CONSUMER LEGISLATIONS
PART - A

HISTORY OF CONSUMER LEGISLATION

INTRODUCTION

Law is the basis of all civilised existence. Every crime is a crime against society and a violation of social values. In ancient society religion was the only law, which controlled our uncontrollable urge of breaking our bondage of social existence. We followed them and remained within our limits, be it business or any walk of life according to the norms conventionally practiced, and there was no need of legislation imposed by those who were in power to rule and govern.

But now with the change in our social milieu, we are obsessed with rules and regulations and with the law and legalities. We have become a litigious people and our obsession with law is of ridiculously out of all proportions. As a result, we have become a nation of escapists and escapism has become part of our psyche and culture.

From a society, predominantly ruled by self-imposed norms through religion, we have transformed ourselves to this slavery of law by submitting knowingly or unknowingly to the legislations by governments that come into power from time to time right from the rule of the British Imperialism to those of the present day democratic government.¹

THE NEED FOR LEGISLATION

Any Government whether in India or anywhere in the world comes out with controls and legislations mainly for two reasons. Firstly, in order to curb the black-sheep, of whom there is no dearth in any part of any society and whose immoral
behaviour brings disrepute to the entire community. Secondly, the community concerned is itself cold, rather averse to the idea of self-regulation and self-imposed discipline. In India people somehow believe that the almighty, the Government alone can set things right. Be it the menace of dowry or molestation, adulteration or air pollution. One may put faith in a free market mechanism or Gandhiji's dictum that the least governed is the best governed state. But when there is a national calamity or other occurrences of Mother Nature and during that time, for want of self-realisation of national duty or social responsibility, or in the absence of strong and well-organised self-regulatory system, a section of a trading community indulges in boarding, black-marketing, over pricing, etc., even the most staunch champion of free enterprise would have to call for some state intervention.

Our socio-economic set up has been suffering from these ailments for a long time and there is no let up as yet. Mutual exploitation with short-sightedness for self-interest has been the root cause which even the best thought of legislation is unable to control. Pinning down the observations relating to the question of safeguarding the interests of the consumers, the state of affairs have been more distressing. Exploitation of the consumer in respect of supply of goods and services to him has been more chronic.

The increasing number of malpractices and their instances in every day life have not only justified but forced the Government to control the situation through legislation. There is more injustice being done to the consumer that, what meet our eyes and hit our ears. Consumers now in despair, have turned to the law as the last and perhaps only resort and he has welcomed the legislation with a hope to get the maximum redressal.
THE CONSUMER'S POSITION IN COMMON LAW

The fundamental relation between buyer and seller however, was and to some extent remains that which is implied in the common-Law Maxim Caveat Emptor (let the buyer beware), according to which the onus is placed on the buyer to protect his own interest by ensuring that what he purchases is of sufficient quality to meet his needs. This doctrine, which has been progressively modified in the interests of the consumer to the extent that the law is governed more by the exceptions than by the rule itself, accorded well with the principle of laissez faire capitalism that the buyer is served best by free competition between sellers.

Certain changes that have occurred over the past century in the nature of industrial corporations and in the types of products available to the consumer have rendered this assumption invalid. First may be cited the growth of large corporations exerting monopoly influences- i.e. setting prices and standards of quality for a particular product, so that the consumer is no longer afforded the opportunity to choose among effectively competing suppliers. Such corporations do not have to control a product's entire market, which may in fact be divided among several suppliers who offer the consumer products so similar in terms of price and quality that effective choice is impossible. Sometimes the impression of competition may be created by heavy advertising of "competing" brands or marks. Such a situation known to economists as one of oligopoly, has often been typical of the markets for detergents and automobiles.

A second factor that has weakened the effectiveness of the consumer in protecting his own interests by rational choice among competing alternatives is the complexity of the products that modern technology has made available. There is, for
example, little basis on which the consumer can decide between the merits of two
different television sets, vacuum cleaners or patent drugs without a technical informa-
tion, which he would probably be unable to evaluate even if it were given to him.

A third factor that is commonly alleged to have crowded the consumer's
capacity to choose effectively in his own best interest is his increasing exposure to
advertising and to new sales techniques. Advertising, it is argued, is predominantly
persuasive rather than informative, serves to create demand for products that are
unnecessary, and often exploits the hidden fears, insecurities, and prejudices of the
consumer. Further modern sales methods, ranging from so-called 'introductory
offers', 'free gifts', and trading stamps to the 'high pressure' techniques practiced by
door-to-door salesmen are alleged to subject the consumer to an unjustified degree
of influence. It is against this background that a variety of pressures and methods for
protecting consumer interests have been developed. 2

MAIN AREAS OF REGULATIONS

As mentioned above, the common law has long provided certain safeguards to
buyers. Some of which have subsequently been incorporated into legislation. Of the
safeguards derived from common law, the most important one—embodied in England's
Sale of Goods Act, 1893*, is the one that states that, whenever a buyer expressly or
by implication, makes known to the seller, the particular purpose for which the goods
are required, thus relying on the seller's skill or judgment, there is an implied condition
that the goods sold shall be reasonably fit for such a purpose.3

*The first Government legislation anywhere in the world was perhaps the Sale
of Goods Act 1893, in Britain. It was an effort to provide protection to
consumers of goods.
EARLY LEGISLATION CONCERNING FOOD AND DRUGS

Other early legislation mainly dealt with adulteration of food and drugs. This was true, for example, of the Adulteration of Food and Drugs Act of 1872 (England) and similar cumulative measures of 1848, 1890, and 1906 in the United States. The scope of such Acts has been enlarged from time to time to include, for example, goods such as electrical products and automobiles which could endanger the safety of the consumer, if certain standards are not met. The provisions of such legislation are necessarily complex and vary from country to country, as well as, in the United States, from State to State. Various non-statutory control such as standards laid down by National-Standards Institutions also interact with statutory controls. In one of the surveys, it was found that both the statutory and non-statutory aspects of this subject are considered together.

LEGISLATIVE CONTROLS ON MANUFACTURING AND DESIGN

Of all industries, food and drugs are the most controlled by legislation. Other products in general are controlled by standards institutions which lay down basic minimum standards for many different kinds of products. Legislative controls applying to food and drug manufacturers, prohibit them from adding or removing any thing from the product they sell that would make it injurious to health. Although this might appear to afford absolute protection for the consumer. Manufacturers sometimes unwittingly add ingredients that are subsequently found to be harmful—for example, cyclamacts, which were used for some years as an artificial sweetener. The frequency of such occurrences will clearly depend on the rigour of the standards of the official testing agencies concerned and the stringency with which standards are applied.
STANDARDS INSTITUTIONS

For non-food products, legislation is less easily devised and far less easily enforced. Most countries, nevertheless, have developed minimum applicable standards. National-standards institutions were, in many instances, set up more for the benefit of manufacturers than for that of the ordinary, domestic consumer. In addition, government bodies were often formed to control better for government purchasing. In the United States, for example, the General Services Administration laid down specifications and quality standards that had to be satisfied before the federal government would buy supplies. Other standards bodies, such as the British Standards Institute, started in 1901, were set up for the convenience of manufacturers so that one manufacturer's goods could be used in conjunction with another's as in the standardization of electrical fittings.

USUALLY ENFORCEABLE VOLUNTARY STANDARDS

By the 1950s, standards organizations had become far more aware of the needs of the ordinary consumer, but their legal status, for the most part, remained unaltered. Most recommendations are devised with the cooperation of the industry, government departments, and the consumers. The standards themselves are not usually legally enforceable but remain voluntary. They usually do not reflect the quality of the product as a whole, but deal only with a specific aspect of it. The mark of a standards institution, for example, may well indicate that a hair dryer is sufficiently insulated against electrical-shock hazards, but not that it dries hair satisfactorily.

Though standards institutions in various countries may differ in some aspects, they are all basically the same. Some are entirely financed by the government (as in India), some are part of a government department (as in Japan), and still some others
are a mixture of both (as in the United States where the General Services Administration is a federal agency and the American National Standards Institute is financed by American Standards Association of manufacturers). For the world as a whole, the International Standards Organization draws up standards that can be adopted by all countries. Again, compliance with such standards is optional.

WEAKNESSES OF STANDARDS CONTROLS

Although the standards institutions have assisted in raising the quality of many consumer products, their grip is weak. Most standards result from decisions of committees in which manufacturers unusually have the final say. The recommended standards are thus more often a reflection of the industry’s conscience than of the standards that would be required to provide satisfaction for the consumers. The standards laid down by manufacturers for a product can be so low that the consumer benefits little, if at all. Further almost all standards refer to the safety of a product and not to its efficiency: and with only a few exceptions, the recommendations of standards agencies are voluntary. The decision whether to adopt the standard is up to the company that markets the product, and such a decision necessarily involves an assessment of possible costs and returns. It is unfortunate that, in many countries, the selling power of the standards symbol is less substantial than that of a good promotion campaign. Consumers, it would appear, are not sufficiently aware of the presence and significance of these symbols, perhaps because, they tend to be little publicized by the manufacturers.

Apart from the formulation of standards, testing by various bodies occasionally results in the redesigning of certain products. Such testing has been most apparent in the automobile industry, in which cars have been recalled by their manufacturers so
that alterations and improvements could be made. In the United States, for example, General Motors Corporation voluntarily recalled some 10 lakhs cars in 1971-72 for such changes.

CONTROLS ON ADVERTISING

Of all the criticism leveled at manufacturers, those against their advertising probable have been the most vociferous. Advertising is necessarily vulnerable to these attacks: it is experienced by everybody, its products are on show for a long time, and its purposes are materialistic. Although the major purpose of company advertising which is to attract members of the public toward buying a particular product, is fairly straightforward, the methods employed in this process have become increasingly complex. As business has become more competitive, so as to the advertising that sells its products. Coupled with this increased competition has been the development of more powerful media—the most important of these being television.

Criticism of advertising can be broadly divided into two: those that affect the consumer directly, and those that are concerned with economic matters, particularly the structure of industry.

From the consumer's point of view, the basic criticism of advertising is that it leads him to purchase, goods that he has no wish to purchase by presenting misleading and untruthful statements for, by creating wants, needs and desires in his kind, that might not otherwise exist. In the first instance it is accepted that the consumer, of his own volition, has a need that is filled by the description of the advertised product (but not necessarily by the product itself), where as in the second, the need is artificial and is stimulated entirely by the media.
From economic point of view, critics of advertising point out that the enormous amount of money spent in it does not benefit the consumer, although he is compelled to pay it. A second criticism is that advertising restricts competition, because only large companies can afford expensive, nationwide campaigns, thus limiting freedom of entry of new firms into an established market.

A definite answer to both these questions is obviously impossible. Regarding the first, it might be fair to say that economic growth and the creation of wealth might come about far more slowly without the aid of advertising. The development of national brands rather than regional and the economies of scale implicit in this development might be retarded. For all its drawbacks, advertising informs the consumer and enables him to make not only a choice between products but also a choice between the stores at which he can buy those products. For the manufacturer, it justifies a heavy investment in capital and manpower in that, it assures (to some degree at last) the quick development of sales.

Regarding the second major criticism is that advertising encourages the concentration of industry - there is no doubt that this is true. But not everyone agrees that industrial concentration necessarily acts against the interests of the consumer, particularly in the absence of out-right monopolies or cartels. In some countries, such as the United States and Great Britain, monopoly laws use to restrain the more frequent abuses of industrial power. Other countries, especially some in western Europe, have established monopolies boards, which monitor or oversee activities of large corporations in the field of takeovers and mergers.

The advertising industry has for many years been aware of the various criticisms and has accepted the need for some control over advertising methods, in addition to the provisions of statutory regulations, that exists in many countries. In the United States, the Federal Trade Commission empowers to stop advertising if it considers misleading. In the United Kingdom, the Department of Trade and Industry has some
powers to do this under the Merchandise Marks Act. These powers are necessarily used in conditions of the last resort and the advertising industry itself preferring to control it members voluntarily. One method of self-control has been the establishment (prior to World War II) of the International Code of Standards on Advertising Practice under the auspices of the International Chamber of Commerce; it codifies the views common to national advertising groups on what, constitutes good practice.

The country with the most stringent advertising standards, is usually thought to be Great Britain, where, for example, all television advertising is controlled by the Independent Television Authority (ITA). The ITA lays down some 32 separate controls on advertising, banning the use, for instance, of subliminal advertising (methods by which the viewer might be influenced without his becoming aware of it) and of advertising that plays on fear and on the minds of the superstitious.

The ITA has a further list of unacceptable products and services. In the early 1970s, it included cigarettes, book-makers, undertakers, fortune-tellers and matrimonial agencies. Other regulations involve methods of television reproduction, the wording and advertising of guarantees, and the enforcement of prices and other offers. Furthermore, special conditions exist in specific cases - the viewing child, the employment of children in advertisements, and the advertising of certain products such as medicines and drugs and also finance.\(^4\)

**LABELING STANDARDS**

Labeling can be used either to inform or to device the consumers and manufacturers, in their sales efforts, are often tempted by the latter expedient. Minimum standards of labeling exist for some products but, as with controls on manufacturing
quality, legislation tends to concentrate on food and drugs. Usually, every container carries a statement of contents, but apart from food and drugs, content identification is not usually required. If it is provided, however, it must not be represented. In general, this means that labeling, when it is present at all, tends to be accurate.

REGULATION OF LABELING IN SWEDEN

Consumer movements and official bodies have, in many countries, seen the need for better systems of product labeling. Of methods proposed, one of the best may be the Varudeklarationsnamnden system (Quality Labeling Board) adopted by Sweden, which is financed by the Swedish Government in conjunction with various national business and consumer organisations. In this system, labels must describe the most important characteristics of the product and must do so in words, that by any standards are explicit, many being more than 200 words long. Price labels are of further importance to the consumer. With the advent of self-serving shopping, the need for goods to be priced correctly is essential. Vendors, however, are under no legal obligation to indicate prices and a major criticism by consumer groups has been that, even when prices are indicated, it is often difficult to make price comparisons because of the lack of standardization of the weights or volumes of packages in which a product is sold.

CONTROLS ON SALES METHODS

Generalizations cannot be made concerning statutory controls on sales methods, because they vary from place to place. Sales practices have been controlled for over a century; early regulations were largely concerned with peddlers and hawkers. Legal progress has, in general, imposed a stricter control of selling methods to reduce the incidence of deception.
Particularly difficult to control is door-to-door selling, a method that for many years has drawn criticism from the general public, even though the majority of door-to-door salesmen are fair and reputable tradesmen. Vacuum cleaners, floor polishers, sewing machines and encyclopedias have been sold by this method, some by salesmen who have exploited the purchasers' vulnerability. Salesmen's tactics often go far beyond the common foot in-the-door technique. To persuade people to enter into heavy financial commitment, salesmen have been known to misstate the terms of payment or the trade-in allowance, to conceal figures on the order form or agreement, and to resort to other deceptive practices. Some countries have outlawed such deceptions. In Sweden, a Door-to-Door Selling Act leaves buyers free to withdraw from contracts signed in their own homes and at exhibition stands within a period of seven days. A similar law in Britain specifies a period of four days. Some American states likewise provide statutory protection. The Swedish legislation is part of a package designed to help the consumer and includes an Undesirable Terms of Trading Act (for monitoring standard contracts) and further legislation regarding credit sales and hire purchase, legal aid, holiday travel, and foodstuffs.

**SWITCH SELLING**

Another technique used in direct sales is that of switch selling. The salesman attracts his victims by placing an advertisement offering a domestic article at a remarkably low price; this is known as the 'bair'. Inquirers are personally visited by a salesman, who, from the outset, makes no attempt to sell them the product advertised. Having convinced the inquirer that the model is not worth buying, the salesman goes on to offer the customer another model that he happens to have with him at, of course, a higher price. Although this and similar methods often are in violation of statutes governing the sale of goods of which enforcement is difficult. Extra protection is provided by legislation in some countries, and, in others, non-statutory regulations protect the consumer.
PART - B

NEED FOR CONSUMER LEGISLATION IN INDIA

In India common people are losing confidence in the judiciary and are now more reluctant to approach the courts to get justice mainly for two reasons, viz., that justice has steadily become very costly and time-consuming and also that apart from advocate's fees and other out of pocket expenses. In some states, even the court fees for filing suits is as steep as 10% of the claim amount. The result is that, many a time it goes beyond the reach of a common man and some times, financially, the remedy is costlier than the relief sought. As regards time, it takes years if not decades to get the orders of the court and if the matter is dragged on by the defendant to higher courts, one can only imagine the plight of the plaintiff.

Even while these facts are accepted by the authorities, no remedial measures are taken. Of course, the pressure on the courts and number of cases are now being reduced through indirect ways such as referring of cases between local bodies to arbitration, deciding certain cases through Lok Adalats, etc. But with more and more laws being enacted, there is no change in the gradual deterioration of the judicial system. This, apart from not helping in solving the problems rather creates more complications and the matter gets stuck up longer in courts. The result is that the common people can ill-afford to spend time and money for securing justice through courts and in many instances matters which otherwise would have been referred to courts are settled otherwise. This has affected the society mainly in two ways. Due to the reluctance of the people to approach the court undue advantage has been taken by many unscrupulous manufacturers and persons in duping their clients by passing
on sub-standard and adulterated products, and thereby committing breach of agree-
ment/warranty. On the other hand, more and more people are adopting extra judicial
means to get the disputes solved and set right their losses. However, in the long run,
both these tendencies are bound to affect the society adversely.

How to overcome these difficulties? Filling up of the vacancies of the judges or
creating more posts for the judges will not help, as the primary reason for filing up of
cases in the courts is that, they move at snail's pace. Moreover, it does not solve the
problem of high costs involved in getting the relief through courts. Is there no way out
of this, like that to the corruption which has become 'a universal phenomenon' as
quoted by our late Prime Minister Mrs. Indira Gandhi? Incidentally, the longer delays
in getting reliefs through the courts indirectly helps corruption.

OBJECTIVES OF CONSUMER PROTECTION LEGISLATIONS

The consumer protection legislations should

(a) eliminate impure and harmful food, drugs and cosmetics.

(b) prevent fraud, deception and false advertising.

(c) standardise weights and measures and improve labeling.

(d) promote fair competition.

(e) assure fair rates in transportation, power, fuel, communication and
    the like.

(f) avoid abuses in the fair trade practices.

(g) establish bodies to receive complaints from consumers, to inves-
tigate these complaints and to take action.

(h) establish machinery to promote the education of consumers.
(i) provide licensing and on-going regulation of the types of persons who may be permitted to supply certain types of goods and services to consumers.

A number of consumer protection laws have been developed over the years to protect various interests of consumers, and these reflect the government's desire to do the needful in this direction. But, as stated above, the law has become standstill in its implementation. We have the following consumers protection legislations in India.

5. The Trade and Merchandise Marks Act, 1958.
8. The Drugs and Cosmetics Act, 1940.
9. The Dangerous Drugs Act, 1930.
11. The Households Electrical Appliances (Quality Control) order.
12. The Agricultural Produce (Grading & Marketing) Act, 1937.


A brief explanation about some of the Acts has been given here as under:

1. Essential Commodities Act, 1955

It governs the production, procurement and distribution of all essential commodities. This act has been amended in 1974 to ensure quicker and more elective action against the anti-social activities of profiteers, hoarders and black marketeers. The administration enforced orders relating to display of prices and stocks by dealers in essential goods and items of mass consumption.

Under the MRTP Act, 1969 an enquiry into restrictive and unfair trade practices can be made by the MRTP Commission, upon receiving a complaint from any trade or consumer association having a membership of 25 or more. This is a valuable right which the consumers can exercise with a view to removing artificial shortages, effects of misleading advertisements, manipulated high prices of essential commodities.

3. The Sale of Goods Act, 1930

Sections 14 to 16 of the Act deal with implied warranties and conditions as to title quality or fitness of goods and set out the exceptions to the maximum *Caveat Emptor*.

4. The Packaged Commodities Regulation Order, 1975

The Primary objective of this order is to appraise the consumer of the contents, weights, price, month of manufacturers of several packaged commodities for retail sale.

5. The Drugs and Cosmetics Act, 1940

This Act seeks to control the quality of drugs and cosmetics. It is obligatory under the Act to obtain a license to manufacture or sell any of the articles mentioned and to do so without license is an offence.

6. The Dangerous Drugs Act, 1930

This Act controls misuse of habit forming drugs like morphine and opium. Interstate movement of narcotic drugs is also regulated.
7. The Drugs and Magic Remedies Act, 1954

This Act prohibits advertisements of drugs for certain diseases like blindness, heart diseases, paralyses, epilepsy and sexual impotency. Publication of advertisement of drugs for some disorders is prohibited. The Act also prohibits advertisements of magic remedies like tahsman, mantra, kavacha and charms for prevention of mitigation treatment or cure of diseases.

8. The Agricultural Produce (Grading) Marking Act, 1937

Under this act, the Government has set up grading stations for commodities like ghee, flour, etc. The graded goods are stamped with the official seal of the agricultural marketing department - AGMARK goods which enjoys a wider market and naturally secure better prices due to purity and quality. We have a central quality control laboratory at Nagpur and ten regional laboratories in different parts of the country for the purpose of testing quality and purity of agricultural products applying for AGMARK.


We have compulsory licensing of manufacturers of fruit and vegetable products to ensure minimum standards in respect of quality, packing, labeling and marketing and for sanitary conditions in the factories. Periodic inspection and testing of samples ensure quality control of fruit and vegetable products.

10. The Emblems and Names (Prevention of Improper Use) Act, 1950

The Act seeks to prevent improper use of certain emblems and names such as National flag, Ashok Chakra, etc., for professional and commercial purposes. These provisions will also help to avoid deceiving the gullible public.

This Act provides for detention of any person with a view to prevention of black-marketing and maintenance of supplies of commodities essential to the community.

12. The Indian Contract Act, 1872

Section 19 and 73 of the Act deals with the buyers' rights to avoid agreements made without free consent and to compensation for the loss and damage caused by breach of contract.

13. The Indian Standard Institution (Certifications of Marks) Act, 1952

In India any product manufactured as per standards laid down by the Indian Standards Institution may be certified under the I.S.I. (Certification Marks) Act 1952. The ISI mark of a particular design and including the reference number of the standard, constitutes the symbol of certification assuring the buyer that the marked articles satisfied the recognised quality standards. The ISI certified goods are subject to quality control checks and tests. They are produced as per the Indian Standards and specifications and find ready acceptance in all markets. They are the best safeguards against impure, bogus and substandard commodities. The ISI marks of certification is more than a claim by the manufacturer. The ISI was established in 1947. During the 48 years it has formulated a number of standards for foodstuffs, textiles, sports, goods, cookers, etc.
Needless to say that, in addition to all the provisions, the consumer has the right, as a citizen, to invoke the provisions of Articles 32 and 226 of the Constitution of India to approach the Supreme Court or the High Court by filing writ petitions. Further, the Articles 39 (b) and (c) direct the state to secure that the ownership and control of the material resources of the community are so distributed as best to subserve the common goods and that the operation of the economic system does not result in the concentration of wealth and the means of production to the common detriment.

These measures were well intentioned and have certainly been of great help to the consumer. However, the fact remains that the consumer continues to suffer from many disadvantages and disabilities and in some respects, he is worse off than what he was before. To a certain extent this is the fault of the consumer himself, who unlike other interest groups has failed to organise himself or even develop a consciousness of his problems and rights. The consumer-co-operatives movement has been especially weak and ineffective.

These reforms will not fall from the heavens. Nor would the government bears them about, unless it is subject to a strong and steady pressure. Only a strong consumer movement would be able to exercise such pressure and get for the consumer the protection and consideration which is rightfully due to him.

These Acts have been there on the statute book for years but, they have hardly prevented the consumer from exploitation, particularly those in the countryside. State Governments and local authorities have rarely succeeded in using them effectively to ensure that the consumer is not cheated on quality, price, weights, measurement etc.
The existence of many regulations is of course heartening, but their implementation still requires more serious handling. The slowness of legal implementation has been perhaps a reflection that the sense of urgency to protect consumer is not yet strongly felt, or at least is still on the last rank in the scale of priorities of the policy makers. In the application of these resultations, bureaucracy itself often suffers from inertia, weak co-ordination and slack control.

CONCLUSION

It can be concluded that there have been many efforts by many countries to provide statutory protections to the ailing consumers or consumers who are likely to be cheated. Thus, many laws and controls had been framed in order to protect the standards to be maintained in respect of consumables. It is further evident from the foregone analysis that consumers world wide have turned to the consumer protection laws as the last and perhaps only resort to get their grievances redressed. In India, too many consumer protection oriented legislations have come into existence over the years in order to help the consumers in respect of betrayals in the purchases of essential commodities, packaged commodities, drugs, agricultural products, misleading advertisements, black-marketing and adulteration.

REFERENCES

2. Ibid. p. 32.
3. Ibid. p. 45.
4. Ibid. p.50.