' market for consumer goods and not the buyers' market. Many items of consumer goods like edible oils, sugar, kerosene and cooking gas are in short supply though quite often artificial and manipulated. When goods are not available and the consumer has to stand in queues to get what he wants there is little scope for complaint by him of quality and measure.

Malpractices of adulteration are rampant. There are factories manufacturing adulterants, raw materials for adulteration on a large scale in a systematic manner. Those who indulge in the practice of adulteration are able to offer the goods at a lower price. A larger commission is offered to traders. This prompts them to sell adulterated goods. The innocent consumer with no means to identify the genuine from the adulterated quite often consumes what he gets with the attendant risk. We have no doubt some enactments in the statute book to deal with these phenomena. The Prevention of Food Adulteration Act is an illustration. It is only the element of deterrence that can dissuade the economic offenders from indulging in illicit practices on a large scale. Deterrence depends on how far the law has been successful in getting at the class of real offenders. The retail outlets are normally the targets of the prosecutor with the result that there has been very little impact on the vast and organised sector of the adulteration industry.

One of the basic reasons for artificial shortage of goods and consequent increase in prices is the absence of an organised system of supply. This enables hoarding at many
points resulting in manipulated short supply. There may be legislation to prevent such hoarding. Such legislation may require disclosure of stocks in sales premises. But this can touch only the periphery of the problem. So long as the goods are not made freely available through retail outlets easily accessible to the consumer this hoarding and manipulation of supply, especially in certain categories of goods, are likely to persist. Kerala has comparatively an efficient system of distribution through ration shops, a system which can be emulated by other States; besides this there are depots of Kerala Civil Supplies Corporation. This is a good beginning. With primary societies of Statewide cooperative marketing concerns acting as agents and a whole network of marketing cooperatives operating, supply of essential consumer goods at reasonable prices can be facilitated. Such a system will be a greater deterrent in practice to the blackmarketers and hoarders than any enforcement of penal law against them. Therefore, it would be an important step in consumer protection to have more and more retail sales-depots of the state and cooperative sectors in the State. If at least 30 to 40 per cent of consumer requirements are met by such depots there will necessarily be price and quality control automatically. The sellers' market will then turn into a buyers' market. That will keep the price of commodities steady and reasonable.

Ignorance of the consumer, lack of consumer organisations, lack of due recognition given to the existing consumer bodies by the government and absence of adequate legislation are primarily the main causes for the situation today. Mass education of the consumer is the necessary first step and that can be undertaken only by organisations which can influence and shape public opinion. The result of the study by academic bodies and institutions towards promoting consumer interests must be passed on to social, cultural and service associations functioning throughout the country who should be inspired to take up mass education on this cause. Seminars
at all levels particularly in villages cannot be overempha-
sized. The extent of consumer exploitation is to be exposed. 
This can be done through mass media, especially the press. 
All these matters call for top priority. It is no doubt true 
that now and then we find articles in newspapers about con-
sumerism. But as yet, such speeches and writings have not 
shown any significant impact on the common man so as to awaken 
him to the need for organised action to tackle the problem. 
It is surprising that in a vast country like ours there is 
very little literature on consumer resistance and consumer 
protection.

Once the consumer becomes aware of the gravity of the problem it is natural that he will organise himself realising 
that it is the organised force that does count as an effective 
factor for putting up a fight. Such voluntary consumer 
organisations must be given semi-official status. People 
who feel aggrieved can approach such organisations to make 
their complaint and seek a remedy. These organisations must 
be empowered to investigate into the matter and on being 
satisfied with the sustainability of the complaints, to 
initiate action. Such steps will be more effective than 
entrusting the task to a purely State machinery, access to 
which may be difficult for the common man. This can be 
achieved only by the government making appropriate legislation 
for recognising such bodies and entrusting them with sta-
tutory duties. These bodies can act as arbitrators too. In 
course of time it is likely that such organisations may be 
able to exercise considerable influence to reduce the evil 
of consumer exploitation.

In a developing society like ours with the bulk of 
its people, illiterate and still suffering from 
abject poverty, the battle for consumer protection has to 
be fought on different fronts and simultaneously by a variety 
of agencies. Of these, the role of the government is perhaps 
the most significant.
The main role of the government, both Central and State, in protecting the consumer is obviously the enacting of suitable laws and enforcing them effectively. There are however other ways in which the government can ensure the protection of the consumers' interest. The most important of these is by acting as a model for other producers to emulate. Our government is the largest producer of consumer services. Electricity, water, telephone, air and road transport, the post-offices - the government is in charge of all these important services. In a country of India's size and still with an explosive rate of population growth and chronic shortages, the running and maintenance of these services with a minimum of satisfaction is indeed a Herculean task. And yet it is important for the morale of the country that the government should not only do its best at all times, but it should be seen to be doing its best.

For most of the ordinary people, "government" means the lower level official with whom they come in contact in a variety of ways. For example, the railways is represented by the clerk who sells the tickets at the counter, the ticket collector and perhaps the station master also. If it takes a quarter of an hour to buy a ticket because the man behind the window is busy describing his sister-in-law's marriage to his colleague, then as far as the people are concerned, the whole railway system is slack and has no sense of time. Again, if in a small post-office in a village the man at the counter refuses to sell a stamp because it is now just ten minutes to five and he is to go off duty at five, as far as the consumer is concerned the whole postal system is poor. A news item reported sometime ago that many of the ticketless commuters rounded up in Bombay gave the same reason for not possessing a ticket, namely, the enormous time they have to spend standing and waiting for buying a ticket and the fear that they would be late at the place of their work. Indeed, much of the petty evasion of rules
and regulations in India is due, among other things, to the fact that doing things in the correct way is unusually cumbersome and time consuming. The government as represented by the staff which deals with the public, must set an example by effectively handling such problems.

For millions of our people who live in the urban areas, the man in the ration shop represents their contact with the government. When he promises the citizens in the neighbourhood area on Monday and later casually tells them day after day that stocks have not arrived then two things happen. First, the credibility of the government suffers because for our purpose, the shopkeeper is the mouthpiece of the government. Secondly, we get the impression that the government is profoundly unconcerned about the wasted time of its citizens.

The Indian consumer is fighting a desperate battle on two fronts: costs and quality. Barring a few essentials for which there exists a fairly effective system of price control and a public distribution system, prices rise relentlessly and hit many, especially those who belong to the fixed income groups. As costs rise inexorably quality is plummeting. Evidence of this is all too easily available in the entire range of consumer goods starting with the humble and the ubiquitous matchbox to our expensive motorcars, many of which are a motorist's nightmare.

What about safety which is a matter of concern to the consumers? In a recent study it was pointed out that 40 per cent of all domestic burn accidents are caused by the pressure stoves and in many cases are directly due to faulty workmanship or substandard material. This is only one of the hazards consumers face. There are scores of others, such as harmful additives and colours in food; pesticide residues on grains, vegetables and fruits; electrical appliances of careless workmanship and badly made toys which can be torn apart by infants and seriously injure them.
The consumer movement is still in its infancy in India. Except in a few large cities like Bombay and Delhi, the movement has no significant impact on the manufacturer, the wholesaler or the retailer or the government.

From the above, it is clear that with the industrialisation, the availability of a variety of consumer goods has increased. More and more consumer items are being used by persons. Further, area of service sector has also increased. But consumer feels helpless against the strong lobby of trade and industry. He has little protection against high prices, inferior quality of goods and poor service. Condition of rural consumers and belonging to small towns is even more worse. There are several reasons responsible for such a situation eg. ignorance of consumers, apathy of trade and industry, non-existence of powerful consumer organisations etc.

On the contrast, a review of consumer movement in other countries, particularly in USA and Western European Countries, reveals that consumers are much aware of their rights. Governments of these countries have also enacted several consumer protection laws. Consequently, trade and industry takes due care of consumers.

It is, therefore, necessary that in India consumer movement is intensified and consumers are made aware of their rights. Further, there is necessity of effective implementation of consumer protection laws.