CHAPTER - I

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MEANING OF CONSUMER

The word ‘Consumer’ ordinarily stands for persons who purchase goods and services and consume those for the satisfaction of their wants or wants of their family. No one is exception to this because every person has to satisfy his wants for existence and making his life comfortable and happy. Thus all the persons or citizens of a country are consumers in this sense. In other words it can be said that a person who buys property, movable or immovable or hires services for various purpose is a consumer. The Consumer Protection Act, 1986 defines Consumer specifically and mentions that the Goods must have been purchased for a ‘consideration’ which has been paid or promised or partly paid or partly promised. These goods so purchased should not be meant for resale or for any other commercial purpose. Further the Act says that services must have been hired for a consideration which has been paid or promised or partly paid and partly promised. In respect of services, it does not include rendering of services free of charge on under a contract of personal services. All the beneficiaries of a person purchasing goods and hiring services are also consumers. Persons
consume things either internally or externally. Internally by means of foods & drugs and externally consumer is affected by constituents of Environment. Food is the first requirement of life. Food habits vary from society to society but all societies require purity of the preferred food as Sine quo non. Malnutrition is the result as much of impurity of food as of insufficiency. Malnutrition plays havoc with health and energy and cases of serious malnutrition do not respond to treatment. In a Consumer Society, the prevalence of the practice of selling adulterated food can and does give rise to higher infirmity and mortality rates.

The relation between consumer and market is continuous old, i.e. since the beginning of social life. These relations have been taking different shapes from barters, system of exchange to present day's monetary system. This relationship is never to end. Development and mobility as per time is the eternal law of nature. But if the change advances towards development alongwith the elements of neglecting the consumer, the results are very harmful. The tendency of liberal economy from one country to another has encouraged the commercial tendency. There is no guarantee whether the consumer has been exploited of his hard-earned money or not. Either in respect to price of goods or quality of goods is not
based on time scale. It extends upto the level of affecting the health of consumer negatively too. This analysis is not confined to the goods in the market alone but in other services too.

**Area & Scope:** Now a days there is lot of cheating in price and quality of services purchased by the consumer openly such as Railways services, Bus, Phone, Journey, Telecommunication services, Residential services, Domestic gas services, Banking services, etc. The consumer remains helpless and monetary looted. Had this looting limited to the extent of money, remedy could have been suggested but there seems to be no remedy of overloaded transport services resulting into life taking accidents, or for cosmetics goods under the big advertisements, reducing the beauty due to bad chemicals instead of increasing it and leaving permanent damages to health. Similarly factories cause sound and pollution together work unchallenged playing with the health and life of common people because the owners of these factories give big donations to the ruling political parties. Under this condition it is only consumer protection law which provides a ray of hope towards uprooting this social evil. Though at times it may not be successful in uprooting the nuisance fully but it succeeds in controlling it definitely.
In India, the ideological conception of consumer protection is from very ancient times. The Vedic literature, Smritis, Mahabharat, Kautilya's Arthashastra are some main works in which we find rules need for consumer protection. Correct price, weights and measure and honest commercial dealings to protect the consumer have been a treated as Raj Dharma or political religion of the ruler. The law breakers were punished very heavily or even to death to protect the society from spreading the above evil.


**Purpose of work**: It is an important effort to remove the shortcomings in execution of these above mentioned laws. The protection to consumer is in accordance with the spirit of our Constitution. Every citizen of India is a consumer and Constitution has given him the right to live as per Article 21 as his fundamental right. Health cannot be separated from life. "Every person of the society has right to protect his health as he has right to protect his freedom." It is an important duty of state to formulate such rules which may protect public health under the policy of public welfare. The Articles 38 and 39 express this motto clearly. J.P. Bishop while discussing the constitutionality of laws related to public health, said that: "The principle is that of necessary, it is both the right and duty of legislature to make needful regulations for the preservation of public health and the protection of public interest."
Health has been kept in Seventh Schedule of Concurrent list as sixth subject. Under this clause the Centre and State both Governments have been empowered to make necessary legislation for protection of health of the people. The Article 47 of the Constitution directs the following duties of the State: (1) State should develop public health by increasing the level or standard of living and standard of nutrition. (2) State should ban the use of poisonous matter which is harmful to health except for reason of medical treatment.

Human health has direct relation with eating & drinking system but it is indirectly affected by the whole environment in which one lives also. To make environment pollution less is duty of both state and society. The Article 48-A added in the 42nd Amendment of Constitution in 1976 stresses this motive. State should endeavour to keep environment protected and increase the purity alongwith protecting the forest and forest life. The preface of our Constitution and directive elements are important steps in the directions.

**Crimes Against Consumer**: These crime come in the category of crimes against public welfare. In these types of crimes whether malice is present or not with looking to it, the principle of such it
liability is applied. For these legislatures and to some extent judiciaries have worked keeping aside the traditional principle of mens rea. Specially in the matters of adulteration of food and drinking products, and wrong weights and measures, black marketing, and over profiting etc. National Vs. M.P., The tendency of Indian Judiciaries has been punishing for the crimes under essential Goods Act and adulteration of food, Protection Act even in the absence of malice.

The Supreme Court has clearly given to, verdict that - It is true that society is not taking the full advantage of consumer protection laws due to illiteracy and lack of awareness but for the faults or mistakes in providing proper services from cooking gas to house wives and to consumers of National and International travels have been provided monetary compensation by fining the concerned defaulters under the consumer protection laws. It can be called a continuous process to provide Justice to consumer and establishing a progressive system in coming years. Messers Flame Gas Service Bikaner Vs. Amlesh Kumar Bansal. This judgment not only clarifies but throws light on the fact that Gas Producer and Distributor should take full care while supplying the gas and repairing the Gas Cylinder. It is such a delicate service for which well trained workers
are necessary. The services by untrained workers come under the preview of harmful services. Hence in services like gas supply a distribution carelessness or negligence or innocence of any kind should not be undertaken.

Rajasthan Housing Board Vs. Narendra Singh Choudhary: This judgment provides a big check to partial treatment and to procedure without any rules in the residential services given by housing board to consumer. Similarly telephone has become a necessity of life. But it is found that the telephone apparatus does not work properly. It frequently stops working; the unnecessary delay is caused in repairing. The consumer becomes helpless in spite of making all payments in time. To avoid these odd conditions the Judgment of Lalit Kumar Vs. Distt.\textsuperscript{10} and a like judgment are of great importance. There are so many important services which are most necessary in social life such as Railway services, Airway services, Educational institution services, Medical services, Banking services etc. Some of these, people need every day. The defects in the above services put great influence on the mental and physical health of people. The consumer forum come forward to give relief to suffering consumers through their judgments and lit a ray of hope for improvement in the quality of these services in future.
Consumers are aware of their rights, they can approach to consumer forums, the institutions giving above services would try to remove the defects to avoid the punishments by Consumer Forum. This will lead to good system.

The Consumer Forums are working in three tier under the Consumer Protection Laws namely: (1) District Consumer Forum (2) State Consumer Commission (3) National Consumer Commission. These forums are doing full justice to the cases they deal. There is no doubt. But while making the Consumer Forums more speedy disposal in cases than civil judiciary was expected from these forums. It is still to be achieved. There are certainly some humanitarian or technical reasons which come in the way of all the three members of the forum may not be present. On this repeated situation, there is no responsibility fixed. Besides, the regular judges remain busy in their courts and could not attend the consumer forum frequently. In-spite of establishment of three tier Consumer Forums, under section 23 for right or appeal a special provision has been kept. According to this one can go in Supreme Court against the judgment of National Consumer Commission also. While there is no provision for appeal against the orders of National Commission under article 226.
Lucknow Development Authority Vs. M.K. Gupta.\textsuperscript{12} In this case the Supreme Court has felt the necessity of interpreting the meaning of provisions in favour of consumer while giving decision, said that - After minute examination of the different words and languages used such as 'Consumer Services' incorrect commercial tradition etc. It is felt that executive has tried to extend the scope of ordinance. All these definitions are in two parts; are explanation and two expansions \ldots S.K. Singh pg. 22. Thus the interpretation or provisions or Act is to be done in favour of consumer for maintaining the Aims of Act, because it is public welfare oriented Act.

It is the primary duty of the court to interpret the provisions of such Acts without damaging the language and without creating the opposite results. They should adopt constructive way to achieve the correct aims of the Act. Neela Basant Raje Vs. Amogh Industries & others.\textsuperscript{13} In this case, it was said that one social welfare Act should not be interpreted with short-sightedness; but should take the help of profitable interpretation which are helpful in achieving and encouraging the aims of Act e.g. to protect the interest of consumers and provide remedy to consumers from their immoral exploitation after crushing it.
Main Suggestions: The biggest right with consumer is injunction but normally consumers are not able to make use of this right. Consumer is actually looted in his daily life. The procedure of consumer forum is not very quick to provide him remedy; though consumer expects quick relief. In other words there is need to make reform in the procedure so that consumer may get encouraged towards Consumer Forum. Consumer Protection Council is practically inactive. It is organisation, meetings are problematic in itself. The illiteracy and lack of awareness of consumer are equally responsible also. Consumer in general cannot fight the procedural combat for getting its due. So there is need of Consumer Protection Forum at town and district level. Consumer shall report their all grievances in the forum and it is the duty of Consumer Protection Forum to continue the procedural battle on his behalf. Non government organisations should come forward for this social service to consumer besides than other social motto. The NGO's should compulsorily take the work of consumer protection to uproot this social evil i.e. exploitation of consumer physically and mentally.

In order to make consumers aware, the reports on Consumer Forums activity and their achievements should be published regularly in newspaper, magazines and vide publicity through
Radio and Television programme. Documentary on Consumer Protection can also be prepared and displayed. It will cover very vide area. Those agents of the companies who come in the District to advertise and sell their products should give their addresses identity, legal signature and other information in District Collector office, so that looting and befooling of consumer can checked. It should be compulsory for agents who sell the products in more than Rupees one hundred. Refusal to give receipt by the seller to consumer should be kept in the category of consumer crime punishable with fine on report. The utility of consumer protection law can be appealed from village to village through folk songs and folk dramas. The success of consumer movement is very important for making a developed and pure society rather it is first and foremost one.
CITATION

2. Article 384 and 39 Constitution of India.
4. "The public welfare offence" is used to denote the group of public offences and Criminal nuisances, punishable irrespective of the actor's state of mind, which dates back to the middle of the 19th Century in England and America C.F. Sayre; "Public Welfare offence" (1933) 33 col L. Rev. 55.
5. Example of such offences may be found in section 5, 7 and 16 of the prevention of food Adulteration Act 1954 (India Section 79-79 of the Trade & Merchandise marks Act, 1958 (India).
7. Mens Rea by necessary implication may be excluded from a statute only it is absolutely clear that the implementation of the object of the statute would otherwise be defeated.
8. L.R.T. 1995 P. 45
10. R.L.T. 1992 P. 1