CHAPTER III

POLICY PERSPECTIVE

Policy refers to the intention of the government about what to do and what not to do, to enact decisions and to implement strategies. Policy making is one of the ways in which societal problems are sought to be resolved and as such is part of the problem solving activity of the society as a whole.\(^1\) Legislation provides the most obvious example of these intentions. It is also considered as the most acknowledged rules of conduct that guides administrative decisions. A well thought out public policy can help the government in a better societal management.\(^2\)

Consumer policy is essentially a principle or group of related principles with their consequent rule of actions and conditions that ensure successful achievement of certain objectives. Thus, a policy must be consistent and integrated in such a manner that it contributes to the accomplishment of the desired objectives. A well planned policy defines the ends to be achieved but does not prescribe any detailed procedure to attain them.\(^3\)

Policy also supplies standard guidelines to help an administrator to plan and act. It is to be distinguished from goals or objectives on one hand and operative steps on the other.\(^4\) Thus,

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making every consumer educated or aware towards buying goods for self consumption and not getting trapped by the seller is an objective and the measures taken to protect the interests of the consumers by the government is a policy designed to realise this goal.\textsuperscript{5}

The shaping of consumer policy is one of the paramount concerns not only of all the developing countries but also of the developed ones. It is not something to be rigidly prescribed for all times to come. On the contrary, it is something ever-growing, ever-evolving and ever-changing. Since consumerism is an agent of change and an instrument of economic and social transformation, it gets intensely linked with the aim of consumer protection i.e., the process of social development. In general, consumer protection is one of the major factors to bring planned change in any society.\textsuperscript{6}

Every change in policy has to consider the experience of the past, the situation prevailing in the present and the hopes entertained for the future. A policy cannot be considered in isolation, cut off from the environment in which it is evolved. At the same time environmental factors such as geographic, demographic variables, social, political and economic systems etc. place limits and constraints upon it.\textsuperscript{7} The past, present and future too have bearing on policy formulation and implementation. Sometimes social, economic and religious elements cause a passive acceptance of policy

decisions and certain groups of the society do not expect much from the system.\textsuperscript{8}

Thus, policy perspective requires more analytic approach in the context of changing goals, shifting environment and varying circumstances of the society. The role of the state in this regard is predominant and significant because of its functions with area power planning, addressing social priorities, controlling people's expectations and solving social problems. Since India is a multi-lingual, multi-cultural and multi-religious society, social characteristics, values governing them have important bearings on all policies including consumer policy. Consumer policy and values underlying them interact with moods and fashions of the period and it will be difficult to identify the leading values. In fact, all values have social and economic connotations when they are translated into operational statements of policy.\textsuperscript{9} To be more specific, values are either 'basic' or 'secondary' i.e. instrumental or consequential values. Then the basic value is held to be right by those who believe it. The concepts of equality of opportunity, freedom, social security or information may be held as 'basic' values. Basic values may have several defences in terms of evidence that lead to good or otherwise desirable or undesirable consequences. But these are necessary for policy statement support.\textsuperscript{10}

In India, though the consumer has always been conceived as a top priority item in various policy statements of the government after

Independence, yet this crucial area of concern has continued to suffer from a variety of social, economic and other reasons. In this chapter, various policies that have been enacted to protect the consumers have been discussed with special reference to the Consumer Protection Act, 1986.

**LEGISLATION IN INDIA**

After independence, the government through different regulations safeguarded the interests of small and large scale business. It was consumer pressure which compelled the government to enact certain legislations and assume other roles for protecting the consumer.

As regards the legislative action by the government, various laws have been enacted in our country. Since the law is the means of administration of justice, it exists to bind the community together. The government over the years has aimed itself with many acts and issued statutory orders and notifications for ensuring fair prices, equitable supplies and quality control of different products and services. The fundamental law of the country is related directly or indirectly with the philosophy and mechanism for the protection of interest, health and happiness of the consumer by legal control of immoral and anti-social practices of producers and sellers. The various articles in the constitution of India have direct or indirect relevance with regard to the various aspects relating to the life of the consumers. The provisions include equality, \(^{11}\) consumer policy \(^{12}\) and freedom of Trade

\(^{11}\) Article 14 i.e. Equality before the law.

\(^{12}\) Article 39 (a), 39(c), 39(e), i.e. to secure proper distribution of wealth and production and protect childhood and youth against exploitation. Article 43 and 47 promises decent standard of life and improvement of public health.
and Commerce and viewing to High Court in case of violations of consumer rights.\textsuperscript{13}

\textbf{GENESIS OF LAW RELATING TO CONSUMER PROTECTION}

As already stated, the need to ensure the basic rights to health safety of consumers has long been recognized the world over. The Indian Government too has passed many laws and the same have been amended from time to time to put more teeth into the enforcement machinery to ensure better protection for the consumer. The action taken by the Indian Government is in consonance with the growing legal systems in other parts of the world. In fact, the new horizons emerged in Indian legal system only after this country attained independence. Selected Statutes intended to protect the consumer against different forms of deceit, injury and exploitation have been mentioned below. Some of them do not mention the consumer interest specifically but do provide for consumer protection in some way or the other. The general enactments * other than the law of torts that are ultimately aimed at protecting the interest of the consumer are:-

\textbf{The Indian Contract Act, 1872}

The Indian Contract Act determines the circumstances in which promises made by the parties to a contract are legally binding on them\textsuperscript{**}. It defines the remedies that are available in a court of law against a person who fails to perform his contract, and prescribes conditions under which the remedies are available. However, it does not deal with contracts of sale or mortgage of immovable property,

\textsuperscript{13} Article 226 and 32 i.e. Power of High Courts to issue writs and Right to Constitutional remedies.

\textsuperscript{*} For details see Annexure III

\textsuperscript{**} For details see Sections 14-19.
leases, etc. Similarly, the Act does not deal with law of partnership, sale of goods, negotiable instruments, insurance etc.

Under the Act all agreements are contracts if they are made by free consent of parties who are competent to contract with a lawful object. It means that an agreement is composed of two elements:-

(a) The party making an offer.
(b) The party to whom the offer is made.

To make a contract it is essential that :-

(a) The consent of the parties to the agreement must be free and genuine. The consent of the parties should not be obtained by misrepresentation, fraud, undue influence, coercion or mistake.
(b) The parties to a contract should be competent to enter into the contract.
(c) The agreement must be supported by consideration on both sides. In cases the promise is not supported by consideration, the promise will be *nudum pactum* and it is not enforceable at law.
(d) The object of the agreement must be lawful and not one which the law disapproves.
(e) There are certain agreements that are expressly declared illegal or void by the law. Such agreements are not enforceable at law.
(f) The meaning of the agreement must be certain or capable of being certain.
The terms of the agreements should be capable of performance. An agreement to do an act impossible in itself cannot be enforced.

A contract may be oral or in writing. It must comply with all necessary formalities like registration and attestation. If these legal formalities are not carried out, then the contract is not enforceable at law.

**The Indian Sale of Goods Act, 1930**

Under the Act, Goods includes every kind of movable property other than actionable claims and money. It refers to stocks and shares, growing crops, and things related to land which are agreed to be severed under the contract of sale.

A sale of goods is a contract when the seller agrees to transfer the property in goods to the buyer for a price. Under a contract of sale, the property in goods is transferred from the seller to the buyer it is called a sale but if the transfer of the property in the goods takes place in future, the contract is called an agreement to sell. An agreement to sell becomes a sale when the agreed time elapses subject to the transfer of goods.

**Essentials of a Contract of Sale:-**

(a) There must be at least two parties i.e., seller and buyer.

(b) There must be transfer or agreement to transfer the ownership of goods.

(c) Consideration in a contract of sale has necessarily to be ‘money’, i.e., the legal tender.

(d) The sale must conform to the essentials of a valid contract.
The doctrine of Caveat Emptor is the fundamental principle of the law of sale of goods. It means that the buyer must inspect the goods to find out if the goods suit his purpose. Therefore, before buying any goods, the buyer has to satisfy himself about the quality he purchases. Still, a buyer is injured by a product transferred to him under a contract of sale, the Act provides certain remedies to the buyer in some situations which are:-

1. **Condition as to title**

   It provides that in a contract of sale unless the circumstances of the contract show different intentions. The seller has the right to sell the goods. As a consequence of this, if the title turns out to be defective, the buyer is entitled to reject the goods and claim refund of the price plus damages. This also includes where the buyer has used the goods.

2. **Sale by description**

   It provides that the goods are in correspondence with the description as well as the sample.

3. **Condition as to Quality or fitness**

   (i) The seller can be held liable if:-

   (a) The buyer makes known to the seller the purpose of requirement.

   (b) The buyer relied on the seller’s skill or judgement, and

   (c) The seller’s business must be to sell goods.

   (ii) The goods sold are of merchantable quality only if:-

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(a) Goods are bought by description.

(b) From a seller who deals in such goods.

(c) An implied warranty or condition as to quality and fitness on account of custom of trade.

(iii) The Act also provides for remedies available to the buyer against the seller in case of breach of warranty. These remedies are:-

(a) To set up against the seller the breach of warranty in diminution or extinction of the price.

(b) To sue the seller for damages for breach of warranty.

(A) The Indian Penal Code, 1860.

The Indian Penal Code is the most relevant Act, for the prevention of food adulteration. The Indian Penal Code seeks to restrict malnutrition caused by circulation of harmful food articles among the people. It contains certain provisions which are in connection with consumer protection and satisfaction. It provides penalties for offences of the following:-

1. Any person who fraudulently uses any false weight or false measure is punished with imprisonment of either one year or with fine or both.

2. Any person who is in possession of any instrument for weighing or measuring, which he knows is false is punished with imprisonment of one year, or fine or both.

3. Any person who makes or sells any false instrument for weighing or measuring and the same is being used as true is
punished with imprisonment for a term of one year or fine or both.

4. Whoever adulterates any article, food or drink and intends to sell such article is punished with imprisonment for a term extending to six months or a fine of Rs1000 or both.

5. Whoever adulterates any drug or medical preparation so as to lessen the efficacy knowing that it will be used for medical purposes is punished with imprisonment for a term extending to six months or fine of Rs.1000 or both.

6. Whoever voluntarily corrupts the water of any public spring or reservoir is punished with imprisonment for a term extending to three months or fine of Rs. 500 or with both.

7. Whoever voluntarily vitiates the atmosphere in any place that is injurious to the health of persons in general dwelling is punished with fine of Rs 500.

(B) Code of civil procedure, 1908.

It provides that in order to prevent the ends of justice from being defeated, the court may :-

1. Issue a warrant to arrest the defendant and bring him before the court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security, commit him to the civil prison.

2. Direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the court or order the attachment or any property.
3. Grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold.

4. Appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property.

5. Make such other interlocutory orders that may appear to the court to be just and convenient.

Besides, the Civil and Criminal Code, *the relevance to protect the interest of consumers is evident from the plethora of laws enacted by the government from time to time.

**(C) Drugs and Cosmetics Act, 1940**

To give effect to the recommendations of the Drug Enquiry Committee with which the Central Government was concerned the Drugs and Cosmetics Act, 1940 was passed by the Governor General. The Select Committee appointed by the Legislative Assembly was of the opinion that a more comprehensive measure, provided for the uniform control of manufacture and distribution of drugs as well as of import was desirable. The provincial legislatures empowered the Central Legislature to pass this Act for regulating the matters relating to the control of drugs which was in the Provincial Legislative list under Section 103 of the Government of India Act, 1935.\(^{14}\)

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\(^*\) This Act provides special power to the executive magistrate in case of violation of consumer rights.

The Drugs and Cosmetics Act, 1970 was enacted to control the quality of drugs and cosmetics. The Act made it obligatory to obtain a licence to manufacture or sell any of the articles mentioned in it.

The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 was an attempt to control the advertisements of drugs in certain cases, to prohibit the advertisement for certain purposes of remedies alleged to possess magic qualities. These advertisements tend to cause the ignorant and unwary to resort to self-medication with harmful drugs and appliances. Therefore, the Act made it necessary to put a stop to such undesirable advertisements in the public interest.\textsuperscript{15}

Section 4 of the Drugs (Control) Act, 1950 enabled the Chief Commissioner to do the following:-

(i) fix the minimum price to be charged,

(ii) fix the maximum quantity as possessed by a dealer or producer.

(iii) fix the maximum quantity to be sold to any person in a single transaction. This maximum is different in different localities or for different classes of dealers or producers.

The Dangerous Drugs Act, 1930 aimed at controlling the operations relating to dangerous drugs, to take measures to suppress the contraband traffic in and abuse of dangerous drugs.\textsuperscript{16}


The Drugs Act, 1940 intended to regulate the import, manufacture, distribution and sale of drugs. Section 18 of the Act prohibited the manufacture and sale of drugs which were not of standard quality under Section 26. Any person can submit for test or analysis any drug to a government analyst, purchased by him and he was entitled to receive a report of that test.

The Act also provides for the establishment of a Drugs Technical Advisory Board and the Central Drugs Laboratory wherein the technical experts are appointed to advise the Central and the State Government on technical matters.  

The Act, 1940 is consumer protection legislation, concerned with standard and purity of the drugs manufactured in India and control of the manufacture, sale and distribution of drugs. The Act was amended in 1986 to promote voluntary consumer movement and to ensure involvement of recognized consumer associations in the enforcement of the Act. The powers were conferred on the recognized consumer associations to initiate legal action on the basis of test reports given by the government analyst.

Section 23 of the Act provides for the procedure of taking cognizance of offences. It states that the prosecution can be initiated by an inspector or by the person aggrieved or by a recognized consumer association only.

17 The main object of the Drugs and Cosmetics Act, 1940 is to prevent sub standards in drugs, for maintaining high standards of medical treatment. This will stand defeated if the necessary concomitants of medical or surgical treatment are allowed to be diluted. The very same evil which the Act intends to eradicate would continue to subsist. In a case where large quantity of spurious drugs were manufactured by a person and passed off as goods manufactured by a firm of repute, the court was of the view that such an act is an anti-social act of a very serious nature and the punishment should always be severe and not lenient. Chimanlal Jagjivandas Sheth. VS State of Maharashtra, Air 1963 SC 665.

18 Under Chapter IV of the Drugs and Cosmetics Act, 1940.
Another legislation that is related to the substandard products is the Bureau of Indian Standards dealing with foodstuff, cosmetics, textiles and many other products. The grading and marking of commodities like ghee, fruit and pulses are regulated by the AGMARK which comes within the purview of the Agricultural Produce Grading and Marking Act, 1937.

The average Indian consumer noted for his gullibility and apathy is likely to get cheated on all the three fronts of quality, quantity and price by unscrupulous elements whether in manufacturing or service industry or in trade. Therefore, to ensure quality and safety, the Government of India provides standard goods. The ISI mark of certification ensures satisfaction and safety of products. Before the standard mark 'ISI' is granted to any product it is ensured that the manufacturer's goods comply strictly with the relevant standards set by the Bureau.

The Bureau of Indian Standards is making valuable contribution to economics and industrial development of the country by developing standards and specifications needed by users and industries and promoting their implementation. With the changing socio-economic environment, higher pace of industrialization and technological advancement, the existing standardization set-up at the National level was felt to be inadequate to meet the needs of the emerging situation and both the scope and authority were found to be inadequate. It was, therefore, decided by the government to

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restructure the existing set-up of ISI and invest it with statutory authority to respond to these needs.*

The membership of the Bureau is broad based and all important interests are represented like Members of Parliament, Ministers of State Governments, nominees of Central Government, Ministries and Departments, farmers, consumer organisations, academicians, research industry and professional associations. The Minister for Parliamentary Affairs, Food and Civil Supplies is the President of the Bureau. A broad-based Executive Committee has also been set up to perform, exercise and discharge the functions delegated to it by the Bureau.

Objectives of the Bureau of Indian Standards

The main objectives of the Bureau are to:-

1) Prepare and promote the general adoption of standards on national and international basis relating to commodities, material, methods of test, and codes of practices.

2) Promote standardisation, quality control and rationalisation in industry and commerce.

3) Coordinate the efforts of producers and users for the improvement of materials, products, appliances, processes and methods.

*At the time of introduction of the Bill in Parliament on 26 November 1986, the Minister for Parliamentary Affairs, Food and Civil Supplies had said, "the bill envisages to broaden the activities of ISI, making its working more effective and ensuring interaction with various interests, both within the country and abroad.... while the bureau will now become a statutory body, it will have operational freedom in its day to day activities.....The Government will provide from time to time direction to bureau to ensure that its activities are in line with the national policies and priorities".
4) Provide for registration of certification marks applicable to the products, commodities that conform to standards laid down.

5. Arrange facilities for testing of commodity process.

Based on these objectives the Act lays down the following functions of the Bureau.\(^{20}\)

1) To establish, publish and promote as prescribed standard in relation to any article or process.

2) To recognise standards established by any other institution in India or elsewhere, in relation to any article or process.

3) To specify a standard mark to be called the Bureau of Indian Standards, Certification Mark containing prescribed particulars to represent a particular Indian standard.

4) To grant, renew, suspend or cancel a license for the use of the standard Mark.

5) To levy fees for the grant or renewal of any license.

6) To make inspection and take sample of material or substance to see whether the Standard Mark used conforms to the Indian Standard.

7) To seek recognition of the Bureau and of the Indian Standards outside India on terms and conditions mutually agreed upon by the Bureau with any corresponding institution or organisation in any country.

8) To establish, maintain and recognise laboratories for the purpose of standardisation and quality control.

9) To undertake research for the formulation of Indian Standards in the interest of consumers and manufacturers.

10) To recognise institutions in India or abroad which are engaged in the standardization or improvement of any article or process.

11) To provide service to manufacturers and consumers of articles on terms and conditions agreed upon.

12) To appoint agents in India or abroad for inspection and testing.

13) To establish branches, offices in India or abroad.

14) To inspect any article or process in relation to the Indian Standards intended to be brought into India from a place outside India.

15) To coordinate activities of any manufacturer or consumers engaged in standardization and improvement of the quality of any article.

The Act prohibits improper use of the standard mark. It states that no person who has been granted a license can use the Standard Mark on any colorable imitation unless such article conforms to the Indian Standards.21

Similarly, the Act also deals with the penalty for improper use of the standard mark. The complaint for the offences under the Act is made under the authority of the government. Even the recognized consumer associations have been given a locus standi to make a complaint for the cognizance of offences by the court.22

21 Ibid. Section 21.
22 Ibid. Section 33.
Standardising the quality of product did not prove to be beneficial in all aspects. Hence, it was followed by the Prevention of Food Adulteration Act, 1954. The Act prohibited the manufacturer to sell food without the necessary license, to sell food prohibited by health authorities to prevent the spread of disease.

The Parliament empowered the Central Government and State Governments to take steps for the supply of good quality of food to the consumers. The Central Government has constituted a committee called the Central Committee for Food Standards on matters arising out of the administration of this Act and to carry out the other functions assigned to it under this Act. This committee consists of representatives and experts from different fields but the consumer, for whom the policy decision is to be made, is not directly represented in the committee.

The consumer, who is prejudiced by the sale of adulterated foods, comes directly into the picture only under section 12 of the Act. He can get any article of foods analyzed by the public analyst on payment of prescribed fees. The Prevention of Food Adulteration (Amendment) Act, 1996 had further empowered recognized consumer associations to get any article of foods analysed by the public analyst on payment of prescribed fees. However, the right of the purchaser is restricted by laying down a condition that at the time of purchase, the vendor must be informed about the intention to have the article of foods analysed.

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23 See Section 3(2) of the Prevention of Food Adulteration Act, 1954.

The punishment for adulteration under the Act is not deterrent. Imprisonment can be awarded only if some officers were specifically appointed for the particular work and they were found guilty. A consumer does not have the knowledge or means of detecting the types and extent of adulteration in the food articles he buys. It is, therefore, the responsibility of the government to protect the consumer against widespread adulteration. That is why, food adulteration has been declared a punishable offence in this country under the Prevention of Food Adulteration Act, 1954. But it is not possible to bring a culprit to book without actually establishing the fact of adulteration of a food article.


Food standards provide the basis for determining the degree and extent of adulteration while standards developed by the Central Committee for Food Standards lays down the norms and minimum standards below which a food is considered unsafe for human consumption. Indian Standards provides detailed quality specification, methods of tests and sampling procedures. These two sets of standards then play a complementary role in safeguarding the interests of consumers.

The Central Government prescribes the physical characteristics, configuration, constitutional details, material equipment, performance, tolerance, methods of procedure of tests in relation to any weight or measure in accordance with the recommendations made by the International Organisation of Legal Metrology. But if there is no recommendation, the Central

25 Section 21 prohibits use of non-standard weight or measure or numeral.
26 Section 22 provides that no weight or measure can be manufactured unless it conforms to the standards established under this Act.
Government has been empowered to do so as it thinks fit. Further, the Central Government can also make changes of minor nature in the recommendations of International Organisation of legal metrology where it is not reasonably practicable to give effect to such recommendations made by the International Organisation of Legal Metrology.

The Director has the power to inspect at any time and any place in case a person gives any information that any inter-state commerce had taken place.

The Director can seize any weight, goods or any record if he believes he has evidence indicating that any offence punishable under this Act had been committed in relation to any inter-state trade or commerce.

In case any offence has taken place a punishment of imprisonment of two years and fine of Rs 5000 is prescribed to the offender. Any person aggrieved can appeal against an order to the Director within 60 days from the date on which the impugned order was made.

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* In Usman Ali Khan vs State, the Court said that undoubtedly the adulteration of food articles is a serious matter which may endanger the lives of innocent people, who without doing any wrong to the seller, enable them to make the profit at the expense of their health. These innocent purchasers purchase the article in good faith and therefore it must be checked by awarding adequate sentences to the offender.

** Sulaman Shamji vs Emperor AIR 1943 Bombay 445. In maximum cases seeing their complex nature, it becomes very difficult to prove intention behind the adulteration in food stuffs resulting in acquittal of culprit in many such cases. This lacuna made the Indian Penal Code ineffective to protect the consumer’s interest and defy the evil of adulteration in food and drink.
Similarly, the Central Government is authorized the pre-packing of commodities. Commodities according to this Act means those things which are useful or serviceable, particularly articles of merchandise movable in trade, goods, wares, and merchandise of any kind. The word movable is broader than merchandise, and, in referring to commerce includes almost any article of movable or personal property.

Provisions relating to wholesale dealer and retail dealers.

1. No wholesale dealer is allowed to sell, distribute, deliver, display or store for sale any commodity in the packaged form unless the package complies with, the provision of the Act and the rules.

2. No retail dealer can sell any commodity in packaged form at a price that exceeds the retail price.

3. Where a package in which a commodity has been pre-packed is opened and the commodity contained in it is sold to people, the price charged from the purchaser should bear the same proportion to the price of the package. If the package is opened for selling such commodity in unpacked form the price might exceed by not more than 5 per cent of such proportionate price. If the package is damaged in transit then the commodity is sold at a price less than the proportionate price there of.

4. Where, after any commodity has been pre-packed for sale any tax payable in relation to such commodity is increased.

5. It does not apply to a package that is not required under the rules to indicate the month and the year in which it was pre-packed.
6. No retail dealer is permitted to alter the sale price, indicated by the manufacturer, on the package or on the label affixed thereto.

A batch of packages is approved if it is found that: -

a) The statistical average of the net quantity contained in the (sample) packages is equal to the quantity declared on the package.

b) The number of packages, showing an error in deficiency greater than the maximum permissible error is not more that five per cent of the packages selected as samples.

c) The extent of error in deficiency in none of such sample packages exceeds twice the maximum permissible error.

d) Each package should bear on a label-affixed thereto- the declarations required to be made under the rules.

If, on the determination of the quantity contained in the sample packages, the Director finds the package deceptive the manufacturer must re-pack and re-label the package. In the event of the omission on the part of the manufacturer, the Director can take punitive action and take adequate steps for the safe custody of package in a court as evidence.

28 Sections 50 to 53 provide penalties for non-contravention of the provisions of the Act, 1976.

The Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1955

It was enacted by the parliament with a view to provide for the detention in certain cases for the prevention of hoarding and black marketing to the community. The most significant of laws that enables the government to deal effectively with trading activities that are adverse to the consumer is the Essential Commodities Act, 1955. The very object of the ECA as well as its predecessor enactment the Essential Supplies (Temporary Powers) Act, 1946 was to check the inflationary trends in prices and to ensure equitable distribution of consumer commodities. Hence, wide powers were conferred on the government by the Act. The ECA as well as the Essential Supplies Act initially dealt with two classes of essential commodities.

(i) basic non-perishable commodities like coal, textiles, iron and steel and

(ii) daily consumption perishable commodities like foodstuffs, cattle feed etc.

The ECA vested wide powers on the Central Government to meet the objectives of the Act, and to issue control order for the same. The power exercisable by the Central Government in this regard extends even to introduce ban in trade and commerce, or prohibit the circulation of any particular article or commodity, which in the opinion of the Government is not in the interest of public consumption.

* Will be herein referred as ECA

30 Government of India Report. The Essential Commodities Act under Section 2(a).
The powers conferred on the Central Government are of a general and particular nature and at the same time both pragmatic and purposive, which any government would undoubtedly need if it were to safeguard its domestic market and economic order. The powers are meant to enable the government to see to the equitable distribution and the availability of commodity in the market at fair price to the consumer. The government seeks to regulate by licenses and permits the production, manufacture, storage, transport and distribution. Besides, the government has the supplementary power to enter and search premises, vehicles, vessels and aircraft and seize them. It empowers the government 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.

Though the provisions of the ECA have armed the government with substantial power to ensure regular supply and fair distribution at reasonable prices of a variety of consumable articles. However, despite the vast powers enabling the government to regulate, control, supply and distribution of goods, the provisions are rendered ineffective for the lack of enforceability and the penal provisions are found meaningless.


The Government of India, by a Notification dated April 16, 1964 appointed the Monopolies Commission under the Commission of Inquiry Act of 1952. The main purpose was to inquire into the extent an effect of concentration of economic power in private hands, and

31 Ibid. Section 3.
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the prevalence of monopolistic and restrictive trade practices in sectors other than agriculture, with special reference to their causes and consequences. The Act is largely based on the provisions of the draft bill contained in the Report of the Monopolies Inquiry Commission dated September 28, 1965. The Act is not to outlaw either the concentration of economic power or monopolistic and restrictive trade practices, but to curb them only when they are not conducive to the common good. The Act thereby implicitly recognizes that concentration of economic power in private hands is one of the consequences of economic growth.

The objective of the Monopolies and Restrictive Trade Practices Act as declared in the preamble is to ensure that the operation of the economic system does not result in the concentration of economic power to the common detriment, to control monopolies and to prohibit monopolistic and restrictive trade practices which are prejudicial to public interest.

In order to give effect to these objectives, the MRTP Act made sufficient provisions to regulate expansions, mergers and amalgamation of undertakings. It controlled the appointment of directors in dominant undertakings having assets of Rupees one crore or more and of undertakings which by themselves or with interconnected undertakings have assets of not less than Rupees 20 crores in value. Also, to regulate the starting of new undertakings which after establishment would become interconnected undertakings having assets worth more than Rupees 20 crores.

* will be herein referred as MRTP.

However, the most important provisions from the point of view of consumers are those which speak about the control over and prohibition of monopolistic and restrictive trade practices as are found to be prejudicial to the public interest\textsuperscript{34}. A monopolistic trade practice is prejudicial to public interest if it:-

1. Increases unreasonably the cost of production, supply or distribution of goods.
2. Increases unreasonably prices or profit.
3. Reduces unreasonably the competition or prevent unreasonably supply of goods to consumer.
4. It results in deterioration in the quality of goods.

The restrictive trade practice means a trade practice which has the effect of preventing or restricting competition in any manner that: -

1. Tends to obstruct the flow of capital or resources into the stream of production,
2. Tends to bring about a manipulation of prices or condition of delivery in such manner as to impose on the consumers unjustified costs or restriction.

The MRTP Commission consists of not less than three and not more than nine members. They are appointed by the Central Government with a Chairman who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court\textsuperscript{35}. The Monopolies Commission has investigatory, advisory and adjudicatory function. It is vested with the power of a civil court to call witnesses and receive evidences. It can inquire into any restrictive trade practices on a

\textsuperscript{34} Government of India Report. The Monopolies and Restrictive Trade Practices under Section 32.
complaint from any trader or consumers' association having not less than 25 members or upon a reference made by the Central or State Government, or upon the application made by the Registrar of Restrictive Trading Agreements³⁶.

If the commission finds any monopolistic undertaking indulging in any restrictive trade practice it can, besides making an order refer for appropriate action³⁷. The commission can undertake an inquiry into a monopolistic trade practice either *suo moto* or on a reference made to it by the government. But the commission has no power to make final order in such a case. It has to report its finding to the government which has the power to make final order.

Growing competition at national and international markets and rising costs, the MRTP Act in view of this, empowers the Central Government to grant relaxation in suitable cases.

The state is under a duty to control monopoly and secure an equitable distribution of wealth. However, state monopoly does not offend the constitution. In fact, monopolization by state is recognized by the constitution. The law creating state monopoly usually contains proper safeguards to check abuse of such powers.

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³⁶ In the case of Director General of Investigation and Registration vs Complement Motors, Case 225, 1987 (MRTPC), the enquiry was regarding an advertisement by one of the dealer in terms of diagnostic equipments, experience and spare parts. The Commission observed that the effect of the advertisement was misleading as far as the service was concerned, because the equipment was practically the same with that dealer as that of any other dealers and therefore it can not be said that they excel in the giving of sevice.

³⁷ In the case of Director General (I and R) vs Air Command India Ltd., (UTPE No 292/88, 1989 (MRTPC), the enquiry was regarding non-installation of air conditioners. Full price of the air conditioners was paid by the complainant. The Commission held that the respondent falsely represented that his goods were of particular standard, quality, grade, style or model and as such the respondent indulged in unfair trade practice within the meaning of Section 36 A (1)(i) of the MRTP Act, 1969.
Elaborate provisions are made in MRTP Act 1969, to control prices and regulate distribution and supply. The MRTP Commission is given wide powers to investigate and make orders for modification or cancellation of restrictive trade agreements. It has the power to increase the cost of production, distribution or supply of goods, increasing prices, reducing competition or deteriorating the quality of any goods or performances of any services. Minimum price maintenance is declared void. Withholding of supplies for refusal to maintain minimum price is prohibited. Penalties are prescribed for violation of various provisions of the Act.38

Another practice restrictive of competition is the insistence of many manufactures that their goods may not be sold below the prices as indicated by them. This is described as re-sale price maintenance. This kills the competition between the actual distributors and even keeps the prices which the ultimate consumer has to pay higher than they would otherwise have been.

The Central Government prescribes the physical characteristics, configuration, constitutional details, material equipment, performance, tolerance, methods of procedures of tests in relation to any weight or measure in accordance with the recommendations made by the International Organisation of Legal Metrology. But if there is no recommendation the Central Government has been empowered to do so as it thinks fit. Further, the Central Government has been authorized to make changes of minor nature in the recommendation of International Organisation of Legal Metrology where it is not reasonably practical to give effect to such

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recommendation made by the International Organisation of Legal Metrology.

The control over monopolies and restrictive trade practices is the most generally accepted and stable form of governmental intervention in the affairs of a company. The purpose is to promote free competition. But even free market competition may not exercise a civilizing influence and may lead to debasing of morals, undermining of cultural standards and wholesale adulteration of food. In smaller companies quality and prices are subject to ordinary pressures of market competition. But competition has less apparent effect on larger companies that dominate the industrial and commercial activities in particular spheres. The increasing concentration of commerce and industry in diminishing number of persons is not adequately checked. The emergence of multinational corporation, whose operations are so extensive as to make futile any attempt to control them by a single national government, makes the problem more difficult. The Companies Act does not provide a satisfactory legal framework or meaningful control of large modern organisations.

There is also provision for reconstruction or amalgamation of companies by Central Government for eliminating costly and unproductive competition or to promote a company of sufficient size to compete effectively with its foreign competitors.\(^{39}\) The MRTP Act regulates the formation, expansion, merger and amalgamations, and holding of managing directorship. It clothes the Central Government with power to nullify any act done in contravention of such provisions. It also confers on the Central Government the power to direct the division of such undertaking on the recommendation of the MRTP Commission. Indian industry suffers from specific evils as technical

\(^{39}\) Ibid., Section 23
backwardness, growing competition at national and international markets and rising costs. The MRTP Act in view of this, empowers the Central Government to grant relaxation in suitable cases.

Analysis of the Acts

It is evident from above that about two dozen Acts have been enacted from the period of Contract Act, 1872 to the MRTP, Act, 1969 and it is observed that none of them is complete in all respects. The intentions behind enacting these legislations were to regulate various marketing activities as they suffered from a number of defects. The analysis of the various acts leads us to the following observations:

1) The Contract Act suffered from various lacunae and did not contain any positive rule of law governing the legal position of parties to a contract.

2) The main drawback with the Essential Commodities Act, 1955 is that it does not provide for the time limit. Starting from drawing the samples to the furnishing of report by the Public Analyst. The legislation does not provide for time limit for the prosecution.

3) The words 'not reasonable delay' are ambiguous. The delay generally provides more time to the authorities for contacting the traders and suggesting them ways and means how they can get their seized goods recovered by payment of illegal gratification. Moreover, Essential Commodities Act is silent as to how the price would be determined in case of essential commodities.

4) The standard prescribed under the Prevention of Food Adulteration Rules 1955 in respect of various articles of food
drinks is not exact standards of quality. There are minimum standards instead of raising the standard to the optimum levels the proposed draft of changes in rules sought to lower further the existing standards (in respect of certain articles of food and drink) to the prejudice of the consumer.

5) The lenient view of judiciary is also clear from the provisions of Protection of Offender Act, 1958 to offences relating to food adulteration. The Act fails to provide for mandatory standard of identity and quality for all goods which would force the law in cases involving prosecution for adulteration and misbranding.

6) The implementation of Food Adulteration Act has been rather tardy. The government has never insisted on packages giving complete information on food labels. Disclosure of all ingredients has never been made compulsory. In case of drugs, the drug controller never gives wide publicity to drugs withdrawn or decertified. Further, drugs do not indicate the side effects that are likely to be caused by them.

7) The conditions and stipulation under Hire Purchase Agreement governed by Sale of Goods Act, 1930, do not appear to be favourable to customers/hirers and as such it is the seller/owner who takes advantage out of the stipulations/conditions under hire purchase agreement.

8) The MRTP commission has cumbersome procedure to deal with the customers’ complaints and general disregard by the official agencies. It takes four to five years for the consumer organisations to get justice from the commission while industrial houses engage lawyers at high cost.
The MRTP Act had earlier empowered the MRTP to take legal steps to prevent the exploitation of the consumer through unfair practices. But the bureaucracy and politicians in power had managed carefully to keep the public and cooperative sectors out of its purview. But with the passage of Consumer Protection Act 1986 the MRTP Act relegated to the sidelines, and the CPA 1986 occupied centre-stage.40

This led to a lot of resentment and criticism from the consumer and the business organisations, and persistent demand was made to bring these two sectors within the ambit of the MRTP Act. This made the Government, while formulating the Consumer Protection Bill, cover not only “products” but also “services” and make it applicable to the private, public as well as cooperative sectors. It thus provided to be the magna carta of the Indian consumer. In fact, to make all these acts more forceful, the Consumer Protection Act 1986 was formulated.41

According to the preamble, the act provides for better protection of the interests of consumer and for that purpose makes provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith.

41 The Consumer Protection Act 1986 had received the President's assent on November 24,1986. It contained 31 Sections and 4 Chapters. In terms of Sub- Section (3) of Section 1, the government issued two notifications on April 1 and June 10, 1987 providing that the provision of Chapters I,II, and IV would come into force on April 15, 1987 and those in Chapter III dealing with consumer redressal agencies on July 4, 1987. The Act applied to the whole of India except the state of Jamnui and Kashmir.
The Act appears to be a comprehensive legislation* with its main thrust on providing single, speedy and inexpensive redressal of consumer grievances under a three tier quasi-judicial redressal agency at the District, State and National levels.*

-The salient features of the Consumer Protection (Amendment) Act, 1993 are as follows:-

-The scope of the Act has been enlarged so as to enable one or more consumers to complain on behalf of group of consumers having the same interest.

-The definition of 'unfair trade practice' contained in section 36 A of the Restrictive Trade Practices Act, 1969 has also been incorporated in the Consumer Protection Act.

-The goods bought and used by a consumer exclusively for the purpose of earning his livelihood, by means of self-employment have been excluded from the scope of 'commercial purpose.'

-The scope of the definition of 'service' has been extended by inserting 'housing construction' medical in the definition.

-The provisions have been inserted in the Act for the constitution of selection committees for the selection of non-judicial members of various redress agencies.

-The limits of the monetary jurisdiction of the District forum, the State Commission and the National Commission have been enhanced.

*A detailed analysis of the important provisions directly affecting the consumer have been dealt in Chapter 6 & 7.

A limitation period of two years for filing complaints has been provided.

The provisions have been made to counter additional powers on the CDRA's redress agencies toward costs to the parties; and to order to recall the goods which will be hazardous to life and safety of the people.

The Act is quite comprehensive to define the terminology so that there is no confusion or misinterpretation of terms in regard to their meaning and scope. A mention of few terms has been made here:-

(i) Complaint (ii) Complainant (iii) Consumer (iv) Goods (v) Service (vi) Consumer Dispute (vii) Defect (viii) Deficiency

The Act defines that any allegation that is made in writing by a complainant that the services hired by him are deficient or goods purchased by him are defective, hazardous or charged in excess is termed as a complaint. Similarly, a consumer or a group of consumers with common interest or any registered voluntary consumer association on behalf of the consumer can file a complaint before the Redressal Agencies. Then, any person who buys goods or hires services for self-use or consumption is a consumer but a person who obtains goods for resale or for any commercial purpose is not a consumer.  


*A purchase of goods could be said to be for a 'commercial purpose' only if two conditions were satisfied, namely- (i) the goods must have been purchased for being used in some profit making activity on a large-scale, and (ii) there should be close and direct nexus between the purchase of goods and the profit making activity. In Bhupender Guna v. Regional Manager and Others (II 1995 CPJ 139), the Supreme Court observed that whether the purpose for which a person had brought goods was a 'commercial purpose' has always been a question of facts and to be decided in the facts and circumstances of each case. If the commercial use was by the purchaser himself for the purpose of earning his livelihood by means of self-employment such purchaser of goods would yet be a consumer. The Supreme Court further observed that if a person who purchase a machine to operate it himself for earning his livelihood, he would be a consumer. If such a person took the
At the same time, the goods covered by the Act are all kinds of movable property other than actionable claims and money that are served before sale. Services in the Act relates to the facilities in connection with banking, financing, insurance, transport etc. but it does not include the rendering of any service free of charge\textsuperscript{43} or under a contract of personal service. Moreover, if any person, against whom a complaint has been made, denies the allegation of adopting unfair trade practices is said to be a dispute. The Act defines defect in a broader context as any fault, imperfection of shortcoming in the quality, quantity, potency, purity or standard whereas deficiency is any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance performed by a person in pursuance to any service.\textsuperscript{44}

\textsuperscript{43} The other part of the exclusionary clause relates to services renderd 'free of charge' broadly fall in three categories: (i) where services are rendered free of charge to everybody availing the said services, (ii) where charges are required to be paid by everybody availing the services, (iii) where charges are required to be paid by persons availing services but certain categories of persons who cannot afford to pay are rendered services free of charges.

\textsuperscript{44} In the case of National Insurance Co. Ltd. V. Dr. J.M. Goyal, (Appeal Case No. 98 of 1995) a practising medical practitioner owned a Maruti 800 motor car bearing Regn.No. CHK 8426 at Chandigarh. It was stolen on 11-10-92 and an FIR No. 141 was lodged regarding this theft the same day. The vehicle was insured with National Insurance Co. Ltd., Chandigarh. The District Forum held that the payment of insurance amount on 26-2-93 i.e. after a period of 4-1/2 months was late and ordered payment of interest from the date of theft till realisation at 18 per cent totalling Rs.6,960. It also allowed compensation of Rs. 1,000 to the complainant on account of harassment. However, counter to the decision of the District Forum, the State Commission held that the theft of the motor car took place on 23-10-92. The 'non- traceable' report was received from police 10-12-92. These two dates have not been controverted. If this was the position, the local insurance company was expected to make the payment to the claimant by 31-12-92. In other words, the reasonable period was from 23-10-92 i.e. the date of occurrence till 31-12-92. There was no justification for withholding the payment after 31-12-92. At the same time there was no justification for allowing interest from the date of theft itself. Thus, the delay for the period 1-1-93 till 26-2-93 remained unexplained. Therefore, the interest of 18 per cent for the period
Although the scope of certain definitions was widened, to include other services like housing and medical services yet the power provided in the Act to the CDRA's needs to be enhanced to protect the harassed consumer. In fact, the objectives of the legislation concerning consumer protection can only be achieved in its perfection if consumers become fully conscious of their rights and are aware of availability of simple and speedy remedies under the Act.

1-1-93 to 26-2-93 comes to Rs. 2,853 as interest and Rs. 1,000 as compensation was paid to the respondent. Therefore, the interest of 18 per cent for the period 1-1-93 to 26-2-93 comes to Rs. 2,853 as interest and Rs. 1,000 as compensation was paid to the respondent.