CHAPTER-III

CONSUMER PROTECTION

LAWS IN INDIA:

A HISTORICAL DEVELOPMENT
Though The Consumer Protection Act is unique in the protection of consumers, there are many laws in the country to take care of the consumer. It is also evident from the objects of the Consumer Protection Act, 1986, which states that this Act is to provide for better protection of interests of consumers. In this chapter, let us examine the role played by these legislations in checking the menace of the trading as well as the professional community. At the outset it is also relevant to mention that there are about 30 legislations in India looking after the interests of the consumer but the remedy under them is either through a civil court or a criminal court which at the most imposes penalty on the guilty.

The following are some of the Acts worth mentioning:

1. The Indian Contract Act, 1872.
4. The Drugs and Cosmetics Act, 1940.
8. The Indian Standards Institution (Certification Marks) Act, 1952.


15. The Industries (Development and Regulation) Act, 1951.

16. Law of Torts.

17. Indian Penal Code, 1860.

18. The Drugs (Control) Act, 1950.


20. The Competition Act, 2002

Of the above, the MRTP Act, 1969 was first of its kind in India providing for specific relief to the consumer through a separate judicial body (M.R.T.P. Commission). This was a right step in the right direction. Hitherto all remedies are either through civil courts or criminal courts, which are not really useful to the aggrieved consumer. There were two major amendments in 1984 & 1991. The new trend was virtually set by the introduction of the concept of unfair trade practice in MRTP Act through the Amendment Act of 1984. This was done on the recommendations of the Sachar Committee. Ever since, the subject of unfair trade practice started growing in leaps and bounds. Consumer cause has since been
highlighted through various decisions of the MRTP Commission. Hence it is worth starting with the MRTP Act, 1969.

3.1 MRTP ACT, 1969\textsuperscript{30}

The development of economic legislations is of recent origin. The economic legislations emerged in 70’s onwards. The MRTP Act, 1969 is one of its kinds which was enacted to meet the requirements of Articles 39(b) and (c) of the Constitution.

The (Amendment) Act of 1984 introduced the concept of unfair trade practices and also upgraded the position of Registrar of Restrictive Trade Practices to Director General of Investigation and Registration. Further, the powers of MRTP Commission were enhanced.

The (Amendment) Act of 1991 had sweeping changes in the Act. The control effect was mitigated and liberalization aspect has been highlighted. The Act was made applicable even to Government and public sector undertaking. All the provisions relating to concentration of economic power (except those dealing with division and severance of undertakings under Sections 27, 27A and 27B) have been removed.

Now, the emphasis is on promotion of health trade competition and protection of the interests of the consumer.

\textsuperscript{30} The Ministry of Corporate Affairs, Government of India has issued a Notification dated 28\textsuperscript{th} August 2009, whereby the most controversial the Monopolies and Restrictive Trade Practices Act, 1969 ("the MRTP Act") stands repealed and is replaced by the Competition Act, 2002, with effect from September 1, 2009. The MRTP Commission will continue to handle all the old cases filed prior to September 1, 2009 for a period of 2 years. It will, however, not entertain any new cases from now onwards.
Consumer Protection under MRTP Act, 1969

The Act is popularly known as four-in-one Act. This inter alia covers four areas viz.-(i) Concentration of economic power (C.E.P.); (ii) Monopolistic Trade Practices (MTP); (iii) Restrictive Trade Practices (RTP); (iv) Unfair Trade Practices (UTP).

To diffuse the concentration of economic power, the Act provides for division and severance of undertakings under Sections 27 and 27A respectively under the following circumstances:

(a) Division of trade, undertaking or interconnected undertaking can be ordered by the Central Government on the recommendation of MRTP Commission. The Commission makes the recommendation only when in its opinion, the working of an undertaking is prejudicial to public interest or it leads to monopolistic trade practice or restrictive trade practice. Further, it can initiate enquiry-

- Upon receiving a complaint of facts from any trade association or from any consumer or a registered consumers' association whether such consumer is a member of that consumers' association or not, or

- Upon a reference made to it by the Central Government or a State Government; or

- Upon its own knowledge or information.
Similarly the MRTP Commission may recommend severance of interconnected undertakings under Section 27A when it is convinced that the continuance of interconnection of the principal undertaking with any other undertaking is detrimental to

- The interests of the principal undertaking; or
- The future development of the principal undertaking or;
- steady growth of the industry to which the principal undertaking pertains; or
- the public interest

**Monopolistic Trade Practice (MTP)**

The expression monopolistic trade practice has been defined under the Act by Section 2(i). As per the provision, a monopolistic trade practice is one, which has or is likely to have the effect of:

1. Maintaining the prices of goods or charges for the services at an unreasonable level by limiting, reducing or otherwise controlling the production, supply or distribution of goods or services;

2. Unreasonably preventing or lessening competition in the production, supply or distribution of any goods or services whether or not by adopting unfair method or fair or deceptive practices;

3. Limiting technical development or capital investment to the common detriment;
4. Deteriorating the quality of any goods produced, supplied or distribute; and

5. increasing unreasonably -
   o The cost of production of any good; or
   o Charges for the provision, or maintenance, of any services; or
   o The prices for sale or resale of goods; or
   o The profits derived from the production, supply or distribution of any goods or services.

A monopolistic trade practice is deemed to be prejudicial to the public interest, unless it is expressly authorized under any law or the Central Government permits to carry on any such practice.

One shortcoming was that a consumer/consumer association is not empowered to lodge a complaint against monopolistic trade practice even though public is affected by it. Moreover, there is no practical utility of monopolistic trade practices since all the orders passed by the Central Government, against the undertakings have been stayed by the Supreme Court and none has been ever decided.

**Restrictive Trade Practice (RTP)**

The expression restrictive trade practice has been defined under Section 2 (o) of the Act. Certain trade agreements enumerated under Section 33 (1) are termed as deemed restrictive trade practices. The acid test of RTP is public interest. MRTP Commission has absolute powers to enquire and pass an order.
The Commission may initiate inquiry on:-

i. reference by Central or State Government;

ii. application by Director of Investigation and Registration;

iii. complaint by trade association, consumer or registered consumer association;

iv. its own information and knowledge.

Unfair Trade Practice (UTP)

Section 36A defines unfair trade practice. Sections 36A to 36E dealing with UTP were added by the (Amendment) Act of 1984, which were based on Sachar Committee’s recommendations. Misleading advertisements and certain other practices were termed as unfair trade practices. The (Amendment) Act 1991 made the definition of UTP actionable per se. MRTP Commission has absolute powers to inquire and pass orders against UTP.

Redressal Authorities under the Act

In the case of concentration of economic power and monopolistic trade practice, Central Government has the ultimate authority to pass an order. In the matters relating to restrictive trade practices and unfair trade practices, MRTP Commission has ultimate authority to pass an order. But in all the four categories, the Commission’s enquiry is compulsory and the Central Government cannot pass an order without the recommendation of the Commission.
Constitution and Powers of the Commission

The MRTP Commission is established by the Central Government. It consists of the Chairman and two other members. The Chairman should be the judge of a High Court or the Supreme Court. The other shall be prominent persons in certain fields like economics, law, public administration etc. The term of office is 5 years and a member is eligible for reappointment till he reaches the age of 65 years. In consumer forum, one of the members shall be a woman. There is no such provision under the MRTP Act.

MRTP Commission has power to issue temporary injunctions under Section 12A of the MRTP Act, 1969. It has also been given the power to punish for the contempt of its order under Section 13-B of the Act. This has been added under the Amendment Act, 1991.

In comparison, the consumer fora, including the National Commission do not have the above mentioned powers.

CONCLUSION

MRTP Act, 1969 contains provisions relating to the protection of consumer. With the advent of unfair trade practice, the scope for consumer protection through MRTP Act had widened. In fact the Act was enacted to take care of various aspects affecting the economy and consumer protection is a part of it. Basically, there are two categories of cases that come up for decision before the MRTP Commission - issues between traders and issues between consumers and traders.
Disputes between the traders, mostly steal the show, as the consumer has no easy accessibility to the Commission. There is also a point of overlap. In the case of unfair trade practice, the consumer has a choice to approach either the MRTP commission or a consumer forum. If he approaches the commission, it may prove costly and time consuming. Still we come across reported cases under the MRTP Act which could be equally raised at a consumer forum. This only speaks volumes that the consumer awareness and education are at a low level. Voluntary Consumer Associations and Consumer Protection Councils have to play a greater role in bridging the gap of information.

3.2 COMPETITION ACT, 2002

Anti-competitive and Consumer Protection laws have to play an important role in maintaining the competitiveness in the Indian Markets and generation of best products at the lowest prices to provide benefits to consumers. The Competition Commission is meant to curtail anti-competitive agreements, abuse of dominance and anti-competitive mergers. The Redressal Authorities, set-up under the Consumer Protection Act, enforce Consumer Protection law to prevent deception and unfair marketing practices, which hurt the Public at large, as consumers of goods and services. Thus, these two regulatory authorities ensure that nation’s markets are vigorous, vibrant, efficient, and free from restrictions that harm trade and industry as also the consumers. This has, indeed, become a task of prime importance in the context of present day global markets, high-technology innovations and the fast changing economic landscape.
The pre-merger notification programme under the Competition Act is an important element of the anti-competitive mission pursued by the Competition Commission, Mergers and Joint Ventures (for convenience sake "mergers") can generate efficiencies and most mergers are either pro-competitive or competitively neutral. But, mergers that are anti-competitive, however, can lead to rise in Consumer prices of magnitude at unpredictable intervals. Such questionable mergers might also significantly diminish product quality and output as also consumer choice and innovation. To distinguish between mergers that threaten free markets and those likely to promote them, sophisticated economic analysis and through factual investigations are necessary. The fact that the ongoing globalization of the economy, which has significant impact on maintaining competition within the country and continued growth of commerce beyond National boundaries has been duly recognised in the regulatory provisions contained in section 5 of the Competition Act.\textsuperscript{31}

The main objects of the Competition Act, 2002 are: (a) promotion and maintenance of competition in markets; (b) prevention of practices having adverse effect on competition; (c) protection of consumer interests; and (d) ensuring freedom of trade. The Act also provides for the establishment of a Competition Commission with specific powers and functions related to promotion of competition in India and control of practices adverse to it.

Since various provisions of the Competition Act are of great relevance to consumers, the Act has adopted its own definition of

\textsuperscript{31} S M Dugar; MRTP Law, Competition Law & Consumer Protection Law (3 in 1); 4\textsuperscript{th} edition 2006
“consumer”32. According to this definition, a buyer of any goods and the hirer of any services besides the purchaser of goods or hirer of services, the users of goods and the beneficiaries of services who use or avail them with the approval of the first purchaser or the hirer. It is immaterial that such purchase of goods or hiring or availing of services was for resale or any commercial purpose or for personal use.

**Competition Commission of India (CCI)**

The Act provides for the establishment of the Competition Commission of India to control practices adverse to the promotion and sustenance of competition in India.33 The Commission is a body corporate having perpetual succession and common seal with power to acquire hold and dispose of property both movable and immovable and to contract and shall sue and be sued.34 The Commission is to consist of Chairperson and not less than two members and not more than six members.35 Section 8(2) stipulates that the Chairperson and the every member shall be a person of ability, integrity and standing and who has special knowledge of and such professional experience of not less than 15 years in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters including competition law and policy.

**Duties, powers and functions of the Commission**

The Commission has duty to eliminate the practices having adverse effect on competition, to promote and sustain competition in the market, to protect the consumer interests and to ensure freedom

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32 The Competition Act, 2002; sec. 2(f)
31 *Id.*, sec. 7(1)
34 *Id.*, sec. 7(2)
35 *Id.*, sec. 8(1)
of trade carried on by other participants in the markets in India. The Act empowers the Commission to enter into any arrangement or memorandum, with prior approval of central government, with any agency of a foreign country for the purposes of discharging its duties and performing its functions.

The Act prescribes that the Commission in discharge of its functions shall be guided by the principles of natural justice and the concerned parties can appear before the Commission in person or shall though authorised Chartered Accountants, Company Secretaries, Costs Accountants or Legal Practitioners.

In order to achieve the objectives of the Act, the Commission is vested with functions and powers to:

(a) Inquire into certain agreements and dominant position of an enterprise;

(b) Conduct such inquiry; and

(c) Pass certain orders which must meet the administrative law standards of reasonableness, fairness, proportionality and being consistent with the parent statute.

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36 Id., sec. 18
37 Id., proviso to sec. 18
38 Id., sec. 36
39 Id., sec. 35
40 Id., sec. 3: Anti-competitive agreements
41 Id., sec. 4: Abuse of dominant position
42 Id., sec. 19
43 Id., sec. 26
44 Id., sec. 27
While determining whether an agreement has an appreciable adverse effect on competition under section 3, the Commission will have to give due consideration to all or any of the following factors, namely:

(a) Creation of barriers to new entrants in the market;

(b) Driving existing competitors out of the market;

(c) Foreclosure of competition by hindering entry into the market;

(d) Accrual of benefits to consumers;

(e) Improvements in production or distribution of goods or provision of services;

(f) Promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.\(^45\)

The Commission shall, while inquiring whether an enterprise enjoys a dominant position or not under section 4, have due regard to all or any of the following factors, namely:

(a) market share of the enterprise;

(b) size and resources of the enterprise;

(c) size and importance of the competitors;

(d) economic power of the enterprise including commercial advantages over competitors;

\(^{45}\) *id.*, sec. 19(3)
(e) vertical integration of the enterprises or sale or service network of such enterprises;

(f) dependence of consumers on the enterprise;

(g) monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;

(h) entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers;

(i) Countervailing buying power;

(j) Market structure and size of market;

(k) Social obligations and social costs;

(l) Relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition;

(m) Any other factor which the Commission may consider relevant for the inquiry.\(^{46}\)

It is noteworthy that in terms of Section 27, the Commission can pass all or any of the following Orders:

\(^{46}\) *Id.*, sec. 19(4)
(a) When it comes to the conclusion that enterprises or persons have entered into anti-competitive agreements and/or there has been an abuse of dominance:

(i) Direct discontinuance of such agreement and abuse of dominance;

(ii) Impose penalty to the extent of 10 per cent of the average turn over for the last three preceding three financial years upon such persons or enterprises;

(b) In case of cartels:

(i) Impose penalty on each member of cartel up to three times of its profit for each year of the continuance of agreement or ten per cent of its turn over for each year of continuance of such agreement, whichever is higher;

(ii) Modify the agreement;

(iii) Pass any other Order/direction which deems fit;

(iv) Order division of the enterprise enjoying dominant position.\textsuperscript{47}

(c) Inquire\textsuperscript{48} into combinations in the manner\textsuperscript{49} and pass such Orders\textsuperscript{50} as a prescribed under the Act.

\textsuperscript{47} \textit{Id.}, sec. 28
\textsuperscript{48} \textit{Id.}, sec. 20
\textsuperscript{49} \textit{Id.}, ss. 29 & 30
\textsuperscript{50} \textit{Id.}, sec. 31
Competition Appellate Tribunal (CAT)

The Act casts an obligation upon the Central Government\textsuperscript{51} to establish Competition Appellate Tribunal ("the Appellate Tribunal"), to-

(a) Hear and dispose of appeals against any direction issued or decision made or the Order passed by the Commission under Sub-sections (2) and (6) of the Section 26, Sections 27, 28, 31, 32, 33, 38, 39, 43, 43A, 44, 45 or 46 of the Act;

(b) Adjudicate on any claim for compensation that may arise from the findings of the commission or the Orders of the Appellate Tribunal in an appeal against any finding of the Commission or under Section 42A or under Sub-section (2) of Section 53Q of this Act,

And pass Orders for the recovery of compensation under Section 53N of the Act.

The Appellate Tribunal is to consist of a Chairperson and two members\textsuperscript{52}, where:

(a) The Chairperson shall be a person who is or has been a Judge of the SC or a Chief Justice of High Court, and

(b) The members have to be the person of ability, integrity and standing having special knowledge of or professional experience of not less that 25 years in competition matters including competition law and policy, international trade, economics,

\textsuperscript{51} Id., sec. 53A

\textsuperscript{52} Id., sec. 53D
business, commerce, law, finance, accountancy, management, industry, public affairs, administration.\textsuperscript{53}

The Appellate Tribunal is empowered to adjudicate upon any claim for compensation that may arise from the findings of commission or the Orders of the Appellate Tribunal and pass Order for recovery of compensation from any enterprise for any loss or damage shown to have been suffered. There has to be a claim by way of an application and the Appellate Tribunal is obliged to inquire into the allegations made in the application before passing an Order. The Appellate Tribunal is empowered to entertain a class action.\textsuperscript{54} It is relevant to note that there is no time limit prescribed for filing the claim application with the Appellate Tribunal.

The Orders of the Appellate Tribunal shall be enforced as if decrees made by the courts. In case there is difficulty in execution of the Orders of the Appellate Tribunal, the Tribunal can send its Orders to the Courts within whose local limits:

(a) In the case of the of an Order against a company, the registered office of the company is located;

(b) In case of an Order against any other person, place where the person concerned voluntarily resides or carries on business or personally works for gain, is situated.\textsuperscript{55}

\textsuperscript{53} \textit{Ibid.}
\textsuperscript{54} \textit{Id.}, sec. 53F
\textsuperscript{55} \textit{Id.}, sec. 53P
The Appellate Tribunal has the same jurisdiction, powers and authority in respect of contempt of itself as a High Court and may exercise the provisions of the Contempt of the Courts Act.\textsuperscript{56}

**PRO- CONSUMER POLICIES UNDER THE COMPETITION ACT**

**A. Restriction of anti competitive agreements:**

The Act restricts all anti competitive agreements, which may lead to monopoly and concentration of economic power in few hands leading to exploitation of the consumers. Section 3 of the Competition Act prohibits all enterprises and persons from entering into any agreements in respective of production, supply, distribution, storage, acquisition or control of goods or provision of services which may have an appreciable adverse affect on competition and declares them void.

The term ‘enterprise’ has been given a wide meaning under the Act.\textsuperscript{57} It includes a person or a department of the government engaged in any activity relating to the production, storage, supply, acquisition or control of goods or services of any kind. Any person or government department engaged in investment or business of acquiring or dealing with shares, other securities of any other body corporate are also covered by the definition of the enterprise. The term enterprise, however, does not include any activity of the government relatable to the sovereign functions and the activities carried on by the departments the Central Government dealing with atomic energy, currency, defense and space.

\textsuperscript{56} Id., sec. 53U
\textsuperscript{57} Id., sec. 2(h)
Sub-section (3) of section 3 expressly declares certain agreements, practice and decisions, including cartels, as having an appreciable adverse effect on competition which may have been resorted to by any enterprise or association or person, with respect to any goods or services:

(a) To directly or indirectly determine the purchase or sale prices; or

(b) To limit or control production, supply, marketing, technical development, investment or provision or services; or

(c) To share the market or sources of production or provision of services by way of allocation of geographical area, or type of goods or services, or number of customers in the market or any other similar ways; or

(d) To attain, directly or indirectly, the purpose of bid- rigging or collusive-bidding.

It is evident from the provisions of the Act that any agreement entered into by way of joint ventures would not be deemed as void or anti-competitive, if such agreement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services.\(^{58}\) But any agreement at any stage or level of the production chain in different markets would be deemed as a contravening agreement if it causes an appreciable adverse effect on competition.\(^{59}\) The agreement may be in respect of production, supply, distribution, storage, sale, price or trade in goods or provision

\(^{58}\) *Id.*, proviso to sec. 3(3)

\(^{59}\) *Id.*, sec. 3(4)
of service, including tie-in agreement, exclusive supply agreement, exclusive distribution agreement, refusal to deal, resale or price maintenance.\textsuperscript{60}

B. **Prohibition on abuse of dominant position:**

For the protection of consumers, the Act prohibits every enterprise from restoring to any activity which can amount to abuse of it dominant position.\textsuperscript{61} The abuse of dominant position includes:

(a) Imposition of unfair or discriminatory conditions or price (including predatory prices)\textsuperscript{62} on purchase or sale of goods or services;\textsuperscript{63}

(b) Limiting production of goods or provision of services or market there for\textsuperscript{64};

(c) Indulging in practices resulting in denial of market access\textsuperscript{65};

(d) Making of conclusion of contracts subject to acceptance by other parties of supplementary obligations which have no connection with the subject of such contracts, either by nature or according to commercial usage\textsuperscript{66}; and

(e) Using dominant position in one relevant market to enter into or protect other relevant market\textsuperscript{67}.

\textsuperscript{60} Ibid.
\textsuperscript{61} Id., Explanation to sec. 4
\textsuperscript{62} Ibid., “Predatory price” means the sale of goods or provision of services, at a price which is below the cost, and may be determined by regulations, of production of the goods or provisions of services, with a view to reduce competition or eliminate the competitors.
\textsuperscript{63} Id. Sec. 4(2)
\textsuperscript{64} Id., sec. 4(2)(b)(i)
\textsuperscript{65} Id., sec. 4(2)(c)
\textsuperscript{66} Id., sec. 4(2)(d)
\textsuperscript{67} Id., sec. 4(2)(e)
C. Regulation of combinations:

Sections 5 and 6 of the Competition Act make provisions for regulation of combinations or cartels to prevent anti-competition operations and anti-m consumer policies. The combination means further acquisition of enterprises by a person or enterprise in similar trade or business and mergers, amalgamation, joint ventures, or taking over of friendly or hostile enterprises. This is a kind of monopolization of trade or supply. According to section 5, the acquisition of one or more enterprises by one or more persons or acquiring of control or merger or amalgamation of enterprises adverse to competition should be construed as combination.

Section 6 of the Act, dealing with the matter, prohibits any person or enterprise from entering into combinations which may cause an appreciable adverse effect on competition within the relevant market and declares them void.\(^{68}\) By implications, combinations are permissible if they cause no appreciable adverse effect on competition. However, any person or enterprise that proposes to enter into a combination should give to the Competition Commission a notice disclosing the details of the proposed combination. The notice should be given within seven days of approval of the proposal relating to merger or amalgamation by the board of directors of the enterprises concerned. Similarly, notice shall be given on the execution of any agreement or other document for acquisition or acquiring of control over an enterprise.\(^{69}\)

\(^{68}\) Id., sec. 6(1)
\(^{69}\) Id., sec. 6(2)
After receiving the notice, the Commission has to make investigations into the combination as to its effect on competition and conduct enquiries about the disclosures made in the notice and issue orders accordingly, in favour or against combination.\textsuperscript{70} These regulatory provisions do not apply to share subscription or financing or any acquisition by a public financial investor\textsuperscript{71} or bank or venture capital fund\textsuperscript{72}, pursuant to any covenant of a loan agreement or investment agreement\textsuperscript{73}. Any such institution should file, within seven days from the date of the acquisition, with the Commission the details of the acquisition including the details of the control, circumstances for exercise of such control and the consequences of default arising out of such loan agreement or investment agreement, as the case may be.\textsuperscript{74} Obviously, all these requirements have been prescribed to check \textit{malafide} combinations and protection of the interests of the consumers.

\section*{3.3 THE PREVENTION OF FOOD ADULTERATION ACT, 1954}

It provides for preventing adulteration of food and protection of the health of the citizens. It is a piece of consumer legislation and regulates to some extent, the consumer-supplier relations. The consumers demand enforcement of discipline among the producers or manufacturers of food to ensure safety in the realm of food. The consumer's legitimate ignorance and his almost total dependence on the fairness and competence of those who supply his daily needs have made him a ready target for exploitation. The Act is, therefore,

\textsuperscript{70} \textit{Id.}, ss. 6(3), 29, 30 & 31
\textsuperscript{71} The Income Tax Act, 1961; sec. 115-A
\textsuperscript{72} \textit{Id.}, sec. 10(23FB)
\textsuperscript{73} The Competition Act, 2002; sec. 2(f), 6(4)
\textsuperscript{74} \textit{Id.}, sec. 6(5)
intended to protect the consumer against outright frauds and to ensure the purity of food and the maintenance of public health by eradicating the evil of adulteration of food. It ensures that the food which the public would buy would, *inter alia*, be prepared, packed and stored under sanitary conditions so as not to be injurious to the health of the people consuming it. (Pyarelal vs. New Delhi Municipal Committee)\textsuperscript{75}

The Act resolves to prevent "adulteration" and "misbranding" of foods, securing purity of food and to inform the public what they are buying and also to prevent fraud on the consumer public. The Act also provides for adequate punishment for food adulterations.

Prior to the passing of the Prevention of Food Adulteration Act, 1954, states had different Acts against adulteration of food. The State Acts lacked uniformity because they were passed at different times without mutual consultations between the States. Most of the State Acts were highly deficient in their actual operation and functioning. A great need for a central legislation was realized. So the Prevention of Food Adulteration Act, 1954 was enacted to plug the loopholes to a great extent. To provide for more stringent and effective measures to curb the rampant evil of increased adulteration of food-stuff, the Prevention of Food Adulteration (Amendment) Act of 1978 was passed.

### 3.4 LAW OF TORTS AND CONSUMER PROTECTION

Law of torts is a branch of common law of England, developed out of precedents. In earlier days, all the cases were being raised

\textsuperscript{75} (1976) 3 SCR 747
before the Common Law Courts for relief and remedy. Apart from strict liability, the only plausible remedy to the consumer against the defective goods was proof of negligence. Proving negligence is not that easy in a civil court. Negligence suits are complex and involve lengthy and expensive trials. To relieve an affected person from discharging the heavy burden of establishing negligence of the producer, there has been a shift in the social policy in industrially advanced countries from requiring the plaintiff to prove the fault of the manufacturer to demonstrating fault in the product. In India the progress in the path is slow. The present law of negligence is based on the celebrated decision of Donoghue vs. Stevenson.\(^{76}\)

It was held in this case that manufacturer of a product owed a duty to all those who ought reasonably to have been in its contemplation as persons likely to be affected by as a result of defect in the product. It laid down a rule of far reaching importance which provided that a manufacturer of a product owed a duty to the customer to take reasonable care in the preparation or putting up the products. In this case, Mrs. Donoghue went with her friend to a café. The friend ordered for her a bottle of ginger beer and ice cream. She went on pouring it for Mrs. Donoghue until a snail floated out of the bottle. Mrs. Donoghue suffered a shock to see this spectacle and later was down with gastro-enteritis. In an action brought by Mrs. Donghue against Mr. Stevenson, the manufacturer of the ginger beer, it was clear that there was no contractual relationship between the plaintiff and the defendant. Nevertheless, the House of Lords held the defendant liable. Lord Atkin in a passage which is often quoted propounded the modern doctrine of negligence as under:

\(^{76}\) 1932 AC 562
"You must take reasonable care to avoid acts or omissions which you can reasonably foresee, would be likely to injure your neighbor. Who, then, in law is my neighbor? The answer seems to be, persons who are so closely and directly affected by my act that I ought reasonably to have them, in contemplation as being so affected when I am directing my mind to the acts or omissions which are in question. In a tort action, therefore, it is possible for a consumer to initiate an action against a manufacturer even though there exists no probity between them. However, it would be necessary for him to establish negligence. It is now well settled that it is the duty of the manufacturer to take reasonable care to ensure that the products are designed and manufactured in a manner that they do not endanger public safety. For this purpose, the law expects that the manufacturer shall not only engage competent persons but also establish a system of quality control to check products and their performance on a systematic basis."

3.5 THE INDIAN CONTRACT ACT, 1872

The Indian Contract Act, 1872 is one of the oldest enactments of British era, still succeeding in independent India with a fewer amendments. The Act provides the basic principles of formation of contact, its validity, enforcement and remedies. Besides, it also provides solution to various contractual situations pinpoints the responsibilities /asserts the rights of the parties. This is a very important and fundamental piece of legislation in commercial parlance. This covers all aspects of contracts in general and certain special contracts like indemnity, guarantee, bailment, pledge and agency. In essence, the remedies under the Act are available to all,

77 ibid
consumers as well as non-consumers. Hence certain principles like privity of contract were justified and retained under the Act. But as far as consumer protection is concerned, application of privity of contract principle in stricto hampers the interests of the consumers.

**Remedies under the Contract Act**

The Contract Act provides for various remedies to the aggrieved party. They include mainly:

(i) Compensation/damages;

(ii) Specific relief;

(iii) Injunction;

(iv) Rescission of Contract

At the same time, the remedy is rooted through a civil court which is abhorring and time consuming. But under the Consumer Protection Act, 1986, the remedy is through the consumer fora which do not consume much time of the consumer and moreover there are a variety of remedies appropriate in the modern times. The remedies available to the aggrieved consumer under the Consumer Protection Act 1986 are enumerated under Section 14 of the Act. They are as follows:

(i) Discontinuation of unfair/restrictive trade practice;

(ii) Removal of defect in goods;

(iii) Replacement of goods;

(iv) Removal of deficiency in service;
(v) Return of price charged/paid;

(vi) Getting cost of litigation;

(vii) Compensation for the loss or injury caused due to negligence of the opposite party.

Thus the Consumer Protection Act, 1986 is better on various counts:-

1. The principle of privity of contract is largely done away with under the Consumer Protection Act, 1986.

2. The remedy is specific to the need of the consumer.

3. Consumer fora ensure a quick, cheap and easily available remedy.

3.6 THE SALE OF GOODS ACT, 1930

The Sale of Goods Act is an important piece of consumer protection law which provides remedy for defect in goods. The term “goods” has been defined under Section 2 (7) of the Act. It may be noteworthy that the same definition was adopted by Consumer Protection Act. Though this Act covers all transactions of sale of goods to consumers and non-consumers, consumers in specific have certain reliefs.

**Scheme of the Act**

- The Act defines goods under Section 2 (7) as “every kind of movable property other than actionable claims and money; and
includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale”.

- It distinguishes between sale and agreement to sell.

- It defines conditions and warranties and also states the situations in which the former be treated as the latter. It also specifies the consequences of breach of conditions as well as warranties.

- It also specifies implied conditions and warranties with the exceptions to the principle of caveat emptor.

- Provisions relating to passing of title from seller to buyer have been laid down.

- The doctrine of ‘nemo dat quod non habet’ was incorporated with exceptions.

- Delivery and rules relating to delivery have been provided.

- Unpaid seller defined and remedies available to the unpaid seller have been provided.

- Rules of auction sale have been enumerated.

In the light of the above, we can say that the Act is comprehensive as far as the sale of movable goods is concerned. It also ensures proper remedies to the aggrieved party but it has certain provisions which are not in tune with the requirements of the contemporary society. For instance, the recognition of the principle of caveat emptor under the Act is unacceptable under the changed business conditions. Moreover, the remedy through the civil courts is
the same old story of predicaments. Now, under the Consumer Protection Act, all the matters pertaining to the consumers falling under the Sale of Goods Act can be diverted to consumer fora which provide the real time benefits to the grieving consumer.

3.7 ESSENTIAL COMMODITIES ACT, 1955

Since in public interest it is considered necessary that the Centre should continue to control production, supply and distribution of certain essential commodities, the need for a permanent measure on the subject was felt. For this purpose certain amendments were required to be made in the Constitution. The Constitution (Third Amendment) Act made the required amendments in Entry 33 of List 3 of the Seventh Schedule to the Constitution to enable the Parliament to enact the required legislation.

The Essential Commodities Ordinance No.1 of 1955 was promulgated which came into force on 26th January, 1955. The Ordinance was subsequently replaced by the present Act namely, the Essential Commodities Act, 1955 (Act No. 1 of 1955) with effect from 1st April 1955.

*Objects and Scope of the Act*

The preamble to the Act says that it is an Act to provide in the interest of the general public for the control of the production, supply and distribution of, and trade and commerce in, certain commodities. The dominant object and intent of the Act is to secure equitable distribution and availability at fair prices of essential commodities in the interest of the consuming public and not the interest of the dealer.
3.8 WEIGHTS AND MEASURES ACT, 1976

The Act extends to the whole of India and the Central Government has been empowered under the Act to bring into force all or any of the provision of the Act for different areas, class of undertakings, classes of goods, classes of weights and measures or classes of users of weights and measures.

This Act contains detailed provisions to regulate hierarchy of standards in the country. Further, the coverage of legal control under the enforcement laws is wider. The law covers measurement/measuring instruments used in commercial transactions for industrial production or for the protection of human health/safety.

In the field of commercial transactions, the law ensures that articles or goods which are sold by weight, measure or number should be weighed, measured or counted accurately in the presence of the purchaser. In case the commodities are sold at retail outlet in prepackaged form, the packages should conform to the rules prescribed in this behalf in relation to, particularly, the name of the commodity, its price, net contents etc. In so far as measurements for industrial production are concerned, the law envisages proper control on the accuracy of the measurement carried out in industrial fields so as to ensure inter-changeability of particulars and components with a view to permit mass production of machines and their parts and accessories. The authority at the national level responsible for legal metrology is Director (Weights and Measures) under the Ministry of Food and Civil Supplies, Directorate of Weights and Measures, New
Delhi and in the State and Union Territories the Controllers of Legal Metrology. The Directorate of Weights and Measures is the nodal authority for planning and co-coordinating the activities relating to metrification and legal metrology including consumer protection in the country.

Consumer Protection in the Packaged Commodity Rules 1977 has assumed a lot of importance in recent times. Now the rules are applicable to all sales intra and inter state. This is one important area where more consumer awareness is necessary. The aggrieved consumer under the Weights and Measures Act, 1976 can seek remedy through the consumer fora. Though the volume of cases under this is low, it is encouraging to see that some cases are coming up for redressal. Before the Consumer Protection Act the aggrieved consumer had no plausible remedy except that the erring party was punishable either under Indian Penal Code, 1860 of Weights & Measures Act, 1976 or Weights and Measures (Enforcement) Act, 1985.

3.9 INDIAN PENAL CODE, 1860 [SECTIONS 274, 275 & 276]

The age old Indian Penal Code makes punishable the adulteration of drugs, sale of adulterated drugs\(^{78}\), and sale of drug as a different drug or preparation\(^{79}\), with the meager punishment of imprisonment up to six months or with fine up to rupees one thousand or with both, which may be appropriate at that time. But in the changing scenario of this social-economic crime in which offender plays havoc with lives of thousands of patients as consumers, the provisions require an amendment to deal with offenders with severe

\(^{78}\) Section 275
\(^{79}\) Section 276
punishment having a deterrence. Therefore, these provisions should be suitably amended providing with at least imprisonment of life and fine up to Rs.50,000/- as punishment.

3.10 DRUGS AND COSMETICS ACT, 1940

The purpose of the enforcement of the provisions of Drugs and Cosmetics Act is to control the rampant evil of misnamed or substandard drugs from being sold, and to see that no genuine drug is sold without license. But the purpose is frustrated due to certain shortcomings in law itself and the paucity of enforcement machinery. The problem of adulteration of drugs and also of production of spurious and sub-standard drugs continues to pose serious threat to the lives of consumers. With this view necessary amendments were made in the Act so as to impose more stringent penalties on the antisocial elements, indulging in the manufacture or sale of adulterated or spurious drugs or drugs not of standard quality which are likely to cause death or grievous hurt to the user\(^{80}\). Still the Act was found lacking to control the menace of the hazardous drugs, already banned in advanced countries but flourishing in the Indian market. Therefore, the Act was amended in 1982 inserting the new Section 10-A and 26-A, thereby conferring power on the Central Government to prohibit manufacture, sale and distribution thereof\(^{81}\), thus providing the Central Government with drastic powers to control the banned drugs, in which respect it was lacking earlier\(^{82}\).

Despite these amendments, it seems, on examination of the various provisions of the Act, that it is still lacking in mitigating the

\(^{80}\) Drugs and Cosmetics (Amendment) Act, 1964
\(^{81}\) Drugs and Cosmetics (Amendment) Act, 1972
\(^{82}\) Drugs and Cosmetics (Amendment) Act, 1982
\(^{82}\) Section 18
grievances of the consumers against the menace of the spurious, adulterate, banned and hazardous drugs.

3.11 THE DRUGS (CONTROL) ACT, 1950

This Act seeks to ensure the easy availability of the essential imported drugs and medicines at reasonable prices to the consumers by controlling the sale, supply and distribution of drugs. The Act safeguards the interests of the consumer by making it compulsory to give a cash memorandum if the amount of purchase is five rupees or more, and on request, if the amount of purchase is less than Rs. 5/-\(^{83}\). But in practice, often a dealer would himself discourage the buyer from insisting on cash memorandum saying he will have to pay additional sales tax which could well be saved. But doing so at the outlet the buyer forfeits his right to protect his interest, in case the drug sold to him is substandard or spurious. These provisions require strict enforcement.

Suggestions

The interest of the consumer would be safeguarded only when these horrible and havoc playing spurious, adulterated and banned hazardous drugs are eliminated from the market and on the prescriptions of the doctors. To thwart the menace of these drugs, the following worth while suggestions can be made:-

1. For maintaining the quality of the drugs the process of regulation has to be strengthened. For this purpose the law must be provide with sufficient biting teeth. There must be deterrence of exemplary punishment in the mind of every unscrupulous manufacturer of drugs.

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\(^{83}\) Section 9
2. The machinery for enforcement should be revamped and they should be provided with proper facilities and police support. So that the constant regular vigil can be bestowed on hazardous and spurious drugs in the market. In fact there is a need for central enforcement machinery in the interest of community at large, having a jurisdiction all over the country, to regulate manufacture and to punish defaults and lapses.

3. The licensing of manufacturers should also be centralized and the Drug Controller should be empowered in cases where health and public interest demand to revoke the licenses granted to the manufacturer.

4. Proper representation should be given to the consumers in the Central Drug Technical Advisory Board and also in Drugs Consultative Committee. At least two capable representatives from active voluntary consumer societies should be nominated in these bodies.

5. Whenever a ban is imposed on a certain drug it should be given wide publicity by the mass media and the doctors and patients should be advised accordingly.

6. In addition to the Central Drug Laboratory the regional drugs laboratories should be established for timely launching of prosecutions.

7. The drug control organization can also cope with the menace of spurious drugs by persuading doctors and retail shopkeepers to boycott such drug peddlers, and regular screening of the market to detect supply sources.
8. There is a need for creation of a National Authority for Drug Control. It should be established as soon as possible to look after all aspects of Drugs and their quality control.

3.12 CONCLUSION

The Consumer Protection Act, 1986 ushered in a new era of dealing with the cause of the consumer. Thanks to the national as well as international developments and consumer movements which have ultimately brought in the messiah of relief and respite to the common man annihilating the deep rooted obstacles of caveat emptor, privity of contract and so on. In the early stages of the enforcement of the Act so many impediments were experienced. Some took it with caution some with skepticism and some others had even written it off as a non performing Act, but the diligent and sedulous efforts by various consumer associations, pro-consumer interpretations of the Redressal Agencies and sympathetic attitude of the legislature all made the survival and success of the Act possible. The success story of the Act is evident from the enormous increase in number of cases during the first sixteen years. The phenomenal growth in the subject can be largely attributed to the Amendment Acts of 1993 and 2002 which removed so many bottlenecks in the Act and made the Act more functional and practicable. Some land mark decisions by National Commissions and Supreme Court viz. Cosmopolitan Hospitals vs. Smt. Vasantha P. Nair, Lucknow Development Authority vs. M.K. Gupta, Laxmi Engineering Works vs. P.S.G. Industrial Institute have made the Act more viable and useful at the same time, there are still some hitches which need to be sorted out. To cite a few.

84 1 (1992) CPJ 302 (N.C.)
85 AIR 1994 SC 787
86 (1995) 3 CTJ 289 (SC)
1. The decision of National Commission to keep the medical services by Government hospitals out of the ambit of the Act in C.U.T.S. vs. State of Rajasthan\textsuperscript{87}.

2. The decision of the Supreme Court that shares before allotment are not goods in Morgan Stanley Mutual Fund vs. Katrik Das\textsuperscript{88}.

There is a need to strengthen the role of Consumer Protection Councils. Specific provisions must be incorporated in the Act to achieve the objects under Section 6 to promote and protect the interests of the consumer. Consumers' education is the need of the hour. Educating, especially the rural folk, aggressively by means of advertisements on T.V., radio etc. is very much necessary. There is also need to increase the number of District Fora to meet the increasing number of cases.

\textsuperscript{87} (1991) I CPR 241 (N.C.)
\textsuperscript{88} (1994) 4 SCC 225