Chapter-III
Consumer Law- A Comprehensive View.
CHAPTER – III

CONSUMER LAW – A COMPREHENSIVE VIEW

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

“Mahatma Gandhi”

“Consumer is the sole end and purpose of all production; and the interest of the producer ought to be attended to only so far as it may be necessary for promoting that of the consumer.”

“Adam Smith”

Since the early writings of well known personalities namely, John Kenneth, Gilbraith, Vance Packard, Rachal Carson, John Kennedy and Ralph Nadar consumer protection has become a serious concern all over the world. Various consumer organizations have come into existence and various enactments for protection of consumers have been passed. The General Assembly of the United Nations passed guidelines for consumer protection on April, 1985 though origin can be traced to the late 1970’s urging Nation States to encourage International cooperation in this field of Consumer Protection. This chapter is an outcome of an attempt to bring together various enactments which cover diverse subjects and provide consumer protection in one or the other form. However, brief account of some time-honoured doctrines of past and consumer law of other countries from whose experience we have been benefited in framing our own consumer law and policy will be dealt in the first part of this chapter.
(A) **The Law of Torts:** When a person transfers goods to another person under a contract, his liability arises not only under the Law of Contract but also under the Law of Torts. If defective, unfit or dangerous goods are supplied, liability to compensate for the harm done would arise on the principle of *Donough V/S Stevenson*\(^{(1)}\). Before this decision there were no proper regulation from Govt. side to prosecute the manufacturers in relation to food products. The English Courts felt a great necessity to impose the privity requirement in *Winterbottom V/S Wright*\(^{(2)}\) rest the Courts be faced with “an infinity of actions”. In this case the privity requirement was extended to the negligence action of an injured driver against to the supplier of a defective mail coach. This holding left to the driver remediless owing to the governmental immunity of the employing post master who had contracted for the coach’s. Winterbottom was generally followed in America throughout the last Century. The real departure from the application of the doctrine of privity came in 1916 with the landmark case of *Macpherson V/S Buick Motor Company*\(^{(3)}\) where it was held that an action in negligence could be maintained against a remote manufacturer of an automobile with a defectively manufactured wheel that broke, causing injury to the plaintiff.

The Court found that the category of inherently dangerous products is not limited to poisons, explosives and things ... Which in their normal operation are implements of destruction. Rather if the nature of the thing is such that it is reasonably certain to place life and limb in peril when negligently made, it is then a thing of danger Winterbottom was essentially overruled when the Court further stated.

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3. Id. 111 N.E. 1050 (N.Y. 1916)
"If to the element of danger there is added knowledge that the thing will be used by persons other than the purchaser and used without new tests, then irrespective of contact the manufacturer of this thing of danger is under a duty to make it carefully."(4)

After half a century after this case, erosion in many jurisdiction of the privity requirement took place. This erosion was not only in negligent acts only but also for breaches of warranty. Here emphasis was upon the growth of large scale manufacturers and their direct appeals to consumers through extensive advertising (5).

In Escola V/S Coca Cola Bottling Company of Frexsno(6) Justice Traynor stated that public policy demands that responsibility be fixed wherever it will most effectively reduce the hazardous to life and health inherent in defective products that reach the market. It is evident that the manufacturer can anticipate some hazardous and guard against the recurrence of others, as the public cannot.

In 1936 the law in relation to the liability of the manufacturer and vendor for the protection of consumer interest was widely discussed by Lord Wright in Grant V/S Australian Knitting Mills(7). In this important case Grant had purchased from a retailer a suit of Woolen Wear. He suffered from dermatitis which was found to have been caused by certain chemicals not properly washed out of the clothes while manufacturing. Both the retailer and manufacturer were held liable in damages for contract and tort respectively. Lord Wright held former liable in contract because the retailer owes a contractual obligation amounting to a condition or warranty in certain cases under the Sales of Goods Act. The liability of latter in tort was based on the principle laid

4. Ibid.
5. Ibid.
6. Id. (Cal. 1994) 436 2nd P.150
7. Id. P. 15 (1956) A.C 85
down in Donough V/S Stevenson\(^{8}\). In this case A went to a Restaurant with a woman friend and bought one bottle of ginger-beer manufactured by the defendants. The woman consumed part of the contents but when the remainder was poured in the glass she observed the decomposed body of a snail in it. The ginger-beer bottle being opaque and scaled, the presence of snail could not have been observed earlier. The woman brought an action against the manufacturer for negligence and alleged that by taking a part of the contaminated drink, she had contacted serious illness. The House of Lords held that the manufacturer owed her a duty to take care that the bottle did not contain noxious matter, injurious to health. Referring to the liability of the manufacturer of food articles Lord Macmillan observed:

"I have no hesitation in affirming that a person who for gain engages in the business of manufacturing articles of food and drink intended for consumption by makers of the public in the form in which he issues them is under a duty to take care in the manufacturing of these articles. That duty, in my opinion, he owes to those whom he intends to consume his products. He manufactures his commodities for human consumption; he intends and contemplates that they shall be consumed. By reason of that very fact he places himself in a relationship with all the potential consumers of his commodities, and that relationship which he assumes and desires for his own ends imposes upon him a duty to take care to avoid injuring them. He owes them a duty not to convert by his own carelessness an article which is dangerous to life and health. It is sometimes said that liability can arise only where a reasonable man would have foreseen and could have avoided the consequences of his act or omission. In this present case, the respondent, when he manufactured his ginger-beer, had directly in contemplation that it

\(^{8}\text{Supra Note .1}\)
would be consumed by members of the public. Can it be said that he could not be expected as a reasonable man to foresee that if he conducted his process of manufacture carelessly he might injured those whom he expected and designed to consume his ginger-beer? The possibility of injury so arising seems to me in no sense so remote as to excuse him foreseeing it” (9).

Thus in this case it was concluded that the manufacturer was under a legal duty to the ultimate purchaser to consume to take responsible care that the article is free from defect likely to cause injury to his health. This of course holds true only if the purchaser or consumer cannot discover the defect by inspection; the beer was in a sealed bottle; the bottle was of dark opaque glass which under circumstances made it impossible for the consumer to discover the defect (dead snail in the beer) by inspection (10). The role in this case was formulated for the protection of the consumer. Liability in tort may arise because of fraud practized or due to negligence.

The remedy for breach of contract is available only to the parties to the contract (and to third parties in few cases). This remedy can be contracted out by the parties. The remedy under the law of torts is available to immediate as well as ultimate transferees. This duty is imposed by law generally and is available to all those who are affected. The liability of the manufacturer is further extended to other categories of person who create a source of danger as in Donough’s case. The Rule includes people who repair, erect, assemble or supply articles of any sort.

9. Id. P.15
10. Supra Note 8 P. 15-16.
or even leave such articles in place where they likely to be a source of danger\(^{(11)}\).

The rule in Donough V/S Stevenson was formulated for the protection of consumers\(^{(12)}\).

The tort of deceit enables a consumer to recover damages for the fraud practised on him by the other. The defendant makes a false or reckless statement with a view to deceiving the plaintiff so as to cause him some loss – pecuniary or otherwise. So to a consumer who suffers by any such means the Law of Torts permits relief in the form of damages\(^{(13)}\).

In India there is freedom of trade and freedom of association (subject to fulfillment of certain conditions and by following the prescribed procedure). This right coupled with the right to come is misused so as to cause loss to the consumer. There can be combination of traders and by combining into a group may dictate terms to the retailers and consumers. If this combination amounts to the tort of conspiracy, then the consumer has a remedy. It will be actionable only if the persons have combined with a view to causing damage followed by a consequential loss. Exclusive dealership agreements, restrictive trade practices, price maintenance agreements are instances of such agreements. Some of these practices are treated as valid by Section 38 of the MRTP, Act 1996 in the public interest. Others are actionable wrongs. The monopoly position occupied by the traders or businessman is often abused and exploited to their advantages, the victim is the poor remediless consumer\(^{(14)}\).

12. Ibid.
13. Ibid.
14. Id. P 175
In the present age of advertisement, every manufacturer, supplier, trader, distributor and even retailers firmly believe that there is no business like show business. Therefore, each advertises in respect of his wares. They spend a lot on advertisements. In the absence of proper and adequate knowledge, the consumer falls a ‘prey’ to these gimmicks of the trader. The Law of Torts tolerates this ‘advertisement gimmick’ under the name of ‘puffing of goods’. The line between ‘puffing’ and ‘deception’ is very thin only in the latter case, the consumer can succeed\(^\text{15}\).

(B) Medieval Doctrines :- After having a brief concept of law of torts let us have a brief account about some medieval doctrines.

1. **Doctrine of Mensrea**: The general rule of English Law is that no crime can be committed unless there is mensrea. This principle is also one of the main characteristics of our legal system that the individual’s liability to punishment for crimes depends among other things, on certain mental conditions\(^\text{16}\). Consumer offences fall under the general category of public welfare offences. One of the most important problems in this area is whether the element of mensrea should be excluded from such offences contrary to the traditional common principles that mensrea is essentially for holding a person criminally responsible. The problem has for many years confronted legislators, lawyers and courts as is there any special reason for the exclusion of mensrea from offences created for the protection of consumer interests\(^\text{17}\)?

To commit most of the offences the accused do an act, in the sense of executing some bodily movement, or omit to do an act. But to commit some offences it is sufficient to show that the accused was in

\(^{15}\) Ibid.

\(^{16}\) S.N. Misra, Indian Penal Code, 5th Ed. Sanagam Law Agency, Allahabad p.11

\(^{17}\) Supra Note 11, G.Sadasivan Nair- Article, ‘Mensrea in Consumer Offences’, p.290.
some "state of being", for example was in possession of something or was in some specified place. In a number of offences it must be shown not only that the accused did an act, or omitted to do an act, but also that certain consequences resulted from that act or omission. These two categories of offences are important for the discussion because offence against consumers often belong to these categories. Where certain consequences form part of the *actus reus*, the accused must have foreseen those consequences as likely to result from his conduct. Where some "state of being" for example being in a certain place or being in charge of or in possession of something forms part of the *actus reus* of an offence, it must be proved that the accused was voluntarily in that state and either that he must have known that he was in that state, or that he was indifferent as to whether he was in that or not\(^{(18)}\).

To overcome the deficiencies of the traditional doctrine of mensrea, the legislature, and to some extent, the courts have created crimes which exclude mensrea. These offences are called Strict or Absolute liability offences. Many of these strict liability offences arise under regulatory legislation, controlling such matters as the sale of food and drink, the use of false weights and measures, and the use of misleading or false trader descriptions, control of hoarding and black-marketing etc, which may widely be classified as consumer offences. The justification for the creation of offences of strict liability is that the requirement that prosecution must prove mensrea makes it impossible to enforce many enactments in very many cases\(^{(19)}\).

However, it is to be submitted that the adoption of 'Strict Liability' rule has not succeeded in containing serious consumer offences like adulteration of food. It may be argued that the failure is because of the

\(^{18}\) Id. 291-292.

\(^{19}\) Ibid.
lapses in implementing and what is required is a revamping of the machinery to see that it is more rigorously implemented with the help of the strict rule. But the truth is that lack of a valid discrimination between the wicked and the not so wicked together with the ultra-modeled executive discretion, judicial helplessness and societal sympathy has made it an abusive peace of legislation. No doubt in some consumer offences strict liability may be the rule. But it is necessary to take away the element of mensrea in all its forms from every consumer offence? The answer is no. What is needed is a change from the ‘strict liability rule’ to the ‘negligence rule’. The chance of proving innocence, in the sense of either lack of mensrea or having taken all necessary precautions to avoid the mischief, should be given to the accused. Such position is taken by the legislature under Consumer Protection Act, 1987\(^{(20)}\).

(2) **Privity of Contract:** The doctrine of ‘privity of contract’ means that only those persons who are parties to the contract can enforce the same. A stranger to the contract can not sue \(^{(21)}\). This rule has been primarily designed to meet the requirement of commercial transactions. Under this rule in order to recover damages arising out of the faulty products one must be a buyer. This requirement covers a very limited class of persons who can claim relief as consumers. No member of the family of the buyer or his guest, sustaining injury or damage there from can claim relief. The law commission of India, which submitted its eighth report in 1958, while suggesting Amendment in the Sale of Goods Act, failed even to touch the problem of radical reform needed in this field of law. In England, the Molony Committee was constituted to

20. Id. 304

study the problems of consumer transactions and protection and to suggest reform but the said committee confined its definition of 'consumer' to that of buyer only\(^{(22)}\).

There is also the problem of apportioning the loss arising due to faulty products. Under the Sale of Goods Act and Contract Act it is the seller who has to bear the loss for injury or damage arising even due to faulty manufacturing of goods. Here also the rule of Privity of Contract intervenes. Though ultimately in the line of chain action, the manufacturer may be liable but this method works hard on the seller and is not in the public interest.

Though there is a radical departure from this rule under CP Act (under which the consumer does not mean only such person who pay consideration for purchasing the goods or availing the services for private use or consumption but it includes all those persons who use these goods or avail the services with the permission of such persons) but the decision given by the Apex Court in \textbf{Indian Oil corporation V/S Consumer Protection Council Kerala}\(^{(23)}\) appears to have given undue rise to this rule within the ambit of the Act. In this case ‘A’, Dr. Kamlasanand, the Secretary of a registered society known as Consumer Protection Society, Kerala took an L.P.G gas connection through Karthika Gas Agency an authorized distributor of the appellant. ‘A’ paid the amount towards the charges of obtaining LPG connection and other accessories. Due to irregularities committed by the Gas Agency, its distribution work was suspended for some time by the appellant. On revival of gas agency, a new connection was given to ‘A’ by it and

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23. Id. P. 1-6.
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consequently ‘A’ requested the appellant (the principal of gas agency) to regularize its gas connection. On refusal by the appellant to regularize the connection, the complaint filed a suit before the Consumer Disputes Redressal Forum on behalf of ‘A’ all CDRA’s directed the appellant to regularize the gas connection. On appeal the Supreme Court held that in the absence of privity of contract between the appellant and the complainant there is no deficiency of service.

It is to be submitted that the application of the privity rule by the Supreme Court in the case under comment has resulted in miscarriage of justice as it is against the letter and spirit of the CP Act. The CP Act has excluded this rule partially in consumer sales, so far as the commercial sales are concerned, the rule applies vehemently. So it is hoped that the above decision of the Supreme Court would be disregarded by this court and CDRA’s in future in order to implement this consumer protection legislation in a peaceful way for the better interest of the consumer.

(3) **Caveat Emptor:-** In a civilized society, each citizen has an legitimate expectation that his co-citizen will behave justly and fairly towards him, if not, he expects a suitable remedy for the unjust and unfair dealings towards him which caused, either material loss or mental stress and pain to him. For the social existence, an individual has to cater into commercial dealings either to get essential goods for his own existence or to do commercial service for the existence of others. This inter-dependant relationship in commercial dealings is described as ‘seller’ and ‘buyer’.

Traditionally a seller was kept in a high pedestal with the aid of doctrine of *Caveat Emptor* – ‘let the buyer be aware’ which is an old

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24. Ibid.
25. Id S.C.J.P.14
medieval concept. It assumed that the consumer was responsible for protecting himself and would do so by applying his intelligence and experience in negotiating the terms of any purchase. In ancient times when the consensual nature of the contract reigned supreme, courts were in favour of enforcing the 'intention of the parties', as evident from the 'terms of the contract'. Implied terms by way of conditions and warranties were not given much importance and if interpreted very strictly but mostly not in favour of the buyer. An old case, is typical to illustrate this. In 1603 a goldsmith sold a precious stone to Lopus for dollar 100. He told Lopus that it was a bezoar-stone while it was only a fake. The claim for damages failed. The attitude of a court is clear from the following observations:

"... everyone in selling his wares will affirm that his wares are good, or the horse which he sells is sound; yet if he does not warrant them to be so, it is no cause of action ..."

This principle may have been appropriate for transaction conducted in village markets. In early times, the consumer may have to able to protect himself since the products were less sophisticated and could be inspected before purchase. It was for the buyer to make himself acquainted with the quality and defects of the goods which he intended to purchase. Lord O. Hagan said in Ward V/S Hobbs that although the vender is bound to employ no artifice or disguise for the purpose of concealing defects in the article sold as that may amount to a positive fraud on his part; yet under the general doctrine of caveat emptor, he is not generally bound to disclose every defect of which he may be cognizant although his silence may operate to virtually to cheat the buyer.

27. Ibid.
This rule was defended for the reason that it tended to diminish litigation. Baron Parke said in Barr V/S Gibson\(^{30}\) that in a bargain and sale of an existing chattel, the law does not, in absence of fraud, imply any warranty of the good quality or condition of the chattel so sold. Fitz Gibbon L.J said\(^{31}\):

"Caveat Emptor does not mean in law a Latin that the buyer must 'take chance', it means that he must 'take care'. It applies to the purchase of specific things for example a horse or a picture, upon which the buyer can and usually does, exercise his own judgment; it applies also whenever the buyer voluntarily chooses what he buys; it applies also were by usage or otherwise it is a term of the contract, express or implied, that the buyer shall not rely on the skill of judgment of the seller but it has no application to any case in which the seller has undertaken, and the buyer has left it to the seller, to supply goods to be used for a purpose known to both parties at the time of sale."

But now the conditions have changed. Many modern goods are technological mysteries. The consumer knows little or nothing about these highly sophisticated goods. In real life, products are complex and of great variety and consumers and retailers have imperfect knowledge\(^{32}\). The products are marked in a number of ways that it is often very difficult to the consumers to judge their quality adequately. The advertisements regarding the taste, flavour, style, quality standard of the commodities and services of their products by the manufacturers and dealers always allure the consumers to purchase and use when consumers have cause to complain about the product or service they are left to purchase the other

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30. Id. (1838) 3 M and W 390 P.399.
31. Id. Wallis V/S Russel (1902) 2 I.R.585 P.615 C.A.
32. Dr.V.K.Agawal -Consumer Protection, 2nd Ed. B.L.H Publishers, and distributors Pvt. Ltd, Delhi P.3
better one. The consumer does not get remedy to his previous grievances. Consumers of course, are typically in a weak bargaining position because of the disparity in knowledge and resources between the parties which narrows the consumers access to a remedy \(^{(33)}\).

But it does not mean that there is no remedy to eliminate or mitigate the grievances of the consumers. In a modern welfare state, the state is not only an administrator but has also assumed the positions of a Protector, Provider, Entrepreneur, Economic Controller and Arbitrator. Quite consistent with this development and to suit the change from the laissez-faire policy to one of more interventions by the state on the affairs of the citizens, the state and laws have been helping the consumers against ‘defective goods’ and ‘defects on proper using of goods.’ Starting with the outmoded and one sided caveat emptor rule and enforcing only the express terms, the law and law courts slowly evolved a process of providing protections to the ordinary purchaser of goods. This was achieved by a long and continuous process\(^{(34)}\).

(a) **New Development:** The changes brought out in English common law by statutory modifications and liberal judicial interpretations in the past one century gives us a model worthy of emulation. Exemption clauses introduced into the Sale of Goods Act of 1893 and successive exposition by the highest judicial authorities have resulted in very important legislative reforms in the seventies of this country. A new Sale of Goods Act was passed in 1979 incorporating the changes effected earlier particularly by the Supply of Goods (Implied Terms) Act of 1973. In short, the most important change was to protect the consumer from defective and unmerchantable goods thus compelling the seller to sell only goods which are of merchantable quality and

34. Supra Note 17
reasonably fit for the purpose for which they are brought\(^{(35)}\).

Though no concerted effort was made in India in the field of quality control and consumer protection, there are a number of statutes in India\(^{(36)}\) which indirectly provide for them. Here the development can be read under the following headings—

i). **CONDITIONS AND WARRANTIES**: The implied conditions and warranties provided for in the Sale of Goods Act\(^{(37)}\) play an important role in quality control and consumer protection. In effect the distinction between a condition and a warranty is only to show the difference between terms which are of a fundamental nature and terms of less significance. Whether a stipulation in a contract of sale is a warranty depends on the construction of the contract. A stipulation may be a condition though called a warranty in the contract. However, in some circumstances though the contract might use the term condition, if the breach is not resulting in anything fundamental the remedy given may be only that for breach of warranty. The term conditions and warranties were used in a confused manner till codification of law and now when they are all well defined there is no question of there being used so by the parties to the contract.

However, under the present system of law, if a stipulation amounts to condition the plaintiff is entitled to repudiate such contract even if he does not sustain any damages. But if it amounts to warranty, then its breach will entitle him to claim damages, even though such damages are no consolation for the plaintiff. Repudiation of contract and rejection of the goods may be only appropriate remedy which is not available to the buyer under the present rule.

35. Ibid.
36. See for example The Sale of Goods Act, Sections 11-17 which deal with conditions & Warranties
ii). **Merchantable Quality**\(^{38}\) The word ‘merchantable’ can only mean commercially saleable. Reproducing the definition set out in the Supply of Goods (Implied Terms) Act of 1973, the new Sale of Goods Act (English Act) of 1979 has introduced the definition of ‘merchantable quality’. Accordingly, Sub-section (6) of Section 14 runs as follows:

*Goods of any kind are of merchantable quality within the meaning of sub-section (2) above if they are as fit for the purpose or purposes for which goods of that kind are commonly bought as it is reasonable to expect having regard to any description applied to them, the price (if relevant) and all the other relevant circumstances.*

By the definition of merchantable quality quoted above, the existing law is continued but the conditions will not apply regarding defects specifically draw to the buyer’s attention before the contract is made. The result is that the seller can no longer get rid of all responsibility for the quality of the goods. But the seller will be responsible only for such degree of quality as can reasonably be expected in the light of what he has said about the goods, together with other relevant circumstances. The price will be relevant if it is clearly different from the usual price for similar goods. A very important change effected in the English law is that in order to have the implied condition of ‘merchantable quality’ it is no longer required that the seller must be one who deals in goods of that description. Section 14 (2) now reads:

*Where the seller sells goods in the course of a business, there is an implied condition that the goods supplied under the contract are of merchantable quality,...*

Though the requirements and merchantable and reasonable fitness overlap but they are still quite separate and distinct. When a new care or a washing machine is purchased what is expected is not only that the

\(^{38}\) Id. Section 16 (2) English corresponding Section 14.
object of purchase should work properly, that it be reasonably fit for the purpose but also that it would be in the normal form and appearance. The second one comes under merchantability.

The meaning of the term was subject to comprehensive review in the case of summer permain and Company V/S Webb and Company. The Court of Appeal came to the conclusion that it simply meant that the goods comply with the description. Outer appearance is not sufficient to make the goods merchantable, if they suffer from some latent defect, not apparent on ordinary examination.

Thus quality includes the state or condition of the goods. Merchantability extends to the labels or packages in which the goods are contained. The other requirement is that the goods must be fit for the ordinary purposes for which such goods are used. This requirement is broad—based and it means that where goods are used for many purposes, it should be fit for although ordinary purposes and not any one of them.

iii). **Fitness for Purpose**\(^{39}\): ‘Reasonable Fitness’ means fitness for general purposes as well as for specific purposes. A particular purpose is in fact a purpose which is expressly or impliedly communicated to the seller and for which the goods are bought. It is not necessarily distinct from a general purpose for example general purpose of purchasing the food for eating may also be specific purpose. Where the articles sold are described in such a manner as to show an intention on the part of the buyer to use them in a specific manner, then that description of the goods is a specific purpose. Where the goods are used for multipurpose then one indicated by the buyer is the particular purpose. Where the buyer omits to indicate any specific purpose, he will have no remedy, if the goods are unfit for the purpose intended by him. A purpose may be put in

\(^{39}\) Id. Section 6(1), English corresponding Section 14(3).
a wide or narrow term and it may still be a particular purpose\(^{(40)}\).

b). **Present Position**: Thus starting with the age old rule of ‘Caveat Emptor’ we have seen that the law and judges were in favour of the seller. This rule was a dominant future of the law relating to sale of goods in the nineteenth century in England. Since our Sale of Goods Act is largely based upon the provisions of English Sale of Goods Act we have also adopted this rule. But with the development of new commercial practices, new methods of trade transactions, varieties of hire purchase systems and consumer credits, self reliance shops with sophisticated articles including those with scientific intricacies and so on, the buyer was found to be in a difficult situation. The law came to his rescue. A number of implied conditions and warranties came to be imposed as above mentioned in spite of the exemption clauses agreed to\(^{(41)}\). This has created a consciousness in the society which paved way for the acceptance of the theory of ‘Caveat Vendetar’ – let the seller beware in the larger interest of the society.

(C). **Consumer Law – A contemporary View:** In this part besides knowing United Nations Guidelines for Consumer Protection we will know consumer law of some Western Countries also.

1. **United Nations Guidelines For Consumer Protection**\(^{(42)}\): The General Assembly adopted guidelines for consumer protection by consensus on 9 April, 1985. The guidelines provide a framework for Governments, particularly those of developing countries, to use in elaborating aid strengthening consumer protection policies and legislations. They are also intended to encourage

\(^{40}\) Supra Note .25 P.184

\(^{41}\) Supra Note 10 P.158.

\(^{42}\) Supra Note .32 P. 622.
International co-operation in this field.

The origins of the guidelines can be traced to the late 1970s, when the Economic and Social Council recognized that consumer protection had an important bearing on economic and social development. In 1977, the Council asked the Secretary-General to prepare a survey of national institutions and legislations in the area of consumer protection. In 1979, the Council requested a comprehensive report containing proposals for measures or consumer protection for consideration by Governments. In 1981, the Council, aware of the need for an International policy framework within which further efforts for consumer protection could be pursued, requested the Secretary-General to continue consultations with the aim of developing a set of general guidelines for consumer protection, taking particularly into account the needs of the developing countries.

Accordingly, the Secretary-General carried out consultations with governments and international organizations and submitted draft guidelines for consumer protection to the Economic and Social Council in 1983. During the next two years there were extensive discussions and negotiations among Governments on the scope and content of the guidelines, culminating in their adoption in 1985.

a). **OBJECTIVES:**

I). Taking into account the interests and needs of consumers in all countries, particularly those in developing countries, recognizing that consumers often face imbalances in economic terms, educational levels, and bargaining power, and bearing in mind that consumer should have the right of access to non-hazardous products, as well as the importance of promoting just, equitable and sustainable economic and social development, these guidelines for consumer protection have the following objectives:
i. To assist countries in achieving or maintaining adequate protection for their population as consumers;

ii. To facilitate production and distribution pattern responsive to the needs and desires of consumers;

iii. To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;

iv. To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers;

v. To facilitate the development of independent consumer groups;

vi. To further international co-operation in the field of consumer protection;

vii. To encourage the development of market conditions which provide consumers with greater choice at lower prices.

b). **GENERAL PRINCIPLES:**

II). Govt. should develop, strengthen or maintain a strong consumer protection policy, taking into account the guidelines set out below. In so doing, each Govt. must set its own priorities for the protection of consumers in accordance with the economic and social circumstances of the country, and the needs of its population, and bearing in mind the costs and benefits of proposed measures.

III). The legitimate needs which the guidelines are intended to meet are the following:

i. the protection of consumers from hazards to their health and safety;

ii. the promotion and protection of the economic interests of consumers;
iii. Access of consumers to adequate information to enable them to make informed choice according to individual wishes and needs;

iv. Consumer education;

v. Availability of effective consumer redress;

vi. Freedom to form consumer and other relevant groups or organizations and the opportunity of such organizations to present their views in decision making processes affecting.

IV). Governments should provide or maintain adequate infrastructure to develop, implement and monitor consumer protection policies. Special care should be taken to ensure that measures for consumer protection are implemented for the benefit of all sectors of the population.

V). All enterprises should obey the relevant laws and regulations of the countries in which they do business. They should also conform to the appropriate provisions of international standards for consumer protection to which the competent authorities of the country in question have agreed.

(Hereinafter references to international standards in the guidelines should be viewed in the context of this paragraph).

VI). The potential positive role of universities and public and private enterprises in research should be considered when developing consumer protection policies.

c). GUIDELINES:- 

VII). The following guidelines should apply both to home-produced goods and services and to imports.

VIII). In applying any procedures of regulations for consumer protection, due regard should be given to ensuring that they do not become barriers to international trade and that they are consistent with international trade obligations.
IX). Governments should adopt or encourage the adoption of appropriate measures, including legal system, safety regulations, national or international standards, voluntary standards and the maintenance of safety records to ensure that products are safe for either intended or normally foreseeable use.

X). Appropriate policies should ensure that goods produced by manufacturers are safe for either intended or normally foreseeable use. Those responsible for bringing goods to the market, in particular suppliers, exporters, importers, retailers and the like (hereinafter referred to as ‘distributors’), should ensure that while in their care these goods are not rendered unsafe through improper handling or storage and that while in their care they do not become hazardous through improper handling or storage. Consumers should be instructed in the proper use of goods and should be informed of the risks involved in intended or normally foreseeable use. Vital safety information should be conveyed to consumers by internationally understandable symbols wherever possible.

XI). Appropriate policies should ensure that if manufacturers or distributors become aware of unforeseen hazards after products are placed on the market, they should notify the relevant authorities and, as appropriate, the public without delay. Governments should also consider ways of ensuring that consumers are properly informed of such hazards.

XII). Governments should, where appropriate, adopt policies under which if a product is found to be seriously defective and/or to constitute a substantial and severe hazards even when properly used, manufactures and/or distributors should recall it and replace or modify it and replace or modify it, or substitute another product for it; if it is not possible to do this within a reasonable period of time, the consumer should be adequately compensated.
XIII). Govt. policies should seek to enable consumers to obtain optimum benefit from their economic resources. They should also seek to achieve the goals of satisfactory production and performance standards, adequate distribution methods, fair business practices, informative marketing and effective protection against practices which could adversely affect the economic interests of consumers and the exercise of choice in the marketplace.

XIV). Governments should intensify their efforts to prevent practices which are damaging to the economic interests of consumers through ensuring that manufacturers, distributors and others involved in the provision of goods and services adhere to established laws and mandatory standards. Consumer organizations should be encouraged to monitor adverse practices, such as the adulteration of foods, false or misleading claims in marketing and service frauds.

XV). Governments should develop, strengthen or maintain, as the case may be, measures relating to the control of restrictive and other abusive business practices which may be harmful to consumers, including means for the enforcement of such measures. In this collection, Governments should be guided by their commitment to Set of Multilaterally agreed Equitable Principles and Rules for the Control of Restrictive Business Practices adopted by the General Assembly in resolution 35/63 of 5 December 1980.

XVI). Governments should adopt or maintain policies that make clear the responsibility of the producer to ensure that goods meet reasonable demands of durability, utility and reliability, and are suited to the purpose for which they are intended, and that the seller should see that these requirements are met. Similar policies should apply to the provision of services.
XVII). Governments should encourage fair and effective competition in order to provide consumers with the greatest range of choice among products and services at the lowest cost.

XVIII). Governments should, where appropriate, see to it that manufacturers and/or retailers ensure adequate availability of reliable after-sales and spare parts.

XIX). Consumers should be protected from such contractual abuses as one sided standards contracts, exclusion of essential rights in contracts, and unconscionable conditions of credit by sellers.

XX). Promotional marketing and sales practices should be guided by the principle of fair treatment of consumers and should meet legal requirements. This requires the provision of information necessary to enable consumers to take informed and independent decisions, as well as measures to ensure that the information provided is accurate.

XXI). Governments should encourage all concerned to participate in the free flow of accurate information on all aspects of consumer products.

XXII). Governments should, within their own national context, encourage the formulation and implementation by business, in cooperation with consumers organizations, of codes of marketing and other business practices to ensure adequate consumer protection. Voluntary agreements may also be established jointly by business, consumer organizations and other interested parties. These codes should receive adequate publicity.

XXIII). Governments should regularly review legislation pertaining to weights and measures and assess the adequacy of the machinery for its enforcement.

XXIV). Governments should, as appropriate, formulate or promote the elaboration and implementation of standards, voluntary and other at the national and international levels for the safety and quality of goods and
services and give them appropriate publicity. National standards and regulations for product safety and quality should be reviewed from time to time in order to ensure that they conform where possible to generally accepted international standards.

XXV). Where a standard lower than the generally accepted international standard is being applied because of local economic conditions, every effort should be made to raise that standard as soon as possible.

XXVI). Governments should encourage and ensure the availability of facilities to test and certify that safety quality and performance if essential consumer goods and services.

XXVII). Governments should, where appropriate, consider:

i. Adopting or maintaining policies to ensure the efficient distribution of goods and services to consumers: where appropriate, specific policies should be considered to ensure the distribution of essential goods and services where this distribution is endangered, as could be the case particularly in rural areas. Such policies should include assistance for the creation of adequate storage and retail facilities in rural centers, incentives for consumer self-help and better control of the conditions under which essential goods and services are provided in rural areas.

ii. Encouraging the establishing of consumer co-operatives and related trading activities, as well as information about them, especially in rural areas.

XXVIII). Governments should establish or maintain legal and/or administrative measures to enable consumers or, as appropriate, relevant organizations to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Such procedures should take particular account of the needs of low income consumers.
XXIX). Governments should encourage all enterprises to resolve consumer disputes in a fair, expeditious and informal manner, and to establish voluntary mechanisms, including advisory services and informal complaints, procedures, which can provide assistance to consumers.

XXX). Information on available redress and other dispute-resolving procedures should be made available to consumers.

XXXI). Governments should develop or encourage the development of general consumer education and information programmes, bearing in mind the cultural traditions of the people concerned. The aim of such programmes should be to enable people to act as discriminating consumers, capable of making an informed choice of goods and services and conscious of their rights and responsibilities. In developing such programmes, special attention should be given to the needs of disadvantaged consumers, in both rural and urban areas, including low income consumers and those with low or non-existent literacy levels.

XXXII). Consumer education should, where appropriate, become an integral part of the basic curriculum of the educational system, preferably as a component of existing subjects.

XXXIII). Consumer education and information programmes should cover such important aspects of consumer protection as the following:

  i. health, nutrition, prevention of food-borne disease and food adulteration;
  ii. product hazards;
  iii. product labeling;
  iv. relevant legislation, how to obtain redress, and agencies and organization for consumer protection;
  v. information on weights and measures, prices, quality, credit conditions and availability of basic necessities, and;
  vi. As appropriate, pollution and environment.
XXXIV). Governments should encourage consumer organizations and other interested groups, including the media, to undertake education and information programmes, particularly for the benefit of low-income consumer groups in rural and urban areas.

XXXV). Business should, where appropriate, undertake or participate in factual and relevant consumer education and information programmes.

XXXVI). Bearing in mind the need to reach rural consumers and illiterate consumers, Governments should, as appropriate, develop or encourage the development of consumer information programmes in the mass media.

XXXVII). Governments should organize or encourage training programmes for educators, mass media professionals and consumer advisers, to enable them to participate in carrying out consumer information and education programmes.

XXXVIII). In advancing consumer interests, particularly in developing countries, Governments should, where appropriate, give priority to areas of essential concern for the health of the consumer, such as food, water and pharmaceuticals. Policies should be adopted or maintained for product quality control, adequate and secure distribution facilities, standardized international labeling and information, as well as education and research programmes in these areas. Govt. guidelines in regard to specific areas should be developed in the context of the provisions of this document.

XXXIX). Food. When formulating national policies and plans with regard to food, Governments should take into account the need of all consumers for food security and should support and, as far as possible, adopt standards from the Food and Agriculture Organization of the United Nations and the World Heal Codex Alimentarius and to maintain, develop or improve food safety measures, including, inter alia
safety criteria, food standards and dietary requirements and effective monitoring, inspection and evaluation mechanisms.

XL). Water. Governments should, within the goals and targets set for the International Drinking Water Supply and Sanitation Decade, formulate, maintain or strengthen national policies to improve the supply, distribution and quality of water for drinking. Due regard should be paid to the choice of appropriate levels of service, quality and technology, the need for education programmes and the importance of community participation.

XLI). Pharmaceuticals. Governments should develop or maintain adequate standards, provisions and appropriate regulatory systems for ensuring the quality and appropriate use of pharmaceuticals through integrated national drug policies which could address, inter alia, procurement, distribution, production, licensing arrangements, registration systems, availability of reliable information on pharmaceuticals. In so doing, Governments should take special account of the work and recommendations of the World Health Organization on Pharmaceuticals. For relevant products, the use of that organization's Certification Scheme on the Quality of Pharmaceutical Products Moving in International Commerce and other international information systems on pharmaceuticals should be encouraged. Measures should also be taken, as appropriate, to promote the use of international nonproprietary names (INNS) for drugs, drawing on the work done by the World Health Organization.

XLII). In addition to the priority areas indicated above, Governments should adopt appropriate measures in other areas, such as pesticides and chemicals, in regard, where relevant, to their use, production and storage, taking into account such relevant health and environmental
information as Governments may require producers to provide and include in the labeling of products.

d). **INTERNATIONAL CO-OPERATION**: (XLIII). Governments should, especially in a regional or sub-regional context:

i. develop, review, maintain or strengthen, as appropriate, mechanisms for the exchange of information on national policies and measures in the field of consumer protection:

ii. co-operate or encourage co-operation in the implementation of consumer protection policies to achieve greater results within existing resources. Examples of such co-operation could be collaboration in the setting up or joint use of testing facilities, common testing procedures, exchange of consumer information and education programmes, joint training programmes and joint elaboration or regulations.

iii. co-operate to improve the conditions under which essential goods are offered to consumers, giving due regard to both prices and quality. Such co-operation could include joint procurement of essential goods, exchange of information on different procurement possibilities and agreements on regional product specifications.

XLIV). Governments should develop or strengthen information links regarding products which have been banned, withdrawn or severally restricted in order to enable other importing countries to protect themselves adequately against the harmful of such products.

XLV). Governments should, work to ensure that the quality of products and information relating to such products, goes not vary from country to country in a way that would have detrimental effects on consumers.
Governments should work to ensure that policies and measures for consumer protection are implemented with due regard to their not becoming barriers to international trade, and that they are consistent with international trade obligations.

Now let us proceed to know the consumer law of some Western Countries. We have borrowed much from these Countries while framing our constitution and other laws in the same way we owe much to our Western Countries regarding framing and developing concept of Consumer Protection. In this perspective it is appropriate to briefly know origins of Consumer Law in these countries.

(2). United States:- The United States, as long as 1890, enacted the first anti-trust legislation namely, The Sherman Anti-Trust Act. It contains the embodiment of the law upon the subject of unlawful restraint of trade and monopolies. Section 1 of the Sherman Anti-Trust Act, 1890 states –

“Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several states or with foreign nations, is hereby declared to be illegal”.

Section 2 of the concerned Act declares –

“Every person who shall monopolize or attempt to monopolize any part of trade or commerce among the several states or with foreign nations shall be deemed guilty of misdemeanor”.

The Act provides both for civil remedies and for criminal penalties of up to one year imprisonment or fine of up to $5000 or both. In 1955 the Act was Amended to increase the fine to a maximum $50,000. But this Act could not respond to the wide spread pressures for increased

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43. Id. P.5-6, the legal system of The United States is based on common Law of England. In the initial stages of development American Courts applied the rules of English Law as contained in the Judgments of English Courts.
protection of consumers. To meet this end, major legislation were passed in 1940, The Federal Trade Commission Act The Clayton Act. The Federal Trade Commission Act is the oldest and the most prominent statute for the protection of consumers. The Act authorized the Federal Trade Commission to correct unfair methods of competition. In its implementation, the commission moved to protect consumers as an objective in and of itself, rather than as an incident that would further competition. In 1938, the Act was amended by Wheeler–Lea Act extending the scope of the Act to cover ‘unfair or deceptive acts or practices’ as well as ‘unfair methods of competition’. Thus the Amendment provided three separate bases for the Federal Trade Commission’s jurisdiction – unfairness or deception or unfair competitive methods. 1975, The Magnusn–Mass warranty – Federal Trade Commission Improvement Act further strengthen the commission’s rule making and other authority over ‘unfair and deceptive acts and practices’. The commission is organized into two principal operating Bureau, the Bureau of consumer protection and Bureau of competition. The Bureau of Consumer Protection has principal responsibility of monitoring advertising, labeling and deceptive practices.(44)

The Clayton Act, including later amendments contains four substantive provisions. It prohibits under certain conditions – price discrimination, exclusive dealing contracts and tying arrangements, mergers and interlocking corporate directorships. Exclusive dealing contracts, tying arrangements and mergers are forbidden where their effect may be substantially to lesson competition or where they tend to create a monopoly. The Robinson–Pat man Act was adopted in 1936 in direct response to the growth of a few nation wide chain-store corporation in 1920’s and 1930’s. Its purpose is to strengthen the provisions of

44. Id. P.6-8
Clayton Act regarding firstly, price discrimination, secondly to prevent sellers and brokers from yielding to the economic pressures of a large buying organization by granting unfair preferences in connection with the sale of goods, thirdly, to prohibit all devices by which large buyers gain discriminatorily preferences over smaller ones by virtue of their greater purchasing power, fourthly, to protect small businesses, which are unable to buy in quantity against competing operation of large interstate concern and fifthly, to insures that purchaser from a single supplier are not injured by the suppliers discriminatory practices.\textsuperscript{45}

In addition to aforesaid legislation there are number of other legislations on consumer protection which cover, Consumer Credit Protection Act which requires certain disclosures in consumer credit sales and loans, the Consumer Leasing Act which deals with consumer leases, the Fair Credit Billing Act, which contains provision relating to credit billing practices. The Fair Packaging & Labeling Act, The Poison Prevention Packaging Act and The Consumer Patient Radiation Health and Safety Act provide protection to the consumers in several ways. Further, the Uniform Commercial Code attempt to protect purchaser of goods through a requirement of 'good faith' and a prohibition of 'un-reasonable' practice. The provision of the Code have widely incorporated in subsequent uniform or Model Consumer Protection Statute for example Uniform Consumer Credit Code, Uniform Consumer Sales Practice Act Uniform Residential Landlord & Tenant Act, Uniform Land Transaction Act, Uniform Simplification of Land Transfers Act, Uniform Condominium Act, Model Real Estate Timeshare Act, Uniform Planned Community Act, Model Real Estate

\textsuperscript{45} American Jurisprudence Vol.54 2nd Ed.
Cooperative Act, Uniform Common Interest, Ownership Act\(^{46}\).

(3). **United Kingdom**\(^ {47}\):- In the United Kingdom, there are a number of legislations to protect the interest of consumers. The most significant of them are the Fair Trading Act, 1973, The Competition Act, 1980 and the Consumer Protection Act, 1987. The Fair Trading Act, 1973 seeks to protect the consumers from consumer trade practices and unfair practices. The main object of the Act was to encourage competition which is fair as between one business and another, and fair towards the consumer by ensuring the trading standards are improved wherever possible and that unfair trading practices are stopped or changed, whether they be abuses of a monopoly position or practices which are, for example, oppressive of or inequitable to consumers. Part III of the Act provides for a separate procedure for dealing with unfair practices. An unfair practice involves a cause of conduct which is detrimental to the interests of consumers, whether interest in respect of health, safety or other matters. The area to which Part III of the Act can apply is extremely wide. There are no specific exclusions, so that all the professions and all businesses including nationalized industries and public undertakings are within its ambit. The Competition Act, 1980 has been enacted to make provisions for the control of anti-competitive practices in supply and acquisition of goods and the supply and securing of services, to provide for the investigation of prices and charges by the Director General of Fair Trading, and to make some amendments with respect to the Fair Trading Act, 1973 and The Restrictive Trade Practices Act, 1976.

\(^{46}\) Supra Note 44, P.6
\(^{47}\) Ibid.
The CP Act, 1987 is a wide ranging piece of legislation, creating both civil and criminal liability. The philosophy of the Act is that the best form of Consumer Protection is to promote competition. Supplying unsafe goods or misleading consumer about the price is an unfair competition. Fair competition will not be achieved if consumers are given false or misleading information on which to base the decisions that they make in the market place. Thus, if competition is to work effectively in practice, then consumers must have sufficient information for them to make effective choices. The Act deals with three main objects—

a). **Product Liability**: Part – I of the Act provides a system of strict liability imposed upon a producer in respect of any damage caused by defective products. However, the complainant must still prove a casual relationship between the damage and the defect. However, Section 4 (1) of the Act enables the producer to avoid liability if he can prove any one of six defenses laid down under the Act.

b). **Unsafe Goods**: Part – II of the Act introduces a general duty on all suppliers of consumer goods to ensure that the goods they supply are safe. A person who offers, or agrees to supply or supplies any consumer goods which fail to comply with the general safety requirement, shall be guilty of an offence under the Act.

c). **Misleading Price Indications**: Part – III makes it a general offence to give misleading price indications to consumers in respect of any goods, services, accommodation or facilities.

(4). **AUSTRALIA**: In Australia, the first anti-trust legislation was adopted in 1906, The Australian Industries Preservation Act, 1906. The Act was influenced by and was substantially similar to the Sherman Act, 1890 of the United States. Although the Act was amended in 1911, to
overcome some difficulties but changes in attitudes, two world wars and a world depression led to its being ignored for many years. It was hardly the success of the 1906 - Act that promoted the 1965 legislation, namely, The Trade Practices, 1956 of the United Kingdom. Finally the Trade Practices Act, 1974 was passed which replaced the 1965 - Act. There were some minor amendments to the Act before 1977, but the first major amendments were effected in 1977. Further significant amendments have since been made in 1978 and 1980. The Act is concerned with restrictive trade practices and consumer protection. Part - V deals with consumer protection and is aimed at eliminating unfair competition in trade and commerce as well as strengthening the positions of consumers. It prohibits false or misleading representation or advertisement; offering of gifts, prizes or other free items with the intention of not providing them, bait advertising. Further, a corporation is prohibited to supply goods which do not comply with the prescribed consumer products safety standard(48).

Now before moving towards State of J & K to see and know about early legislation here it would not be out of place to ascertain the law available in India.

(5). India(49) - In India following the constitutional mandate a number of legislation – Drugs (control) Act, 1950; Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954; Prevention of Food Adulteration Act, 1954; Essential Commodities Act, 1955; Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980; Essential Service Maintenance Act, 1968; Trade and Merchandise Marks Act, 1986; Standards of Weights and

48. Id. P.8
49. Id. 9-11.
Measures Act, 1976; Bureau of Indian Standards Act, 1986; The Monopolies and Restrictive Trade Practices Act, 1969 have been enacted. Some pre-independent legislations are – Indian Contract Act, 1872; Sale of Goods Act, 1930; Agricultural Produce (Grading and Marking) Act, 1937; Drugs and Cosmetics Act, 1940.

After passing of the MRTP Act which was amended in the year 1984 to incorporate new provisions – the ultimate consumers could not be protected from defective goods or deficient services, over charging of prices and unscrupulous exploitation. For these and many other reasons the Parliament passed potentially a very important legislation – The Consumer Protection Act, 1986 to provide better protection to the interests of the consumers. The Act provides a three-tier quasi-judicial machinery at the National, State and District levels for redressing consumer grievances. The Act has been amended in the year 1991 and 1993 which incorporated positive improvements.

(D). CONSUMER LAW IN THE STATE OF J & K\(^{(50)}\):- In this part of the chapter Consumer Law in one form or the other is in a scattered form will be assembled here briefly.

(1). Ranbir Penal Code:- This Act is the first and foremost Act which made certain provisions to protect the interest of a consumer. The consumer under this Act gets remedy not by way of compensation but by punishing the wrongdoer. In this connection the noteworthy provisions of this Act which provide indirect and remote satisfaction to the consumer law be cited here.

Firstly, Section 264 – 267 deals with offences relating to weights and measures. Under these Section any person who makes fraudulent use of false instruments for weighing, fraudulent use of false weight and

50. Some Central Acts having their implications on State of J & K have been also discussed.
measures and any one who is in possession of false weights or measures and is involved in making or selling false weight or measures respectively shall be punished with imprisonment or fine or with both depending upon the gravity of offence\(^{(51)}\).

Secondly, Sections 269 – 271 deals with offences – like spreading of infection and thereby affecting the public health. Further, Sections 272 – 276 of the same chapter deals with different types of adulteration of food, drink and drugs and provide for their punishments. Also Sections 277 and 278 of the said chapter provide punishment for corrupting and fouling water of public spring or reservoir so as to render it less fit for the human consumption\(^{(52)}\).

Thirdly, Sections 415 and 425 deals with cheating and wrongful loss or damage to the public or to any person and provides punishment in the former case of imprisonment of either description for a term which may extend to one year, or with fine, or with both and in the latter case with imprisonment of either description for a term which may extend to three months, or with fine or with both\(^{(53)}\).

Fourthly, Sections 481 and 482 prescribed penalty for using a false trademark or property mark. A person is liable under the Code to punishment for falsely marking goods, packages or other receptacles of food and using false property mark so as to make a customer believe that such an article is genuine\(^{(54)}\).

(2). The Contract Act\(^{(55)}\):- This Act of 1977 also provides and protects consumer interests. Since this Act is similar in substance with

51. Of Chapter XIII of RPC dealing with offences relating to Weights and Measures.
52. Id, Chapter XIV under title (Of Offences Affecting the Public Health, Safety, Convenience, Decency and Morals).
53. Id, Chapter XVII relating to offences against property.
54. Id, chapter XVIII of RPC.
the Indian Contract Act and Sir Fedrick Pollock said about this Act in the following words:\(^{(56)}\):

"The Law of Contract may be described as an endeavor of the state, a more or less imperfect one by the nature of case, to establish a positive sanction for the expectation of good faith which has grown up in the mutual dealings of man of average right mindedness. Accordingly the most popular description of a contract that can be given is also the most exact one, namely that it is a promise of set of promises which the law will enforce. The specific mark of contract is the creation of a right, not to a thing, but to another man's conduct in the future. He who has given the promise is bound to him who accepts it, not merely because he had or expressed a certain intention, but because he has so expressed himself as to entitle the other party to rely on his acting in a certain way."

In the light of the above observation and after a thorough reading of the Contract Act Section 17 seems to be noteworthy so far as the consumer interest is concerned. If a person feels aggrieved by any mode of sale say for example advertising, labeling or packaging or any other type of fraud he may invoke under the said Section of the Contract Act\(^{(57)}\).

3. **Sale of Goods Act\(^{(58)}\):** This Act like the above mentioned Act provides for and applies to consumer disputes. Generally this Act does not apply to contracts for services independently but to sale of goods and other similar transactions. Since the seller sells goods in the course of a business and the buyer expressly or by implication makes known any

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56. Pollock on contracts (1) (1889)
57. Fraud means and includes -
   i. the suggestion as to a fact of that which is not true by one who does not believe it to be true;
   ii. the active concealment of a fact by the one having knowledge or belief of the fact;
   iii. a promise made without any intention of performing it;
   iv. any such act or omission as the law specially declares to be fraudulent.
58. Samvat, 1996.
particular purpose for which the goods are being bought, there is an implied condition that the goods supplied under the contract are reasonably fit for that purpose. This Act in open words under different Sections lays down a number of duties which a seller owes to the buyer. Some of these duties are:

i. duty to pass a good title;
ii. duty to deliver goods specified under the contract;
iii. duty to deliver goods of right quality, fitness and safety;
iv. duty to deliver goods at a reasonable time and price.

One thing pertinent to say here is that this Act is equally applicable to the sale of drugs like any other type of goods. Thus by providing the rights and liabilities of seller and buyer this Act safeguards the rights of the consumer. The implied warranties and conditions provided in this Act play an important role in quality control and consumer protection. But this protection given through implied terms in a contract is taken away if the goods are purchased under a trade or patent name or purchased after examining the goods.

(4). The Dangerous Drugs Act

This Act is an important central legislation which empowers the Central Govt. to control certain operations relating to dangerous drugs. India participated in the Second International Opium Conference at Geneva wherein a convention relating to dangerous drugs was adopted in 1925. The contracting parties to the said convention resolved to take appropriated measures to suppress contraband traffic in and abuse of dangerous drugs, especially those derived from opium, Indian hemp and cola leaf. In order to honour their commitments, the Govt. of India placed the Dangerous Drugs Act on the

59. Id. Section 16.
60. Passed in the year 1930. Though State of J&K has no separate Act but the instant Act is applicable to the State as to the other states by implication.
statute book in 1930, with a view to control certain operations in dangerous drugs and to centralize and west the same in the central government. The Act also aimed at increasing penalties for certain offences relating to dangerous drugs and to render uniform all penalties relating to certain operation concerning such drugs. Section 4 of the Act prohibits cultivation of any coca plant or gathering of any portion of a coca plant, manufacturing or possessing prepared opium and import and export, transit or sell prepared opium. The Act has since been amended from time to time by the various Acts and adoption of laws orders.

5. **The Drugs and Cosmetics Act** (61): This Act is mainly concerned with standards and quality of drugs manufactured in this country and controls the manufacture, sale and distribution of drugs. The term ‘drug’ as used in the Drugs and Cosmetic Act did not include medicines and substances exclusively used or prepared for use in accordance with the Ayurvedic or Unani system of medicine. It includes all other medicines for internal or external use of human beings or animals and also substances intended to be used for or the diagnoses, treatment, mitigation or prevention of diseases in human beings or animals. It also includes all substances other than food intended to affect the structure of the human body or any functions thereof, or intended to be used for the destruction of vermin or insects which cause disease in human beings or animals as may be specified by the central government. So the expression ‘drug’ includes medicine for external or internal use and the expression ‘substance’ includes a liquid (62).

Thus by widening definition of the term ‘drug’ this Act provides check on contaminated drugs manufactured or packed under in sanitary

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61. *This Act is in addition to and not in derogation of the Dangerous Drugs Act and any other law for the time being in force.*

conditions the Supreme Court in *Swantraj V/S State of Maharashtra* observed that the *Drugs and Cosmetics Act* is a life saving statute. Prior to the Amending Act, 1962 there was no legislation for regulating the manufacture of Cosmetics and therefore, for doing away with the evil involved a remedy was thought for by amending the principal Act namely, *The Drugs Act*, 1940. For the purposes of regulating the manufacture of cosmetics, the legislature chose to define the said term ‘cosmetic’ including in its import any article which is intended to be applied to the human body or any part thereof even for the purposes of beautifying and promoting attractiveness or altering the appearance of the body. Further Amending Act of 1982 introduced more stringent penalties which could be imposed on anti-social elements indulging in the manufacture and sale of such drugs.

(6). **Pharmacy Act**:

This Act is enacted to make better provision for the regulation of the profession and practice of pharmacy. The object of this Act is that only those persons who have attained a minimum standard of profession education should be permitted to practice the profession of pharmacy. It is accordingly proposed to establish Central Council of pharmacy, which will prescribe the minimum standards of educations and approved courses of study and examination for pharmacists, and provincial pharmacy councils, which will be responsible to the maintenance of provincial registers of qualified pharmacists. The pharmacist is an ethical skilled professional person undertaking heavy responsibilities. By and large the profession gives an excellent service to the public and indeed is gradually extending and enhancing the scope of the service, taking over heavier responsibilities in


conjunction with the medical professions for the health and well being of the public.

However, an error from time to time occurs. We are all fallible, also subjects to human error. But an error by a pharmacist can have potentially very serious consequences and thus the greatest possible care must be taken to ensure that the drug given to the consumer is the correct one. As the European Directive says, there must be a high degree of consumer protection and in case contrary is proved he would be punished in terms of the Sale of Goods legislation that is unsatisfactory goods.

(7). The Drugs (control) Act\(^{65}\): Another Act called The Drugs (Control) Act, was passed which provides for the control of the sale, supply and distribution of drugs. The object of this Act is to ensure that certain essential importing drugs and medicines are to be sold at reasonable prices. This Act enables the Chief Commissioner—firstly, to fix the maximum price to be charged; and secondly, to fix the maximum quantity that may be sold to any person in a single transaction.

However, this maximum may be different in different localities and for different classes of dealers or producers. In case any producer or dealer contravenes any of the provisions of this Act or fails to comply with any direction made under authority conferred by this Act shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

(8). The Constitution\(^{66}\): Thought the word ‘consumer’ is not to be found in the constitution, the consumer breaths and peeps out through many of the blood vessels of the constitution. The constitution is a social document. It is not made only to provide a machinery of Govt. to

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maintain law and order and to defend the country and here obviously to defend the State under State constitution. The founding father's of the constitution has a glorious vision of the establishment of a new society with high ideals for granting the multi-dimensional welfare of all the people with a view to identify some of the provisions in the fundamental law of the State that is in the constitution that are related directly or indirectly with the philosophy and mechanism for the protection of the interests, health and happiness of the consumer the following appears noteworthy—

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 of the constitution. It is a socialist constitution in which the instruments of production and the natural wealth of the State shall be 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 epitomized in the preamble is doing justice to all the people. Justice in its simple, direct and widely and historically accepted meaning both conceptually and practically connotes the giving to every person 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 legally or commercially prescribed or impliedly agreed or understood quantity and standard.

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67. Supra Note 34 P. Koteswar Rao-Article P.82.
68. Supra Note 66.
69. Supra Note 67.
b). **Equality**\(^{(70)}\): Constitutions guarantee equality before law to all the person within the territory. Therefore, producers, sellers and consumers are equal before law either for receiving reward or punishment. Further constitution guarantees under this provision 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 also 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, state is enjoined constitutionally to give protection to the consumers. Constitutional consumer protection implies for preventing malpractices in trade, commerce and business, defrauding and exploiting the consumer of his due by adulteration, sub-standardization, under weighing etc. The consumer has to be protected against creation of artificial scarcities by hoarding and manipulation of stock exchanges and black market. 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). **Personal Liberty**\(^{(71)}\): This Fundamental Right as guaranteed by the constitution is relating to life and personal liberty. The word ‘life’ should not be construed here in a narrow sense to mean freedom from bodily restraint or confinement to prison only but something more than the mere animal existence. It includes all that is implied in this term. The right to health and medical care is a fundamental right. Health cannot be separated from (life) because life in the human body is supported not only by the existence but also by the proper functioning of all the constituents of the human organism. The basic principal of public

70. Chapter- IV Fundamental Rights as guaranteed under the constitution of India- Article 14.
71. Id. Article 21.
health is that every member of the community is entitled to protection in regard to his health just as in regard to his liberty.

d). **Social Order Based on Justice:** Section 13 (Article 38 under the Indian Constitution) of the constitution provides that the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice social, economic and political shall inform all the institutions of national life.

This Directive only reaffirms what has already been said in the Preamble according to which the function of the republic is to secure to all its citizens social, economic and political justice. Justice is to be imparted in all relations whether it is between individual and state, employer - employees, master-servant or seller and buyer.

(i). **Duty to Raise Standard of Living etc:** Section 15 of the State (Article 47 under the Indian constitution) imposes duty upon the State to raise the level of nutrition and the standard of living of its people and the improvement of public health and shall endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

(ii). **Duty to Secure A Welfare State:** Section 14 (Clause (b) & (c) of Article 39 of Indian Constitution) of the constitution J & K provides that the State is duty bound to direct its policy towards securing the distribution of the ownership and control of the material resources of the community in such a way as ‘to sub serve the common good’ and the operation of the economic system which does not result in the concentration of wealth and means of production to common detriment. It may also be noted that though this section guarantees to all citizens the right to practice any profession or to carry on any occupation trade or business but restrictions under Article 19 (6) imposes reasonable
restrictions on this right. 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 interest of the consumer.

Thus the identification, enumeration, amplification and elucidation of the relevant provision of the constitution demonstrates the availability of abundant legislative and administrative power in the constitution and the possibility for progressive interpretation by the judiciary in protecting the basic, essential, legitimate interests of the consumer.

(9) **The Industries (Development and Regulation) Act:**

The Industries Development and Regulation Act, 1951 (hereinafter referred to as IDRA) is another example on the part of the Union Govt. to make some attempts in implementing the objectives of consumerism. The IDRA provides a legal framework within which policies and procedures are to be worked out for the utilization of the limited resources of the Country and foreign exchange available, for maximum industrialization. This Act with its registration\(^{72}\) and licensing provisions\(^{73}\) and provisions empowering the Central Govt. to make investigations\(^{74}\), to give direction\(^{75}\), to assume management and control of business\(^{76}\) and to control the distribution, supply and prices of their products\(^{77}\), serves consumer interest to a great extent. Under Section 18-G, this Act empowers Central Govt. to regulate by licenses and permits distribution, transport, disposal, acquisition possession, use or consumption of any article or class of articles. Further under the said Section of the Act, the Central Govt. is empowered to regulate or

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72. IDRA, Section 10
73. Id. Section 11
74. Id. Section 15
75. Id. Section 22
76. Id. Section 18-A
77. Id. Section 18-G
prohibit any class of commercial or financial transaction of article which is considered to be detrimental to public interest. Control is exercised over substantial expansion of Industry and in producing a new article. The function of development councils constituted U/S 16 of the IDRA include recommending production targets and promoting standardization of products.

(10). **The Indian Standards Institution (Certification marks) Act:** From the point of view of administrative protection the Indian Standards Institution has been rendering remarkable service ever since its establishment. It provides the standardization and marking of goods which is a pre-requisite establishment of a healthy trade and to compare favourably with the established makes of foreign products. From objects and reasons of the Act it appears that the ISI is performing the following functions:

i. to prepare and promote the general adoption of standards on national and international bases;

ii. to promote standardization, quality, control and simplification in industry;

iii. to provide for registration of standardization marks applicable to products, commodities etc;

iv. to provide or arrange facilities for the examination and testing of commodities etc.

The Act has been amended in 1961 and 1976 to make more effective in order to achieve its objectives. The ISI prescribes specification for most of the commodities and manufactured articles which figured in India’s export trade with foreign countries and also in the home markets.

78. Id. Section 11-A

The wide publicity given by ISI\(^{80}\) has attracted attention of the enlightened purchasers, especially or organized agencies such as the railways, the municipal corporations, the director general of supplies and disposals and defense establishments, manufacturers and industrial undertakings. The ISI has also a system of issuing product certifications marks to producers who are properly equipped to undertake specified testing operations for regulating the quality of their products. The institute exercises overall supervision over the working of the scheme and it is authorized to suspend or cancel any Licence in the event of its misuse. There are other agencies too for such product certification such as the well known Agmark, established in 1937 for grading and marketing of agriculture products by the directorate of Marketing and Inspection of the Ministry of Food and Agriculture\(^{81}\).

(11). **The Drugs and Magic Remedies (Objectionable Advertisements) Act\(^{82}\):** This Act seeks to control the advertisements of drugs for certain purposes of remedies alleged to possess magic qualities. The statements of objects and reasons of the Act spells out its purpose which is as follows:

"In recent years there has been a great increase in the number of objectionable advertisements published in newspapers or magazines or otherwise relating to alleged cures for venereal diseases, sexual statements and alleged cures for diseases and conditions peculiar to women. These advertisements tend to cause the ignorant and the unwary to resort to self-medication with harmful drugs and appliances or to resort to quacks who indulge in such advertisements for treatments which...

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\(^{80}\) ISI has formulated a number of standards for food stuffs, drugs, cosmetics, utensils, textiles, electric appliances, paints, carpets, furniture, detergents, soaps etc.

\(^{81}\) Supra Note 67, M.V Pylee – Article, 'Consumer Protection in a Developing Society' P. 22-23.
cause great harm.”

Keeping the above purpose of the Act in view it becomes clear that this Act prohibits advertisement of only certain drugs for treatment of certain disease and disorders and puts ban on misleading advertisement relating to drugs, magic remedies for treatment and regulation of certain advertisements of Indian imports and exports. The Act prohibits only those advertisements and advertisements of only those drugs whose magically curative properties were intended to influence the organic function of the human body.

In considering the question as to whether the accused is guilty U/Ss. 3 \(^{(82)}\) and 7 \(^{(83)}\) or not. If his case can fall under the provisions of Section 14, then Section 3 cannot be invoked against him. Thus the object of the Act is to avoid self-medication by people or their being misled by various advertisements. The necessary condition, therefore, is that the advertisement must induce others into using the drugs advertised. In Dr. Yashpal Sahi V/S Delhi Administration\(^{(84)}\), it was held that in order a person is to be penalized it is not necessary to show that the contravention brought home to him is in the nature of a habitual contravention. A single contravention proved against to a person would make him guilty under Section 7.

(12). **The Prevention of Food Adulteration Act\(^{(85)}\):** This Act is for prevention of food adulteration hazardous to human life and health. The statement of objects and reasons of the Act provides –

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82. This Section of the said Act deals with prohibition of advertisement of certain drugs for treatment of certain diseases and disorders.

83. The instant section of the same Act provides penalty for contravention of any of the provisions of the Act.

84. Saving clause for example, this Act will not apply to any advertisement relating to a drug printed or published by the Govt.

85. Of 1954, in 1970 it was made applicable to the State of J&K.
"Adulteration of food stuffs is so rampant and the evil has become so wide spread and persistent that nothing shall of a somewhat drastic remedy provided for in the bill can hope to change the situation. Only a concerted and determined onslaught on this most anti-social behaviour can hope to bring relief to the nation. All remedies intended to be effective must be simple."

The Act in order to curb the increasing tendencies in adulteration and to make the machinery provided under it more effective was amended in various times. The Act has laid emphasis on the supply of articles of food and drink which are fit for human consumption by prohibiting the manufacture for sale or store, to sell or distribute any adulterated food, misbranded food which is prohibited for sale by health authorities to prevent the spread of diseases etc. Section 2 (a) of the Act elaborates in detail cases when an article of food shall be deemed to be adulterated. Section 5 of the Act prohibits import of any misbranded food either by himself or through others and Section 16 of the said Act treats misbranded article of food with adulterated article of food in respect of penalties.

In brief all the means provided in the original Act and its subsequent amendments are designed for the prevention of adulteration in food to ensure safety and health to the consuming public at large. Deterrent punishment to the extent of life imprisonment have been provided for habitual food adulterators, if the product when consumed by any person is likely to cause death or grievous hurt. A provision for summary trial for food adulteration has also been made. The offence under the Act can be tried only by metropolitan magistrates or judicial magistrates first class.

86. In Municipal Corporation of Delhi V/S Shiv Shanker [(1971)1 SCC442], the Supreme Court observed that purpose of the Act was held to eliminate the danger to human life and health from the sale of unwholesome articles of foods.
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.

(13). **Essential Commodities Act**\(^{87}\): The most significant of laws that enables the Govt. to deal effectively with trading activities that are adverse to the consumers is the Essential Commodities Act hereinafter called E.C Act. The very object of the E.C Act as well as its predecessor enactment the Essential Supplies (Temporary Powers) Act called E.S Act 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 Govt. by the Act. The E.C Act and E.S Act initially dealt with two classes of essential commodities\(^{88}\) –

i. basic non-perishable commodities like coal, textiles, iron and steel etc; and

ii. daily consumption perishable commodities like food stuffs, cattle feed etc.

The primary concern of the Govt. in issuing the control orders had been to see that the concerned commodities is in regular supply and available for consumer in right measure and at fair price. The E.C Act vested wide powers in the Central Govt. to meet the objectives of the Act, and to issue control orders for the same. The powers exercisable by the central Govt, state Govt. or officers (to whom the centre and state can delegate powers) to ensure that the dealers display price lists and stock position extends 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 concerned authority is not in the interest of public consumption. The authority of the Govt. to act on behalf of the consumer

\(^{87}\) It is the Act of 1955, for details Supra Note 81.

\(^{88}\) Id. P.129-130.
was reinforced by the Defence of India Act, 1971 and the rules made there under. Exercising the powers vested on the Govt. 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 powers conferred on the government under Section 3 of E.C Act is of a general and particular nature and at the same time both pragmatic and purposive which any Govt. would undoubtedly need if it were to safeguard its domestic market and economic order. The power is meant to enable the government to see the equitable distribution and the availability of commodities in the market at fair price to the consumers. In its particular nature, the government is to regulate by licenses 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 or state government to regulate or prohibit commercial and financial transaction relating to food stuffs to ensure maintenance of supply, to bring under cultivation arable and waste lands, to collect information and statistics to require person engaged in trade and commerce of essential commodities to submit their books, accounts and records for inspection. Besides the Govt. has the incident and supplementary power to enter and search premises, vehicles, vessels and aircraft and seize them. It empowers the Govt. to confiscate food grains, edible oil, seeds and oils and other consumer goods pursuant to any control order, subject only to the supervisory and bailing powers of the district collector. The orders issued by the Govt. under Section 3 of the Act will have effect notwithstanding inconsistence with the other laws in force. Only orders contrary to the provisions of the Act itself is rendered

89. Ibid
The judicial affirmation supporting Govt. authority in this respect is uniform whether in India or America. In 1968 in the Permian Basin Area Rate Cases, the Supreme Court held that Govt. is entitled to make pragmatic adjustments which may be called for by particular circumstances and the price control orders can be called unconstitutional only if it is patently arbitrary, discriminatory or demonstrably irrelevant to the policy which the legislature has adopted. So also in Narendra Kumar V/S Union of India the Indian Supreme Court has held that the power of regulation and prohibition U/S 3 of the E. C Act does not violate the fundamental rights guaranteed under the Indian constitution.

However, despite the vast powers enabling the Govt. to regulate, control, supply and distribute goods of normal consumption it is seen that the provisions are rendered ineffective for the lack of enforceability and the penal provisions are found meaningless. Therefore, it is felt that unless by concerted action an awareness is created on the consumers and resistance is built up, market force would continue to regulate the supply system and the consumer will have to surrender himself to be exploited by the sharks in high seas of the market economy.

(14). The Medical Council Act: The main purpose of this Act is to establish a uniform essential standard of higher qualification in medicine. This is the principal Act governing the medical profession. Medical Council may direct the removal or for a specified period from

90. Ibid.
91. Ibid.
92. Even though the provisions of E.C.A have armed the Govt. with substantial power to ensure regular supply and fair distribution at reasonable prices of a variety of consumable articles.
93. Id. P.132
the register the name of any registered practitioner who has been convicted of any such offence as implies in the opinion of the medical council a defect of character or who after an inquiry at which opportunity has been given to such registered practitioners be heard in person or has been held by medical council to have been guilty of infamous conduct in any professional respect. However, under this Act it is not open for a sufferer or consumer to make complaint before the council himself.

(15). **The Trade and Merchandise Marks Act:** This Act had been enacted with a view to protect trade interests to prevent the deception of the consumers by the misuse or abuse of the trademark. The statement of objects and reasons provides:

"The criminal laws relating to trademarks and trade descriptions which are contained in chapter – XVIII of the Indian Penal Code and the Indian Merchandise Marks Act, 1889 respectively, were enacted at a time when commercial advertising in this country had not been much developed. With the increase both in appeal and power of modern advertisements, a fresh approach to matters relating to false trademarks and false trade description has become necessary."

The Act provides for the legislation, better protection of trademarks and for the prevention of the use of fraudulent marks on merchandise. A good trademark is the best sales man and advertiser of goods. To the purchaser a genuine trademark gives assurance of the mark and quality of the article he is buying. This Act provides enhanced punishment for offences relating to trade and merchandise marks particularly drugs and foods on grounds of public interest and public health. The Act provides


95. This Act has consolidated The Trade Marks Act, 1940 and Indian Merchandise Marks Act, 1889 and provided law relating to registration and better protection of trademarks in the country.

for registered and un-registered trade marks proposed use of trade mark by the company to be formed and removal from register and imposition of limitations on ground of non use. It also provides for alteration and rectification of trade marks and correction of the registration and certification of trade marks. So the protection of the trade marks is essential not only for the honest trader, but also for the benefit of the purchasing public.

(16). **The Specific Relief Act**\(^{97}\) :- This Act has been enacted to define and amend the law relating to certain kinds of specific relief’s obtainable in Civil Courts. From the consumers point of view the Act deals with the rights and liabilities of parties of a contract specifically among others with the right to claim compensation for the breach of contract\(^{98}\) and power of the Court to award compensation in certain cases\(^{99}\).

(17). **Monopolies and Restrictive Trade Practices Act**:- The Passing of the MRTP Act\(^{100}\) (hereinafter called MRTP Act) can be said really to be the beginning towards the consumer movement. This Act came into force on June, 1970. The regulation and control of monopoly in trade and business is an effort done by governments every where to ensure distributive justice. MRTP in several ways tries to checkmate the manipulative capacity of the monopoly trades, and thus protect the consumer in an indirect way from an adverse market. The enforcement of the Act is sought to be done by the Central Govt. and the Monopolies and Restrictive Trade Practices commission, an institution created under the Act. The Act, for the control of the big industrial

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98. Id. 21.
99. Id. Section 22.
100. Passed in the year 1996 and commission established under this Act has been established at centre.
houses, envisages that their expansion schemes, establishment of new undertakings, mergers, amalgamations and takeovers were to be processed by the Govt. and application for that purpose should be made to the Govt. If the Govt. so desires, it will refer to the commission any enquiry that has to be made before taking a decision on the application of these houses.

As far as the control of restrictive trade practices are concerned, the commission is left autonomous and independent of the government. The commission is required to act either on a reference by the government or complaint from either parties or Registrar of restrictive trade agreements or on its own motion. The decisions of both the government as well as the commission on any matter is appealable to the Supreme Court.

'Restrictive Trade Practices' and arrangements which would every which prevent, distort or restrict competition in any manner especially those which tend to restrict the flow of capital or resources into the stream of production. It can also be arrangement which bring about manipulation of prices which affect flow of supply in the market of goods, and services which tend to impose on the consumers unjustified costs and restrictions. Section 33 of the MRTP Act gives illustrative agreement of the kind that would be restrictive trade practices. In the TELCO CASE, the Supreme Court opened that every agreement that falls within the specified types of Section 33, would not be restrictive trade practice, but only those that have the characteristic of being anti-competition and harmful for 'public good'. Within the compass of the definition of the terms 'undertaking', 'dominant undertaking', 'inter-connected understanding' and 'service', a good variety of establishment and activities are concerned, the controlling power of the government on production, distribution and supply of manufactured goods and services can be effective to a very great extent.
The MRTP commission is empowered to inquire into any restrictive trade practices on receiving a complaint from any trade or consumers association having a membership of not less than 25 persons or more consumers. In any monopolistic trade practice the commission can make an enquiry upon a reference by the Central Govt. or on its own knowledge or information. The commission for the purposes of inquiry is vested with the powers of a Civil court, and has to be deemed a Civil Court. It has the power to decide applications referred to it for further inquiry by the Central Govt. The commission also possess the power to register the trade agreements submitted to it for further inquiry by the Central Govt. The commission also posses the power to register the trade agreements submitted to it under the Act and the commission can cause the Director of MRTP to make an investigation before issuing process to parties in particular cases. Thus the entire working pattern of the MRTP commission and the Central Govt. as designed by the Act necessarily envisages the protection of the consumer from the evil designs of the monopoly traders and their trading practices.

However, there is a serious complaint about Sections 21 and 22 of the MRTP Act. While the large companies find the said Sections of the Act led to considerable delay in the implementation of the project, the small companies allege that the loopholes in the Section have provided the big houses the chance to expand without the commissions approval of the schemes. The Sachar Committee on MRTP Act finds that the adverse criticism of the functioning of the commission are unwarranted and unfounded and are not tenable on the face of facts.

Further it is noteworthy to mention here that MRTP did not contain the provisions directly aimed at protecting the consumer but it was intended to regulate competition in the hope that it would generate fair conduct, the effect of which would percolate to the ultimate consumer.
(18). **The Hire Purchase Act**\(^{(101)}\) :- It is a very important consumer legislation and a convenient and a useful legal device for acquiring goods on long terms. Section 6 of this Act provides that every hire-purchase agreement does contain certain conditions –

i. That the hirer shall have an enjoy quite possession of the goods;

and

ii. That the goods shall be free from any charge or encumbrance in favour of any third party at the time when the property is to pass.

Sections 9, 10 and 11 of this Act entitle the hirer to purchase property at any time with rebate, to terminate agreement at any time and to appropriate payments in respect of two or more agreements respectively. Furthermore, Section 17 ensures the rights of hirer in case of seizure of goods by owner and Section 20 deals with the restriction on owner’s right to recover possession of goods otherwise than by proceeding though Court of Law after a specified proportion of hire purchase price has been paid or tendered.

(19). **The Code of Criminal Procedure**\(^{(102)}\) :- This Code like the Ranbir/Indian Panel Code also protect consumer interest to some extent. Section 149-153 lays down the provisions relating to preventive action of the police\(^{(92)}\). Under the said provisions of the Code an officer in charge of a police station may, without a warrant enter any place within the limits of such station for the purpose of inspecting or searching false weights or measures or instruments for weighing. If he finds in such place any false weights, measures or instruments for weighing, he may seize the same and report the seizure to a Magistrate having jurisdiction.

\(^{101}\) Passed in the year 1972; A.I.R 20 Manual 851(4th Ed. 1979)

\(^{102}\) Such action of the police officers falls into three categories i. Prevention of Cognizable Offences

ii. Prevention of injury to public property. iii. Inspection of Weights and Measures.
(20). **The Cigarettes (Regulation of Production, Supply and Distribution) Act** :- Though this Act\(^{103}\) regulates supply and distribution of cigarettes but it simultaneously and sufficiently warns about the hazardous of smoking. The statement of objects and reasons read as under –

"Research carried out in various parts of the world have confirmed that there is a relationship between smoking of cigarettes and lung cancer, chronic bronchitis, certain diseases of the heart and arteries, cancer of bladder, prostrate mouth, pharynx and esophagus and peptic ulcer etc. are also reported to be among the ill-effects of cigarette smoking. It has, therefore, necessary to provide, in the interests of the general public, that trade or commerce and production, supply and distribution of cigarettes shall not be made unless each package of cigarettes or its label bears thereon on the specified warning that 'cigarette smoking is injurious to health'.

(21). **The Jammu and Kashmir Weights and Measures Act** :- This repealed Act\(^{104}\) is enacted to establish standard of weights and measures, to regulate interstate trade or commerce in weights, measures and other goods which are sold or distributed by weight, measures or number and to provide for matters connected therewith. Earlier the repealed Act provided primary unit of length, primary unit of mass and standard, unit of weight, unit of time and electric current etc. However, the repealed Act provides for the establishment of standards of weights and measures on metric system, regulation of interstate trade or commerce in weights, measures and other goods which are sold or distributed, penalties for use of non-standard weights or measures.

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Therefore, this Act established standard of weights and measures thereby prohibiting the manufacture and use of non-standard weights. However, this Act goes more in breach than observance.

**Observation:** After making a careful study of long list of consumer legislations it is clear that in the State of J & K as in the rest of country consumer law is as old as the consumer himself. The question to what extent these enactments have protected an average consumer no satisfactory answer can be given. These Acts primarily are aimed at controlling production sale supply etc. of several goods and services. However these legislation have not helped consumer in real sense. Firstly, because an average consumer is not knowing the law and may have hardly heard about these legislations. Secondly, it is a fact with which many will not disagree that high technicality, expensiveness and time consuming process has disappointed the consumer to go into the litigation. Thirdly, due to lack of enforcement agencies these Acts are going in constant violation in absence of checks and control and sometimes consumer crimes more often are committed in active protection of police and law enforcement agencies. Under these Acts there are more acquittals than conviction and the actual complainant usually consumer gets nothing which can be said to have redressed his grievance. Under these Act no compensatory and direct remedy is available to the consumers to seek redressal against the offending traders, manufactures or provider of services. Under these Acts consumer has difficulty in challenging the Govt. which have the monopoly in the service sector. In these blurred and bewildered circumstances CP Act has proved a silver line to curb the rust. This Act will be dealt separately in next chapter.