Chapter-2

LEGISLATIVE PROTECTION OF CONSUMERS UNDER VARIOUS STATUTES

It is undeniable that the onus of protecting the individual and society in general is on the government of the day. Modern governments charged with the duties of a welfare State have no escape from pursuing policies both administrative and legislative for the common good and protecting the consumers from the undesirable activities of the Shylocks in trade and commerce. Thus as the consumer protection movement gained momentum, every enlightened government rose to the occasion and legislated on the matter.

Each society seeks in betterment and every government tries to improve the well-being of individuals and groups in the society of which it is to take care of legislation historically took care of only specified groups in a given society, depending on the influence they could have with the government, directly, or indirectly. Corresponding to the interest groups that subserve the governmental power, laws were made for particular segments of society and specific interests or industries on the basis of accepted activities. Nevertheless the consumers are to some measure protected by the general and particular statutory remedies available at law.

The history of legislation directed towards consumer protection would show that over the years several enactments have been brought on the statute book which seek to protect consumers. Even in ancient India there were laws to protect consumers. The great economist Kautilya emphasised in his book 'ARTHASHASTRA' that the "rules of weights and measurements" should be followed in strict compliance, keeping in view the consumers protection.
Legislative protection of consumers may be classified in terms of periods into two broad groups:

(A) British India; and (B) Modern India (Since Independence).

(A) LEGISLATIVE PROTECTION DURING BRITISH INDIA PERIOD

Before independence, British rulers enacted certain laws which contained some provisions to protect consumers. Some of such statutes have been examined in the following paras:

(i) THE LAW OF TORTS

Under the law of torts, a manufacturer owes a duty to the ultimate Consumer to take 'reasonable care'. The main principle of consumer protection laid down under law of torts is that if a manufacturer of a product sells them in such a form as to show that he intends the products to reach the ultimate consumer in the same form, with no reasonable possibility of intermediate examination, he owes a duty to the consumer to take reasonable care to ensure that the preparation will not result in an injury to the consumer's life or property.

(ii) INDIAN CONTRACT ACT, 1872

In the year 1872, the Contract Act found its place on the statute book. The law of contracts affects every person, for every one of us enters into contracts day after day. A purchase or sale is also made through a contract. Therefore, the Contract Act provides certain provisions to safeguard the interests of the persons who are entering into the contract. The provisions which are directly or specifically serving the needs of consumers are as follows:
(a) Section 18\(^1\) of the Act provides that when a person has been induced to enter into a contract by misrepresentation, he may rescind the contract.

(b) Section 19 provides that when consent to any agreement is caused by coercion, fraud or misrepresentation, the agreement is voidable at the option of party whose consent was so caused.

(iii) **INDIAN SALES OF GOODS ACT, 1930**

Main provisions of Sales of Goods Act protecting consumers' interest may be summarised as under\(^2\):

(a) **Buyer's Right of Examining Goods**

If the goods delivered have not been previously examined by the buyer, he is not deemed to have accepted them till he has had a reasonable opportunity of doing so. The seller on request, is bound to afford the buyer reasonable opportunity of examining the goods.

(b) A buyer is not bound to return the rejected goods.

(c) **Delivery of Wrong Quality**

A seller who delivers to the buyer a quality of goods smaller or larger, than he contracted to sell, or sends goods ordered along with goods not ordered cannot be said to perform his part of the contract and the buyer is not bound to accept the same.

(d) **Instalment Deliveries**

In the absence of a contract to the contrary a buyer is not bound to accept delivery of the goods in instalments.

(e) **Buyer's Remedies for Breach of Contract**

i. If the seller neglects or refuses to deliver the goods, the buyer may sue him for damages for non-delivery.

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1. Indian Contract Act, 1872.
ii. The buyer has also a supplementary remedy open to him in certain cases: it is always open to the court in fit cases to direct that the seller shall not escape with only giving damages but that he shall perform the contract specifically by doing the very act which he had undertaken to perform, i.e., by delivering the goods.

iii. If, however, the seller does supply the goods but there is a breach of a condition on the part of the seller, the buyer may reject the goods and claim damages or may at his option accept the goods, treat the breach of condition as that of warranty and claim only damages.

(f) Implied Terms and Conditions

In a contract for the sale of goods certain terms and conditions though unexpressed are deemed to be part of the contract by implication of law. However, this protection given to the consumer in India does not seem to be effective for two reasons. Firstly, as most such contracts are not in writing, it is difficult to prove the exact terms and conditions thereof. Secondly, freedom of contract has, today, given way to what is known as "standard form contracts". A person who desires a gas connection will have to agree to a long list of printed terms and conditions dictated by the gas company. He really has no choice in the matter.

(iv) THE AGRICULTURAL PRODUCE (GRADING & MARKING) ACT, 1937

Above statute was enacted to provide for:

(a) grading and standardisation of agricultural commodities.

(b) regulation of markets and market practices.

3. Agricultural Produce (Marketing & Grading) Act, 1937.
(c) market research and surveys, and
(d) training of personnel in agricultural marketing.

The main commodities graded are vegetable oil, ghee, creamery, butter, eggs, wheat flour, rice, cotton, potatoes, gur, maize, honey and ground spices. Laboratory facilities for fixing grade standards for new products and for the existing grade standards, when necessary, are provided by the Central Agmark Laboratory at Nagpur and sixteen Regional Agmark Laboratories in Calcutta, Bombay, Madras, Kanpur, Cochin, Bangalore, Patna, Rajkot, Guntur and other centres. Grading of agricultural produce at the farmer's level and that of 'Kapas' at the producer's level are undertaken by different grading units and centres in different states. Compulsory grading is done before exporting the case of 34 commodities. The graded goods are stamped with the seal of the Agricultural Marketing Department - AGMARK.

The Act has been amended in 1986 through 'The Agricultural Produce (Grading & Marking) Amendment Act. Certain significant provisions have been incorporated in the Amendment Act to protect consumers' interest. These are:

(1) An article shall be treated as misgraded if:
   (a) Article is tempered with;
   (b) Composition of article is altered in any way after sample has been drawn for analysis.
(2) Power has been given to authorised officers to inspect and search the premises and agricultural produce if any contravention of the provisions of Act has been made.
(3) Even authorised officers may also seize the agricultural produce.
(4) Amount of fine has been increased from Rs.500/- to Rs.5,000/-. Further, imprisonment upto six months has also been provided.
(5) Central Government has been authorised to prescribe compulsory grade designation in respect of certain articles.

(6) A recognised consumer association has been empowered to file a complaint before a court on behalf of an aggrieved person, whether that person is member of the consumer association or not.

(B) LEGISLATIVE PROTECTION AFTER INDEPENDENCE

(i) CONSTITUTION OF INDIA

Though the word consumer is not to be found in the constitution, the consumer breathes and peeps out through many of the blood vessels of the Constitution. The Constitution of India is a social document. It is not made only to provide a machinery of government to maintain law and order and to defend the country. The founding fathers of the Constitution had a glorious vision of the establishment of a new society in India imbued with high ideals for guaranteeing the multidimensional welfare of all the people.

(a) Preamble

The Constitution is made by the people, for the people and it is of the people. This is declared specifically in the Preamble to the Constitution. The Constitution of India is goal oriented. It is a socialist Constitution in which the instruments of production and the natural wealth of the country shall either owned or controlled by the State as a trustee of society for the benefit of the people. One of the goals of the Constitution epitomised in the preamble is doing economic justice to all the people.

Justice in its simple, direct and widely and historically accepted meaning both conceptually and
and practically connotes the giving to every person both conceptually and practically what is due to him. Economic justice means securing full reward materially, what is due to a person based on his work or constitution by performing a socially useful function or otherwise one is entitled for morally, socially and legally. Consumer justice implies securing to the consumer commodities or services equivalent to the payment made by him without violating legally or commercially prescribed or impliedly agreed or understood quality and standard.

(b) Equality

Article 14 of the Constitution of India guarantees equality before law to all the persons. Therefore, producers, sellers and consumers are all equal before law either for receiving reward or punishment. Further, Article 14 guarantees equal protection of laws to all the persons. This is a positive policy of the State imposing a duty on the State to positively, deliberately, and actively involve and effectively participate in the task of protecting all the persons irrespective of other considerations of status and power of money against harmful actions and omissions of others. Hence, the State is enjoined constitutionally to give protection to the consumers. Constitutional consumer protection implies the passing of required laws and enforcing them preventing malpractices in trade, commerce and business, defrauding the exploiting the consumer of his due by adulteration, substandardisation, underweighing etc. The consumer has to be protected against creation of artificial scarcities by hoarding. A number of laws like Prevention of Food Adulteration Act, Weights and Measures Act, Essential Commodities Act have been passed translating the fundamental rights into legislation.

(c) Some Principles of Consumer Policy
to be followed by the State

There was a move in the Constituent Assembly to declare
the entire natural and material resources of the country
as the wealth of the entire nation and not that of a
few individuals. The nation's wealth consisting of the
rivers, forests, mines, minerals, land etc. is sought
to be used for the welfare of all the people as production
is not possible without these resources and as the means
of production forms part of or is dependent upon these
resources for making the instruments of production also,
in the ultimate analysis it belongs to the society and
the State as its agent.

Hence the resources and means of production and distri­
bution cannot be left in the hands and at the mercy of
vested interests to the detriment of the consumer. These
ideas of the founding fathers of the Constitution find
clear expression in Article 39 of the Constitution.

Article 39(b) categorically proclaim that the ownership
and control of material resources of the community are
so distributed as best to subserve the common good. It
means that the Constitution keeps the consumers' interests
as the pivot for which and around which the economy in
all its dimension has to move. Ownership, production
and distribution must all be organised and regulated
to serve the consumer. In view of this the State is
empowered by the Constitution widely not wildly to pass
laws and to administer them for the good of the consumer.

Article 39(c) enjoins a duty on the State to prevent
concentration of wealth to the common detriment. The
economic system should be organised in such a manner
as to avoid concentration of wealth. Concentration of
wealth is possible only when producers and sellers are
motivated only by profit and get it by defrauding the
consumer. Either they pay well to the labour and thus
increase the cost of the commodity and charge the consumer highly giving him a raw deal or they pay low wages to the labourer and exploit him but charge nevertheless highly the consumer giving him less than what is due to him. In this way the profits are increased and wealth is concentrated in the hands of the producers and traders. Prevention of concentration of wealth by governmental action gives automatically protection to the consumer indirectly.

Article 39(f) added by the constitution (Forty-Second Amendment) Act, 1976, imposes a duty on the State to provide opportunities and facilities for the children to develop in a healthy manner. Proper nourishment is essential for this. Unadulterated, clean and nutritious food available sufficiently for the requirement, sold at prices within the reach of the common consumer is essential to achieve the goal enshrined in this provision. Towards this end the State has to strive and is empowered to make necessary legislation prescribing standards and imposing punishment for violation of them. The killer profit motive of the producer and seller has to be curbed and expurgated by effective consumer protective penal legislation.

Article 43 imposes an obligation on the State to endeavour to build an economic organisation or to make suitable legislation to ensure a decent standard of life to all the workers - that is, the majority of the consumers. This is again possible if the worker's money gets its equivalent in consumer good sense services. This gives enough power to the State to protect the interest of the consumer. Article 47 imposes a duty on the State to raise the level of nutrition and the standard of living to improve public health.

Though Article 19(g)(1) guarantees a right to all citizens to carry on any occupation, trade or business and Article 301 guarantees freedom of trade and commerce, they are subjected to reasonable restrictions under Article 19(6) and Article 304. Further, the State is empowered to impose
restrictions on monopoly to create a market in favour of the State excluding the private individuals in the interests of the consumers.

(ii) **BUREAU OF INDIAN STANDARDS** (BIS)

The Bureau of Indian Standards [previously known as Indian Standard Institution (ISI)] was incorporated in the year of India's independence. The Memorandum of Association of BIS was signed under the auspices of the then provisional Government of India on the 6th January, 1947.

BIS spends considerable time and effort to promote adoption of standards. A large measure of this adoption is aided by appropriate Acts and Orders passed by the Central and State Governments. BIS also operates the BIS Certification Marks Scheme under which licence is granted to manufacturer who is verified to be capable of producing according to established standards. This is done under strict supervisory control. While this scheme is predominantly voluntary, Government, in cases where the items are of mass consumption or affect the health and safety of the common man, had made it mandatory for producers to conform to Indian Standards.

For example, it is illegal today to manufacture, distribute or sell vanaspati, not carrying Standard Mark. Mandatory compliance also applies to other items such as cement, electric iron, immersion water heaters, etc.

BIS protects consumers' interest through its following activities:

1. **Formulation of Standards**
   
The activity relating to formulation of standards is being looked after by the 11 technical departments

5. B.I.S. Annual Reports.
mainly engaged in standards formulation in their respective fields as also by Publications and Statistics Departments. These technical departments persued further the standardization work in the areas identified earlier as a result of meeting of the Chairmen of Division Councils to align the activity with national needs and priorities. As a result of this, a number of important new standards and revisions were formulated in the priority and thrust areas. A summary of these achievements has been reported in the activity report of various technical departments in this chapter. Special cells have been set up in the Bureau for multi-disciplinary coordination of standards formulation activity on:
- Energy conservation
- Safety
- Rural development
- Environment protection
- Basic materials

The Bureau formulated various standards including revision of standards bringing the number of standards in force on March 31, 1988 to 14000.

2. Certification and Quality Assurance
The Certification and Quality Assurance functions of the Bureau are handled at Headquarters and through its Regional, Branch and Inspection Offices.

PROGRESS OF THE SCHEME
The new licences issued during the year ended 31.03.1988 were 1347 covering 355 products including 20 new items. The total number of operative licences on 31st March, 1988 stood at 10118 as compared to 9350 last year. The number of Indian Standards against which products have been certified has risen to 1264. Of these over 250 standards relate to items of particular interest to the common
consumer. Some of the important consumer items covered under certification so far are:

- Cement
- Vanaspati
- Biscuits
- Milk Powder and Condensed Milk
- Helmets for Scooter and Motorcycle riders
- LPG Cylinders and LPG Stoves
- Oil Pressure Stoves
- Pressure Cookers
- Safety Razor Blades
- Electrical Appliances and Wiring Accessories
- Ceiling and Table Fans
- GLS Lamps and Fluorescent Tubes
- Dry Cell Batteries for Flash Light and Transistors
- Hearing Aids
- Cotton Vests
- Instant Coffee.

3. Guarantee for the Quality

The Bureau of Indian Standards (BIS) stands guarantee under the Act for the quality of products bearing ISI mark because the manufacturers are operating the Marking Scheme under a well defined quality system designed and supervised by BIS. However, if by chance the consumer finds ISI marked products to be unsatisfactory, he may lodge a complaint with the BIS at Headquarters or its Regional/Branch and Inspection Offices providing the following information:

1. The name/type/size/grade of the product, source of procurement, date of purchase, and type of complaint.
2. The Cash Memo No. in case it is available.
3. The date of manufacturing/batch of the product under complaint.

BIS will arrange free replacement if the product is found by the Bureau to be below the standard stipulated in the appropriate Indian Standard.
4. **Consumer Affairs Department in BIS**

Recently a Consumer Affairs Department has been set up in the Bureau of Indian Standards to create quality-consciousness among the common consumers with the ultimate aim of providing consumer protection. Among others, the Consumer Affairs Department will have the following functions:

- Interaction with consumer welfare organizations to ensure consumer protection;
- Organization of orientation programmes of consumer organizations, women welfare organizations, home-science colleges, etc., and acquainting them with the role of the Bureau's Certification Marks Scheme in making available products of acceptable quality;
- Interaction with the Central Consumer Protection Council and Consumer Protection Councils in the States;
- Identification of experts among consumer organizations for their active involvement in standards formulation;
- Dissemination of information to organized consumers about items of their interest covered under the Bureau's Certification Marks Scheme so that preferential treatment is given to such products in their purchase programmes;
- Speedy disposal of consumer complaints in respect of products carrying the Bureau's Standard Mark;
- Identification of items of mass consumption with a view to bringing them under mandatory certification of the Bureau;
- Organization of and participation in exhibitions for display of BIS certified products of consumer importance; and
- Interaction with the Council Committee on Consumer policy of the International Organization for Standardization (ISO) and other overseas consumer bodies.
(iii) THE PREVENTION OF FOOD ADULTERATION ACT, 1954

The Prevention of Food Adulteration Act, 1954 which came into operation on 1st June, 1955 was designed to replace the various legislations enacted by individual States in this regard.

The Act provides for:

1. a Central Food Laboratory to which food samples can be referred for final opinion in disputed cases.
2. a Central Committee for Food Standards consisting of representatives of Central and State Governments to advise on matters arising from the administration of the Act, and
3. the vesting in Central Government of rule-making power regarding standards of quality for articles of food and certain other matters.

Further, the Act prohibits import of:

(a) any adulterated food;
(b) any mis-branded food;
(c) any article of food for the import of which a licence is prescribed, except in accordance with the conditions of the licence;
(d) any article of food in contravention of any other provision of this Act or of any rule made.

The Act provides that 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 mis-branded food;
iii. any article of food for the sale of which a licence is prescribed, except in accordance with the conditions of the licence.

iv. any article of food the sale of which is for the time being prohibited by Food (Health) Authority in the interest of public health.

v. any article of food in contravention of any other provisions of this Act or of any rule made thereunder.

The Act of 1954 was thoroughly amended in 1976 in order to make the provisions more effective and workable. The object of the Food Adulteration (Amendment) Act, 1976 which is quoted below reveals the gravity and magnitude of the malady in the following words:

"Adulteration of food articles is rampant in the country and has become a grave menace to the health and well being of the community. It makes a heavy dent in the already low untritional standards and the benefits of many public health programmes on which large sums of money are spent are inconsiderately undermined. A major offensive against this evil is overdue. Keeping in view the gravity of the problem, and the growing danger which it poses to the health of the nation, it has become necessary to amend the prevention of Food Adulteration Act, 1954 so as to plug loopholes and provide for more stringent and effective measures with a view to curb this menace." (Government of India Gazette, Extraordinary, Part-II, Section-I dated 17.02.1976).

The Amendment of Act of 1976 has made sweeping changes in the original Act by inserting a number of new sections and deleting others. Some of the important features of the Amendment Act are as mentioned below.

The criminal liability has been extended to all those who manufacture articles for sale or distribution of articles for adulteration or engage themselves in the process incidental or ancillary to the manufacture of an article of food to be used for the purpose of adulteration. The manufacturers, distributors and dealers are required to give warranty as to the quality of the articles to the consumers.
Deterrent punishment to the extent of life imprisonment with a minimum of three years' of imprisonment have been provided under Section 16 (B) for habitual food adulterations, if the product when consumed by any person is likely to cause death or grievous hurt. A provision for summary trial for food adulterations under Section 16-A has also been made. The offence under the Act can be tried only by metropolitan magistrates, or judicial magistrates first class and serious offences have been made cognizable and non-bailable. Criminal liability has also been fixed on the officers of the company responsible for offences committed under the Act.

The Act has been further amended in 1986 through 'The Prevention of Adulteration (Amendment) Act, 1986. A recognised Consumer Association has been given due recognition by this amendment Act. Now a consumer association may act as Food Inspector, may inform vendor on behalf of purchaser and may get refund of price paid by purchaser.

(iv) ESSENTIAL COMMODITIES ACT, 1955

As could be noted, the most significant of laws that enables the government to deal effectively with trading activities that are adverse to the consumer is the Essential Commodities Act, 1955, hereinafter called ECA. The very object of the ECA as well as its predecessor enactment the Essential Supplies (Temporary Powers) Act, 1946, called ESA, are to check the inflationary trends in prices and to ensure equitable distribution of consumer commodities. For that purpose wide powers were conferred on the government by the Act. The ECA as well as the ESA initially dealt with two classes of essential commodities, (i) basic non-perishable commodities like coal, textiles, iron and
steel, etc., and (ii) daily consumption perishable commodities like foodstuffs, cattle feed etc.

The ECA vested wide powers on the Central Government to meet the objectives of the Act, and to issue Control Orders for the same. The powers exercisable by the Central Government in this regard extend even to introduce a ban in trade and commerce, or prohibit the circulation of any particular article or commodity, which in the opinion of the government is not in the interest of public consumption. Exercising the powers vested on the government consumable commodities of several kinds were brought under control one by one through the Control Orders to ensure both quality and quantity of supply.

The primary concern of the government in issuing the Control Orders had been to see that the concerned commodity is in regular supply and available for the consumer in right measure and at fair price.

It is evident that by the exercise of the powers of notification as "Essential Commodities" and passing of Control Orders, substantial number of merchantable commodities was brought to be regulated and controlled by the government through supply orders and price control orders so that the consumer is not put to greater hardship.

The powers conferred on the Central Government under Section 3 of ECA is of a general and particular nature, and at the same time both pragmatic and purposive, which any government would undoubtedly need if it were to safeguard its domestic market and economic order. In its particular nature, the government is to regulate by licences and permits the production, manufacture, storage, transport, distribution, disposal, acquisition, use and consumption of essential commodities; to control the price level, to require persons holding stocks to sell them to the Central of State Governments; to regulate or prohibit commercial and financial transactions.
relating to foodstuffs; to ensure maintenance of supply; to bring under cultivation arable and waste lands; to collect information and statistics; to require persons engaged in trade and commerce of essential commodities to submit their books, accounts and records for inspection. Besides, the government has the incidental and supplementary power to enter and search premises, vehicles, vessels and aircraft and seize them. It empowers the government to confiscate foodgrains, edible oil, seeds and oils and other consumer goods, pursuant to any control order.

(v) THE STANDARDS OF WEIGHTS & MEASURES ACT, 1956

The standards of weights and lengths were earlier laid down in the Standards of Weights Act, 1932, and the Measures & Lengths Act, 1889, the standards being the seer, the pound, the yard and their multiples and sub-multiples. These standards, however, with the result that different systems of weights and measures prevailed in different parts of the country. Moreover, the same term represented different units of weights in different trades even within the same area. This state of chaos was thought to be hampering trade and provided opportunity for the exploitation of the masses. It was, therefore, felt the need for enforcing a uniform system of weights and measures throughout the country.

Under the Act\(^8\), metre has been laid down as the primary unit of mass. The Act lays down standards not only for mass and length, but also for time, temperature, electric current and luminous intensity.

(vi) STANDARDS OF WEIGHTS & MEASURES ACT, 1976

Parliament enacted the Standards of Weights and Measures Act, 1976, to replace the Standards of Weights and

\(^8\) The Standards of Weights and Measures Act, 1956.
Measures Act, 1956, with a view to modernising the system of weights and measures which was earlier in the State list was transferred to concurrent list by the 42nd Amendment to the Constitution. To provide for the enforcement of the standards of weights and measures established by or under the Standards of Weights and Measures Act, 1976, and the matters connected therewith, the Standards of Weights and Measures (Enforcement) Act, 1985 was passed by the parliament. The Enforcement Act of 1985, not only provides for the enforcement of the standards of weights and measures but also provides for better protection to consumers by ensuring metrological accuracy in commercial transactions, industrial measurements and measurements needed for ensuring public and human safety.

The Act has been amended in 1986. The amendment Act of 1986 has authorised a recognised consumer association to file a complaint before the court. Further, aggrieved person need not be member of the association.

(vii) STANDARDS OF WEIGHTS AND MEASURES (PACKAGED COMMODITIES) RULES, 1977

There has been a rapid increase in the number and type of packaged commodities made available to consumers during recent times. At present, a large number of items of our daily needs are available in the market in prepacked conditions. The trend is continuing and many new packaged goods are introduced each year. Proper regulatory control of packaged goods has, therefore, assumed importance as a consumer protection measure.

In order to have proper control on packaged commodities, suitable provisions have been included in the Standards of Weights and Measures Act, 1976. The rules, framed under the Act, in respect of packaged commodities,
contain comprehensive provisions to ensure necessary discipline on the manufacture, packaging and sale of packaged commodities. The promulgation of these Rules is, thus, a timely regulatory measure undertaken by the Government to protect the interests of the consumer. Following provisions have been made in these rules to protect consumer interests:

(1) **Label Information**

One of the important provisions made in the Rules is in respect of label information. Goods are packed without the consumer being present; packages and adequate information to enable the consumer to know the quantity and nature of their contents. The Standards of Weights and Measures (Packaged Commodities) Rules 1977, therefore, provide that the following particulars should be clearly and conspicuously marked on every package.

(a) The name and address of the manufacturer/packer;
(b) The common or generic name of the commodity contained in the package;
(c) The net quantity;
(d) The month and year of the manufacture;
(e) The sale price;
(f) The dimensions of the commodity, if relevant;
(g) Any additional particulars which may be required by the consumer in respect of certain commodities.

These particulars are expected to facilitate the consumer to make comparisons, and select the commodity required by him. Informed consumers are the bulwark of an efficient free market economy. The consumer should be aware of the existing legal provisions which protect their interests. They would then be in a position to demand fulfilment of their rights.

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(2) Package Standardisation
One of the important provisions made in the Packaged Commodities Rules is Standardisation of package sizes to help the consumer to make value comparisons without difficulty. The Rules provide that commodities shall be packed in specified standards quantities. This provision is expected to help the consumer in making his selection of the packages required by him. Standard sizes of packages in respect of several commodities or groups of commodities have been prescribed in the Rules.

(3) Quantity Declarations
Quantity of a commodity contained in a package being an important information required by the consumer, the Rules provide that all particulars required to give the consumer a clear idea of the contents, of the package in terms helpful to him for making his choice, should be indicated. The important provisions included in the Rules towards this end are:

(a) While indicating the net weight of the commodity, weight of the immediate wrapper shall not be included except in the case of confectionery items.

(b) The quantity declaration shall not be qualified by any misleading words or expressions. However, in case of commodities which are likely to undergo significant variations in weights or measure due to environmental conditions, the declarations of quantity may be qualified by the words "When Packed". Particulars of such commodities are enumerated in the Rules.

(c) Additional particulars wherever necessary to give the consumer accurate and adequate information with regard to the quantity should also be given. For example a package containing screws should carry declaration not only of the net weight but also of the number and sizes of the screws. Similarly, on
a package containing wire, not only its length but its weight per unit, measure and its diameter or gauge should also be indicated.

(d) Misleading words like "Jumbo", "Giant", "Family Size", "Economy Size", "Colossal", "Minimum", "Average" etc. should not be used to qualify the quantity declaration.

(4) **Date Marking**

Before the enforcement of the provisions of the Packaged Commodities Rules there was no means available to the consumer to find out the date of manufacture of the packaged goods. The Rules now provide that the month and year of packing should be conspicuously indicated on all packaged commodities. Certain exemptions have been made, taking into consideration the practicability as well as the cost outweighing the benefit. The date marking also indirectly bring about price discipline because the price once marked by the manufacturer on the package is not permitted to be changed by the wholesaler or retailer even though the sale price of the commodity may have been changed subsequently.

(5) **Price Marking**

Indication of sale price on the package is another useful information that is required to be provided by the manufacturers under the Rules. The manufacturer or packer is given the option to indicate on the package either:

(1) price inclusive of freight and other charges but exclusive of local taxes. In such cases the sale price shall be marked as "Maximum Price Rs.____ Local Taxes Extra".

(2) Price inclusive of all levies and taxes which, therefore is the ultimate price payable by the consumer. The sale price in such cases should be marked as "Maximum Retail Price Rs.____."
These Rules have been amended by an Order dated 25th May, 1990. But these were effective from 1st October, 1990. As per these amendments, now manufacturers have to publish maximum price inclusive of all taxes on all packaged commodities. This step has been taken by Government to protect the consumers against charging of extra amount on the pretext of local taxes etc. (Order of Ministry of Food and Civil Supplies, File No.WM10(35)/ 88 dated 25.05.1990). But as the rates of sales tax, local taxes are different in different States, consumers have not been actually benefitted. On the basis of a survey report¹ it has been found that manufacturers have added maximum amount of taxes to the price and thus prices of various commodities have been increased considerably under the grab of taxes. For example, the price of large size battery cell of Nippo excluding taxes in Aug.'90 was Rs. 5.05 and was sold in the market at Rs. 5.50 including taxes. But in Dec.'90 the price was Rs. 5.85 including all taxes. Similarly 100 gm. pack of Colgate was priced at Rs. 8.95 and was sold for Rs.9.50 including all taxes. It appears that unless tax rates of different States are not determined on uniform basis, this malady and exploitation of consumers can not be eliminated.

(6) Test checking at the Manufacturer's Premises

With a view to ensuring accuracy in the net weight of packages, the Rules provide for test checking at the manufacturer's premises. Detailed procedure for this purpose has been prescribed in the Rules. The procedure has been drawn up in such a way that while the legitimate interests of the packers are protected, the interests of the consumers are also safeguarded. For this purpose maximum permissible errors for individual packages have been prescribed in the Rules. Various types of commodities having different properties are packaged and sold. Many

varieties and types of filling and packing machines are used by the manufacturers. For constructional or metrological reasons, the filling and packing machines cannot be expected to maintain the desired accuracy ever a long period unless proper care is taken. It is found from the survey conducted that the net contents of each package follow certain statistical distribution pattern.

The manufacturer/packer is required to operate the packaging machine in such a way that the average net content is not less than the net quantity and the variations in individual packages are kept within permissible limits.

During the test checking, it is required to be ensure that:

(1) The average of the net quantity contained in the packages tested is not less than the declared quantity.

(2) The number of packages showing errors in deficiency is not more than 5 per cent of the packages covered in the sample.

(3) No package showed an error in deficiency greater than twice the maximum permissible error.

Thus the test checking of packages is expected to benefit not only the consumers but the manufacturers as well who can avoid large over-doses by reducing the scatter within permissible limits. This in turn would reduce the cost of the packaged commodity benefitting consumers in the long run.

(viii) TRADE AND MERCHANDISE MARKS ACT, 1958

A 'Trade Mark' functions as an assurance to the customer that all goods bearing that 'trade mark' will always be of the same high quality that the customer has come to expect of goods bearing that trade mark.
The object of the Act are:

1. to provide for more effective protection of trade marks;
2. to provide for better facilities for registration in the distant parts of the country;
3. to enlarge the field of registrability;
4. to combine the Patent Office and the Trade Mark Registry to secure better coordination of the administration of the different laws relating to industrial property;
5. to remove the uncertainties as to jurisdiction of High Courts;
6. to strengthen the law relating to trade marks of drugs and articles of food;
7. to consolidate the law relating to trade and merchandise marks in India; and
8. to prevent the use of fraudulent marks on merchandise.

(ix) PREVENTION OF BLACK MARKETING & MAINTENANCE OF SUPPLIES OF ESSENTIAL COMMODITIES ACT, 1980

The primary object of this Act is to provide for detention in certain cases for the purposes of prevention of black marketing and maintenance of supplies of commodities essential to the community and for matters connected therewith.

Under the Act, the Central Government, State Government and specified Officials of the Government have been empowered to order detention of a person who is found to be acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community.

The maximum period for which any person may be detained in pursuance of any detention order cannot exceed 6 months from the date of detention.

However, the person detained has a right to know the grounds of his detention, vide Section 8, unless disclosure of the grounds is considered against the public interest in general.

Further, Section 16 grants protection to the authorities for having taken action in good faith. It provides that no suit or other legal proceeding shall lie against the Central Government or a State Government and no suit, prosecution or other legal proceeding shall lie against any person, for anything in good faith done or intended to be done in pursuance of this Act.

(x) TEXTILES (CONSUMER PROTECTION) REGULATION, 1988

From the consumer point of view, the marking/labelling on the product should supply pertinent information to help him not only in making a wise choice but also help subsequently in taking care of the products and more so for textiles. Keeping this in view, Textiles (Consumer Protection) Regulation, 1988, has been notified by the government which has come into force from June 15, 1988.

According to this regulation, no textile goods shall be offered or put for sale without the statutory marking. These markings shall be complied with by manufacturers before the packing of textiles for delivery. Under this regulation, the following markings are required to be made on the face-plait of each piece of cloth: name and address of the manufacturer, description of the cloth e.g. saree, shirting, suiting, etc., length in metres and width in centimeters; the words 'Preshrunk', 'Mercerised' etc. to indicate the process actually carried out on the cloth; 'fast to normal washing' or 'not fast to normal washing' as the case be; 'seconds', 'damaged piece' or 'defective

piece' as the case may be; in case of cloth made from man-made fibres or filament yarn, the words made from 'Spun x Spun', 'Made from Filament x Filament' or 'Made from Spun x Filament' as the case may be; month and year of packing; the exact composition of the cloth expressed in percentage by weight (mass) of each of the individual constituents to the total yarn content of both warp and weft put together.

In case fibres being less than 2 per cent of the total fibre content, the percentage of such fibres may not be mentioned. Further, the cloth may be marked 'All Wool', provided wool content is at least 95 per cent.

The information about the composition of cloth and the words 'Seconds', 'Defective Piece' etc., should also appear on every alternate metre of the cloth at a height not exceeding 2.5 cm. from the selvedge. For easy identification, the height of the letters and figures shall not be less than 0.5 cm.

The registered voluntary consumer associations have been given the right besides the aggrieved consumer to get the textile product tested in a notified laboratory in case where violation of any of the provisions of the regulation is suspected. The laboratory shall issue a test certificate which would enable them to initiate legal proceedings and seek redressal.

(xii) STATUTORY WARNING PROVISIONS

The Government has framed certain Statutory Warnings to protect and warn the consumers. Examples are as follows:

(1) "Breast Feeding is Best for the Baby", shall statutorily be written or printed, in every packing, advertising, of baby milk food.
(2) "Cigarette Smoking is Injurious to Health", shall statutorily be written or printed, on every packet of Cigarette and in every advertisement.

(xii) **MONOPOLIES & RESTRICTIVE PRACTICES ACT, 1969**

Soon after independence the First Industrial Policy Resolution was enunciated in the year 1948. In the year 1950, the Constitution of India came with the national objectives which are enshrined in Articles 38 and 39, and the Directive Principles of State Policy mentioned thereunder, aim at securing social justice along with economic growth. As far back as 26 years, Late Shri Jawahar Lal Nehru, the then Prime Minister of India, had stressed the need for an enquiry into the nature and extent of concentration of economic power in private hands. For this a committee was set up under the Chairmanship of Prof. P.C. Mahalanobis. Following this committee came the Monopolies Inquiry Commission, which recommended a separate legislation and the setting up of an independent permanent body—"Monopolies and Restrictive Trade Practice Commission"—resulting into the enactment of MRTP Act in the year 1969. After a decade of the enactment of the MRTP Act, the Government constituted a High-Powered Expert Committee known as Sachar Committee, on June 23, 1977 to review the provisions of the legislation. It submitted its report on August 29, 1978. The committee made several recommendations for streamlining and improving the working of the MRTP Act and recommended a new concept of consumer welfare. Therefore, following the recommendations, extensive amendments have been made in the year 1984. A very important provisions now introduced in the MRTP Act, relates to control of "Unfair Trade Practices" to safeguard the interest of consumers.
Preamble to the MRTP Act, 1969

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

The principal objectives sought to be achieved by the MRTP Act as spelt out in the preamble to the Act are as follows:

i. Prevention of the concentration of economic power to common detriment;
ii. Control of Monopolies;
iii. Prohibition of Monopolistic Trade Practices;

Now, a new limb of unfair Trade Practices has also been added to the Act.

The Act seeks to guard against acquisition of dominant position by one or more industrial units so as to be able to control the market by regulating the prices or output and seeks also to curb such practice which restrains competition and thereby, deprives the community of beneficial effects of healthy rivalry between different producers of the same commodity. This is sought to be done in public interest. If the growth of monopolies is not checked, abated or controlled, the common man in the society, or the ultimate consumer, would be a victim or a pawn in the game of these big Industrial Empires. On the other hand, if competition will be alive, it will serve the common people.

The MRTP Act, 1969, enacted in India, for the first time, dealt only with monopolistic and restrictive trade practices. Though these two aspects of the legislation sought to protect the consumer from undesirable effects of monopolistic and restrictive trade practices, there was no scope for protection
from practices which tended to mislead or dupe the consumer. The Act\textsuperscript{13} seemed to have proceeded on the assumption that if free and fair competition in the market is ensured, the consumers would get a fair deal. But, however, it has been recognised that this is not wholly true. The enormous strides made by the modern techniques of advertising and sales promotion in recent years, have rendered it necessary to ensure that these advertisements and representations to the consumer do not become deceptive and lure him to transactions which are not ultimately to his benefit. It has been said that the perfect market is an economist's dream and consumer sovereignty a myth.

It is in this background that the High-Powered Expert Committee on the Companies and the MRTP Acts appointed by the Central Government in 1977 recommended the addition of new dimension to the MRTP Act by inclusion of provisions relating to unfair trade practices. Though the Committee was of the view that many of these unfair trade practices should be prohibited outright as unlawful and recommended accordingly, the MRTP (Amendment) Act, 1984, which came into force from 01.08.1984 did not translate this recommendation in full into the Act. Under the provisions, as enacted, the MRTP Commission has been given power to inquire into unfair trade practices on receipt of complaints, from traders/consumers or their association, on a reference by the Central or a State Government, on the application of the Director General of Investigation and Registration, or \textit{su suo moto}. The Act also provides for investigation by the Director General into any complaint of unfair trade practice against the owner of any undertaking or person indulging in such practices. The Commission and the Director General have been vested with all those powers which they have in respect of restrictive trade practices. There is also provision for grant of temporary injunction in appropriate cases for preventing

\textsuperscript{13} M.R.T.P. Act, 1969.
loss or injury to persons complaining of unfair trade practices being indulged in by the parties and also for award of compensation for loss or injury suffered by any party.

For the purposes of such inquiry, the provisions relating to unfair trade practices have been included in Part-B of Chapter-V of the Act, containing Sections 36-A to 36-E.

A detailed discussion on the provisions and the working of MRTP Act shall be found in Chapters 4, 5, 6 and 7.

MRTP (Amendment) Ordinance, 1991

An amendment having far reaching effect has been made in MRTP Act through a Presidential Ordinance on 27.09.1991. Through this Ordinance all restrictions on establishment of new undertakings, expansion, amalgamation, merger, takeover, appointment of Directors and registration of undertakings, under Sections 20 to 26 of the Act have been removed.

The Government, however, has retained the power of direct division of an undertaking and severance of inter-connection between undertakings if it is of the opinion that the working of the undertaking is prejudicial to the public interest, or has led, or is leading to the adoption of any monopolistic or restrictive trade practice.

Another amendment made by the Ordinance is the inclusion of Government undertakings and departments also within the purview of MRTP Act. This would bring railways, airlines, electricity boards, banks and financial institutions under the purview of the MRTP Commission. However, the Act will not apply to undertakings owned and controlled by a government company, or the government department engaged in the production of arms, ammunitions and allied items of defence equipment, defence aircraft and war-ships, atomic energy and atomic minerals.
CONSUMER PROTECTION ACT, 1986

For the first time in India, we have this legislation which recognises three important rights of consumers:

1. Right to choice;
2. Right to information; and

The preamble to the act indicates that the act is intended to provide for better protection of the interests of consumers and for that purpose, to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and other matters connected therewith.

The preamble further envisages to achieve certain objectives by promoting and protecting following rights of consumers:

(a) the right to be protected against marketing of goods which are hazardous to life and property;
(b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;
(c) the right to be assured, wherever possible, access to an authority of goods at competitive prices;
(d) the right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums;
(e) the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and
(f) right to consumer education.
These objects are sought to be promoted and protected by the Consumer Protection Councils to be established at the Central and State level.

The position of 'consumers' in the Indian set up is quite peculiar. Though consumer awareness is increasing, he is the person who is most harrassed and uncared for in the present day economic and social scenario. Very often he has to compromise with sub-standard quality goods and forgo many after-sales services because of his weak position in the market on account of rapid inflation and shortfall in supplies.

In the back-drop of such thinking, the Consumer Protection Act is greatly welcome. However, it needs to be understood that mere legal provisions cannot improve the situation. Success would greatly depend on the enlightened consumers, the effective redressal machinery and the support and co-operation of the consumers and their organisations and other sections of the society.

The Act\textsuperscript{14} covers wide areas. It applies to all goods and services unless the same have been specifically exempted by the Central Government from the purview of the Act. The concept of 'goods' in the Act is the same as it is under the Sale of Goods Act, 1930. 'Service' has been defined to mean the service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, boarding or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service. The Act applies to all sectors whether private, public or cooperative.

\textsuperscript{14} Consumer Protection Act, 1986.
Certain amendments have been made in the Consumer Protection Act, 1986 through Presidential Ordinance. The amendments mainly relate to the procedure of passing Orders by District Forums. The Ordinance has been replaced by the 'Consumer Protection (Amendment) Bill, 1991'.

A detailed discussion on the subject and critical review of the working of the Act has been made in Chapter-8.

An observation of the various legislative provisions regarding protection of consumers shows that some efforts were made to protect consumer interest in pre-independence era. But these provisions were merely indirect and did not serve the purpose. After independence, some legislative provisions were enacted, but these covered a limited area, particularly agricultural produce and food products. A vast area of consumer products was left untouched. Further, consumer had to pass through long legal process to obtain any redressal or relief. Consumer, being on the weaker side, could not avail the advantage of these provisions.

Serious effort was made only in 1984 by amending MRTP Act, 1969. Through these amendments, provisions regarding unfair trade practices were incorporated in the MRTP Act. Further, procedure of seeking relief was made less costly and easy. But office of MRTP Commission is situated in New Delhi therefore consumers felt inconveniences in seeking relief. Further, MRTP Commission responsible for enforcing the provisions regarding monopolistic and restrictive trade practices also in addition to unfair trade practices, became over burdened. Hence, a separate legislation exclusively for consumers having vide network of redressal machinery was thought of. This came in the shape of Consumer Protection
Act, 1986. With the amendments made in MRTP Act and Consumer Protection Act in 1991 through Presidential Ordinances, it appears that Government is serious for consumer protection. Wide network of consumer redressal forums at district, State and Central level have been established. The success of course will depend upon the degree of enacting the provisions of these protective laws. This requires more and more awareness of their rights among consumers.