CHAPTER - II

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Consumer has been in selecting, buying and consuming the articles of his need as per his desire and choice in old times i.e. in the beginning of social life. But due to industrialisation and advancement of science and technology, consumer has become unable to locate the nature of Adulteration, hike in prices, deterioration in his purchasing power due to economic forces in society, defective instruments of weights & measure etc. Thus, now a days the consumer has become slave in the hands of producers, Marketers and govt. policies.

Principle of Caveat Emptor

The principle of 'Caveat Emptor' was made to alert the consumer to examine and take all sided care before purchasing any commodity and avoid negligence on his part, but now due to above advancement of science this principle of Caveat Emptor does not have the qualifications of Doctor, Engineer, Pharmacologist and other expert at a time to detect the ills in commodity in question. In the commercial world, the traders have formed commercial traditions for their convenience and security. These traditions have
changed their form according to the call of time, still safeguarding the interests of traders.

The academicians and social thinkers have always aimed to protect the weaker section of society. If we compare the plight of producer class and consumer class, the consumer class is positively a weaker class. Hence the thinkers all over the world have given their opinions and thoughts time to time to safeguard the consumer by highlighting his various difficulties chronologically in his favour. This chain of thought gave rise to an environment and movement of consumers. Their ideas were for human beings and beyond the geographical limits, the thoughts of some most important thinkers which helped in formulating the laws to protect the consumer throughout the world.

According to Phillip Kotier - "Consumerism is defined as the social movement seeking to augment the rights and powers of the buyers in relation to sellers in market place."1 Richard H. Bustrik & James T. Roth interpret as - "Consumerism is also defined as the organised efforts of consumer seeking redress, restitution and remedy for dissatisfaction they have accumulated in the acquiesce of their standard of living."2 Asker and David defined consumerism as the widening range of activities of government business and
independent organisations that are designed to protect individuals from practices that infringe upon their rights as consumers." Ketter P. narrates that consumerism is defined as a social movement that has, as its objective, increase of consumer power vis-à-vis sellers of products or services.4 Webster F.Z. means "Consumerism means that the consumer looks upon the manufacturer as a somebody who is interested but who really does not know what the consumer's realities are. He regards the manufacturer as somebody who has not made the effort to find out, who does not understand the world in which the consumer lives, and who expects the consumer to be able to make distinction which the consumer is neither willing nor able to make."5

Sheth J.N. and Mahera N.J. elaborate as - "Consumerism is generally considered to include some form of protection to people against: (i) Physical threat to life, health and property; (ii) Economic threat to rational and satisfying consumption benefits as a result of market imperfections, abuses, fraud & deceptions; and (iii) Threat from other consumers in the process of collective consumption in the modern technological mass consumption society."6 Though it is apparent that there is considerable activity and organisation in consumer interest, one cannot put a finger at any one moment on a "Consumer movement" and say here it is.7 The
scene of consumer movement is like that of a kaleidoscope in which the pattern shifts with circumstances, one particular issue there may be brought together one group of individuals and organizations to promote a consumer programme, and about another issue there will be a different grouping.

A distinguished professor of Indian Institute of Social Welfare and Business Management of Calcutta, Prof. D.K. Sanyal, delivering by a lecture in Cochin in 1968 made a blunt comment on strike notices by workmen for higher wages to a group of top executive by asking "why do not people talk against the demands of workers for higher wages? Give as much as they want to please them. You have nothing to lose but your vanity. Your organisation is never going to suffer, for ultimately the burden is on the poor consumer who will bear everything that you do by your inefficiency. So long as the consumer is not powerful to resist and you free from healthy competition in the market, and you not ready to share with the consumer the benefits of your better productivity, putting all the blame on your workers and their unions is meaningless in our present day development socialist economy." Adam Smith, the celebrated Professor of Glasgow University and called 'Father of Economics' pinpoints the urge of consumer protection under his
ideology of liaises faire by mentioning the consumer. Adam Smith said "the interest of the producer ought to be attended to the extent only, so far it may be necessary for promoting that of his consumer."  

**Evolution and Development of Consumerism**

India is one of the oldest countries of the world with ancient civilization and culture. Its literature points out the existence of principles for the good of consumer with religious background. Vedas worship God and alert the common man from exploiting each other. Manu Smriti has laid down honest behaviour for traders. Similar is the case with Yagnavalyakaya and Patanjali ideologies. Kautilya's Arthashastra has fixed heavy punishment for cheating the consumer in any way. Even the King and its Kingdom have not been spared.

In pre-Independence era, the British rulers provided punishment for adulteration and cheating through false weights & measures under sec. 264 to 267 of I.P.C. Adulteration of food, drink, drugs and other articles and false property marks. Similarly, Sales of Goods Act, 1930 on other Acts were serving the cause of consumer's welfare, by laying down implied warranty and conditions to title, quantity of fitness of goods and provide an exception in case goods are purchased under a trade of patent name, or purchased after
examining the goods.\textsuperscript{11} Regulating the operation relating to
dangerous drugs and contra banned traffic in the abuse of
dangerous drugs,\textsuperscript{12} import, manufacture, distribution and sale of
drugs,\textsuperscript{13} by prescribing test or analysis by Government Analyst; by
prohibiting manufacture and sale of non-standard and misbranded
drugs\textsuperscript{14}; by regulating the importation, possession and sales of
poison, and by providing for the grading and marking of
agricultural products.\textsuperscript{15}

After Independence, Indian Judiciary played a vital role in
giving new dimension to consumer movement, through its
judgements. The various articles of Indian Constitution such as 19(9),
21, 39, 43, 47, 48(A) and 51(G) provide safeguards for benefit of its
citizens, the High Courts and Supreme Court with their helping
hands in protecting consumer interests gave a new dimension to the
consumer movement. In Hamdard Dhawakhana V. Union of India\textsuperscript{16}
Supreme Court held that advertisement of prohibited drugs of
commodities of which sale was not in the interest of general public,
could not be "Speech" within the meaning of "Freedom of Speech"
envisaged in the Indian Constitution. Similarly, in Zafar
Mohammed V. State of West Bengal\textsuperscript{17} Hon'ble Supreme Court
opined that advertisements like "New life, New vigour, New wave.
If you want a cure, see today known world famous experienced registered physician. Special diseases such as oldness in you, all sorts of defects in nerves as weakness, laziness are treated with full responsibility", were declared objectionable advertisements and treated as prejudicial to consumer interest.

Few important decisions of Judiciary which promotes Indian consumer movements are - J.N. Srivatava V. Rambeharilal\textsuperscript{18} the court held; wrong diagnosis of the patient by the doctor was actionable considering the patient as 'Consumer'. In Bangalore Water Supply Vs. A. Rajappa,\textsuperscript{19} Supreme Court held University as an industry and laid down that absence of profit motive or gainful objective is irrelevant, whether the venture is public, joint, private or other actor, the 'User' can claim benefit on this basis.

The Consumer Protection Act 1986 provided for the establishment of Consumer Protection Councils:

CONSUMER PROTECTION COUNCILS: The Act 1986 provided for the establishment and functions of Consumer Protection Councils.\textsuperscript{20} It provides two tier protection councils at the National\textsuperscript{21} and State level.\textsuperscript{22}

Compositions of Central Consumer Protection Council:

Central Council is to consist of 150 members including the ex-officio members. The Chairman of the Central Council is the Minister-in-charge of the Department of Civil Supplies and the Vice-chairman shall be the Minister of State, if he is not holding independent charge or Deputy Minister in Department of Civil Supplies.\textsuperscript{23} These two ministers of the Central Ministry are the
members of the Central Council. Ministers of Food and Civil Supplies or Minister's In-charge of Consumer Affairs of all the states become ex-officio members. Twenty six States excluding the State of Jammu and Kashmir and the six Union Territories will contribute 30 members. Five members of Lok Sabha and three from Rajya Sabha are the eight members of Parliament who are members of the Council. The Commissioner for Scheduled Castes and Schedules Tribes is an ex-officio member. Representative of the Central Government Departments and autonomous organisations concerned with consumer interests, not exceeding twenty, representative of farmers, trade and industries, not exceeding twenty and persons capable of representing consumer interest not exceeding fifteen are also members of the Council. Two more classes are mentioned whose minimum number is 35 and 10. They are the representatives of women, not less than 10 and representatives of consumer organisations or consumers not less than 35. If the maximum and minimum members prescribed by the rule are taken they come to 141. To this body one more member, the Secretary of the Department of Civil Supplies is added, as a member-secretary.
Composition of State Consumer Protection Council: On the same lines the Act provided for the constitution of a separate State Consumer Protection Council for each State. Every State Government is empowered to establish a State Council. It shall be established by a notification and comes into effect from the date specified in the Gazette notification and if no date is specified it shall come into effect from the date of the notifications. It shall consist of such member or members as may be specified by the concerned State Government by notification from time to time. There are big and small states. So the number of members of each state varied according to the size and population of the State. So the number is not prescribed by the Act. Section 30 providing for the rule making power does not mention this section and so the rules made by the State Government do not refer to the State Council as the Central Rules do in Rules 3 and 4. There is no section dealing with the procedure to be followed. So far 22 States and Union Territories have set up these councils under the Act, but how far these councils have been successful in protecting the consumers’ interests in not free from doubt. Time only will decide.
**Objects of the Central and State Council:** The Act provides the objects of Central and State Council. The object of Centre and all States shall be to promote and protect the rights of consumers laid down by the Act.

1. **Sec. 6:** The objects of the Central Council shall be to promote and protect the rights of the consumers such as:
   
   (a) The right to be protected against the marketing of goods and services which are hazardous to life and property;
   
   (b) The right to be informed about the quality, quantity potency, purity, standard and price of goods or services as the case may be so as to protect the consumer against unfair trade practices.
   
   (c) The right to be assured, whenever possible, access to a variety of goods and services at competitive prices;
   
   (d) The right to be heard and to be assured that consumers' interests will receive due consideration at appropriate;
   
   (e) The right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and
   
   (f) The right to consumer education.

2. **Sec. B:** The objects of every State Council shall be to promote and protect within the State rights of the consumers laid down in clauses (a) to (f) of section 6.

3. **Consumer Protection Act, 1986; Sec. 6 and 8.** The beginning of consumer movement or consumerism is very interesting in different countries of the world:
Consumerism in United States of America: Evaluation above in brief regarding, consumerism can be perused in developed countries under U.S.A. The very first Federal Bill was introduced in 1879. Thereafter hundreds of attempts were made but failed due to negative attitude of wealthy persons or industrialists. The first enactment as Food and Drugs Act and Meat Inspection Act was passed in 1906. It covered other food items also. So far modern consumerism in USA is concerned, the credit goes to Ralph Nader and the then President John F. Kennedy. He gradually declared the four following rights of consumer 1. Right to safety 2. Right to be informed 3. Right to choice 4. Right to be heard. It was followed by institutional reform, consumer's representation, redress assistance and consumer education.

Consumerism in United Kingdom: The most important views of David Oughton & John Lawry are: While consumer protection law is often regarded as a modern phenomenon, typical of the twentieth century, it is in fact the case that what is now regarded as statutes with an emphasis on consumer protection had their in a much early age. The 1932 legal articulation by the house of Lords in Donoughe Vs. Stevenson laid down the law (perhaps for the first time in U.K.) that "the manufacturers owed duty to the
ultimate consumer in respect of the goods of the nature that in unlikely to be examined before they reach him.\textsuperscript{35} In U.K. the legislation relating to consumer has proliferated. The legislation has consisted of amendments, consolidation, simplification and modernisation of existing laws as was recommended by the Molony Committee Report in 1962. For instance, Trade Description Act, 1968. Other legislation has been enacted in response to changing social and economic conditions, e.g. Consumer Credit Act, 1974. Basically, present-day consumer protection legislation still derives from four Acts passed during the latter half of the 19\textsuperscript{th} Century to protect the unwary or uniformed shopper, viz. Sales of Goods Act, 1893; Food and Drugs Act, 1860; Weights and Measures Act, 1878; and Trade & Merchandise Marks Act, 1887.\textsuperscript{36} Clark Alutaire has rightly assessed the condition of present day consumer protection laws in U.K. by mentioning that, "It is to be admitted beyond any iota of doubt that the British Consumer Protection Act, 1987 has been an overall improvement over the existing legal provisions in the field of product liability, general safety, misleading prices etc. but all the same it appears to have been received with mixed feelings when compared with its American counterpart in respect of strict liability for product defects.\textsuperscript{37}
Consumerism in France: In France, a specialized establishment National Consumer Institute Associations represents consumers, and two Government Department have special responsibilities for consumer's problems 1. Director General of Internal Commerce & Prices 2. Ministry of Finance & Economic affairs.

Services de la Repression des Frands et du Controls de la Qualite" (Pure Food, etc. Department of Ministry of Agriculture). The First Directorate is responsible for enforcement of the regulations concerning consumer protection. These include the provisions relating to price announcement, misleading, advertising, certain forms of sales (gift offers, pyramid selling etc.) as well as competition regulations to enable customers to enjoy benefits of increased productivity and of development of international competition. "Service de la Repression des Fraudes" (Pure Food etc. Department) has responsibility of protecting consumers by the punishment of fraud in sale of goods or for adulteration of food stuffs and agricultural products. It is responsible for keeping watch on public health measures also. National Consumer Institute (I.N.C.) which was met up in 1967. It is a public institution acting (1) as a testing centre, (2) as an information office and (3) as a body for protecting consumers. It has a regular television programme. It
published a monthly magazine "50 millions de Consommateurs" and
a monthly bulletin entitled "Consommateur Actualities". A number
of private associations look after the protection of consumers' interest. Namely Federal Consumer Union (U.F.C.) General
Consumer Organisation (ORGELO) and family or women's association.

Consumerism in Russia: During Soviet Union, efforts were
made to protect legislation in Russia was worked out, and adopted, but could not be implemented due to dissolution of Soviet Union in 1991. When Soviet Union was dissolved and Russian Federation become independent in 1991, the Russia Republic gave weightage to the spirit of consumer protection. It was influenced by United Nations Guidelines of 1985. "There was consensus that the difficult transition from a socialist planned economy to a market economy would not successfully be accomplished without a strong competition and consumer protection legislation and a special authority for enforcing it.\textsuperscript{38} The Russia Govt. adopted Russian Consumer Protection Act (RCPA) as of 7\textsuperscript{th} February, 1992. It was put into force by an order of Supreme Soviet of Russian Federal Republic from the same day. A specific structure of anti-monopoly practices
and new economic was created. It implemented the RCPA together with Competition Act of 1991.

Preamble to RCPA states that it regulates the relations between consumers and entrepreneurs, and establishes consumers' right; namely: 1. To obtain goods (work, service) of appropriate quality; 2. To security of their life and health; 3. To receive information about goods, work, services, and about producers, sellers and suppliers; 4. To have access to consumer education; 5. To have their interests protected by the state and the society; 6. To associate in consumer organizations; Articles 4 of RCPA gives consumers indirectly a right to quality and article 5 a direct right to safety. The quality obligation of manufacturer, seller or provider of services is defined in article 4 by which products, works as service must correspond in quality namely: 1. The mandatory requirement of standards; 2. Conditions of contract; 3. Commonly held expectations; and 4. Information given by producers, sellers or providers of services. Article 6 obliges manufacturers, sellers or providers of services to provide consumers with necessary and truthful information.

**Consumerism in China:** There is a socialist market system in China inspite of its beings a communist country. The China
Government enacted separate Consumer Protection Act in the year 1993, due to China's economic policy is early 1990's.

The law of People's Republic of China on protection of consumer rights and interests was adopted by 8th National People's Congress on October 31, 1993. It has 8 chapters containing 55 articles. The chapter I consists of general provisions spelling out the objectives of the Act vide art. 1 to 6. The chapter II provides consumer's rights: 1. Right of personal and property safety; 2. Right to obtain true information; 3. Rights of free choice of commodities of services; 4. Rights of fair deals; 5. Rights to compensation; 6. Rights to set up social bodies to uphold their legal rights and interest; 7. Rights to obtain knowledge concerning consumption; 8. Rights of personal dignity; 9. Rights to exercise supervision over commodities, services. The dispute between producers & consumers can be settled by following methods: 1. Consultation and conciliation with business dealer; 2. Appeal to Consumers' Association for mediation; 3. Complaint administrative department concerned; 4. Submission to arbitrating organs for arbitrating according to arbitration agreement with business dealers; 5. Start of legal proceedings before People's Courts. The Art. 40 to 53 of chapter VII impose legal responsibilities on business dealers.
Consumerism in Japan: Japan is one of the most economically and commercially powerful countries of Asia in present days. It has a miraculous rise since worst condition of 1945, i.e. War term economy plus the Atomic devastation. It is dignity of labour, honesty towards consumers and continuous zeal to manufacture the best products in the world, which are root causes of its tremendous uplift. The patriotic Japan is disciplined in every way. In 1950's Japan had rapid growth due to innovation and technological advancement. The consumer movement was launched in Japan by women's organisation. Some of these are: 1. Housewives Association 1948; 2. National liaison council of Regional women's association 1952; 3. Japanese Consumer's cooperative Union 1951 etc. The most important Consumer Protection Act was enacted in 1968. It is also called as Consumer Protection Fundamental Act. It protects the rights of consumers. This Act does not contain legal force or penal provisions. The disputes are settled amicably in administration, businessmen and consumers; their roles are: 1. The state and local governments should assure the responsibility to plan and execute the measures comprehensively in accordance with the development of the economy. 2. Business enterprises should assure the responsibility to take necessary measures to protect consumers and
to co-operate with the measures planned by the administration. 3. Consumers should make efforts to acquire the required knowledge on their own and act independently as well as in a rational manner.

**Japan's Consumer Administration:** It has three main wings:

1. **Consumer Protection Council:** The Consumer Protection Council was established in 1968. Its chairman is the Prime Minister. It consists of 18 ministry and agency heads related to the administration of consumer protection regulations. The council meets yearly to discuss and decide the general planning and measures to be taken, for consumer administration.

2. **The Social Policy Council:** The Social Policy Council was established in 1965 in the Economic Planning Agency as an advisory organ to the Prime Minister and the ministers of related ministries.


**International Organisation of Consumer Union (IOCU)**: IOCU was founded in 1961. It is an independent, non-profit making and non political in nature. It is a worldwide federation of consumer organisations, for protection and promotion of consumer rights and interests by research, information and education. It also represents consumer concerns in international policy making bodies.

IOCU's Head office is in London, and regional offices in Penan (Malaysia), Santiago (Chile) and Harare (Zimbabwe). It provides programmes for developed economies and for economies in transition. It coordinates skills and experiences of consumer groups throughout the world with special interest in developing world, and new market economies.

IOCU has developed several areas of expertise. It supports the works of its member organisation and builds the world consumer movement. Main areas are - 1. Model consumer protection legislation; 2. Consumer magazine; 3. Development product testing support; 4. Media and communication support; 5. Consumer education and 6. National and international advocacy guidelines;
IOCU has ISO member organizations in 72 countries. It links each other through information network, seminars, workshops and a (three yearly) world congress. It helps in research and action on several international issues e.g. - 1. Trade 2. Product standards 3. Food safety 4. Pharmaceuticals 5. Hazardous products 6. Health services 7. Financial services and 8. Sustainable consumption. IOCU is an international NGO. It has official representative's status on several international bodies e.g. 1. UN Economic & Social Council; 2. Lodex Alimen Farins Commission; 3. Foods & Agriculture Organization (FAO); 4. UN Industrial Development Organisation (UNIDO); 5. International Standard Organisation (ISO); 6. World Health Organisation (WHO); 7. UN Educational, Scientific & Cultural Organisation (UNESCO) and 8. OECD. It is doing a great service at the international level for promotion of consumer movement and consumerism.

The UN Guidelines: Consumer protection has become a major political and economic issue in almost all counties of the world, since 1970. The United Nations unanimously adopted a set of guidelines in its general assembly on 9th April 1985 after two years of negotiations in the Economic & Social Committee of UN. The UN Guidelines aims to help Nations in an initial forming national
consumer protection policies and measures. "They also intend to assist the international community in its consideration of the question of consumer protection policies and to further international co-operation in this field. The Guidelines have been also described as "an internationally recognized set of minimum objective, which consumer everywhere should be entitled to expect, will be applied. These Guidelines are: 1. Physical safety of consumer; 2. Protection of economic interests of consumers; 3. Consumers' access to information needed to make informed choice. 4. Measure enabling consumers to obtain redress; 5. Distribution of essential goods and services; 6. Satisfactory production and performance standard; 7. Adequate business practices and informative marketing; 8. Proposal for international cooperation in the field of consumer protection. They also propose measures in the essential areas of food, water and pharmaceuticals with product quality control, adequate distribution facilities, standards, labeling and education and research programme, "These guidelines are not binding. Therefore it is imperative of each government to implement them as they deem fit in accordance with their priority and needs."
CITATION


9. Adam Smith, Wealth of National (1776)


11. Proviso to s. 16(2) of Sale of Goods Act, 1930.

12. Dangerous Drugs Act, 1930, 2, Drugs Act, 1940.

13. Drugs & Cosmetics Act, 1940.


17. 1976 (1) BCR 428.


23. Consumer Protection Rules, 1987 : 3 (a) and 3 (b)

24. Ibid Rule 3(c)

25. Ibid (d)

26. Ibid (e)

27. Ibid (f)

28. Ibid (i)

29. Ibid (j)

30. Ibid (h)

31. Ibid (g)

32. Ibid (k)

33. Section 7 : State Consumer Protection Council : 1. The State Government may by notification, establish with effect from such date as it may specify in such notification a council to be known as the Consumer Protection Council for .................. (here in after referred to as the State Council). 2. The State Council shall consist of the following members namely. (a) The Minister In-charge of Consumer Affairs in the State Governments who shall be its chairman; (b) Such number of other official or non official members representing such interests as may be prescribed by the State Government.


35. 1932 AC 502.

