CHAPTER-II

HISTORICAL DEVELOPMENT OF CONSUMER

PROTECTION LAW

2.0.0 INTRODUCTION

In recent times one of the most significant areas of economic regulation in all countries has been the adoption of Consumer Protection legislation in a big way. India being a late starter has just reached the take off-stage in consumerism though there have been significant development before this stage. The consumers in India have not yet organized like in many other countries in the West. Consequently the exploitation to which the consumer is subjected to by the organized class continues unchecked. Today, a large number of countries have laws for protecting the interest of the consumer. It will be appropriate to discuss here the laws adopted by some of the countries to control unfair and deceptive trade practices and to protect the interest of the consumers.

2.1.0 INTERNATIONAL DEVELOPMENT OF CONSUMER

PROTECTION LAWS

The consumer organisations play a vital role in the developed countries like united states, united kingdom, Sweden, Japan, Germany, France and Belgium etc. for protection of consumers. In developed nations, due to strong consumerism, the consumers are organized and aware of fluctuations of market price and quality of commodity. The slogan of ‘seller beware’ is prevalent there and emphasis is given to strong consumer movement. The
development of consumer protection laws in the developed countries is described under this caption.

### 2.1.1 UNITED STATES

In the United States, the rapid industrialization after the end of Civil War in 1865 led to mergers and amalgamations and to formation of trusts and cartels, which advanced a great deal by 1880s. The concentration of corporate power at such an early stage of economic development and the awareness to check the economic power promoted the passing of the first antitrust legislation as early as 1890 which came to be known as the Sherman Act. The Act declared every contract, combination in the form of trust or otherwise or, conspiracy in restraint of trade or commerce, to be illegally.\(^1\) Every party to any such contract, combination or conspiracy was made punishable with fine or imprisonments.\(^2\) While this Act was of great use in curbing the wave of mergers that had marked the industrial scene of the United States towards the end of the nineteenth century of this century, there were certain monopolistic and restrictive practices to which the Act did not reach. In order to remove this infirmities, two major legislations were passed in 1914 namely the Federal Trade Commission Act, 1914 and the Clayton Act.

The Federal Trade Commission Act set up – new machinery the Federal Trade Commission\(^3\) which shared with the department of justice the responsibility for enforcement of all anti-trust legislation in addition to the setting up of this new enforcement agency. The Act prohibited unfair methods

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\(^1\) Sherman Act, 1890, Sec. 1.
\(^2\) Ibid, Sec. 2.
\(^3\) Federal Trade Commission Act, 1914, Section 2.
of competition. The Act was amended in the year 1938 by Wheeler-lea Act which further extended the scope of the Act to cover unfair or deceptive acts or practices in commerce.

The Clayton Act was designed specially to deal with the problems of mergers and to prohibit certain types of individual conduct which were beyond the reach of the Sherman Act. It declared four types of restrictive practices or device puce discrimination, exclusive dealing and tie-in contracts, interoperate share holdings and interlocking of directorates, illegal attempts at circumvention of the Clayton Act resulted in passing of the Robinson Patman Act, 1936 which tightened up the law on price discrimination. All this legislation collectively provides the framework of the anti trust law in the United States. In addition to these anti-trust legislations there are a number of other legislations on consumer protection e.g. the Consumer Credit Protection Act, 1968 which requires certain disclosures in consumer credit sales and loans; the Consumer Leasing Act, 1970 which deals with consumer leases; the Fair Credit Billing Act, 1974 which contains provisions relating to credit billing practices, and the Magnuson-Moss Warranty Act, 1975, which establishes certain minimum requirements for written warranties offered by suppliers of consumer products. The Fair Packaging Act, 1972 and the Consumer Product Safety Act, 1972 provide protection to the consumer in several ways. The Consumer Products Safety Act, 1972 extended federal control over general consumer products and granted to the government

4 Id., Sec. 2.
5 Ibid.
6 Clayton Act, 1914, Sec. 2.
7 Id, Sec. 3.
8 Id, Sec. 8.
9 Id, Sec. 8.
authority to set safety standards for general products and to ban those products which present real hazards to the consumers. The legislation followed a two years study by a seen-man bipartisan National Commission on product safety. The final report of the Commission led to the creation of a new federal independent regulatory Commission, the bipartisan Consumer Product Safety Commission. The United States has even today, the most comprehensive and well established anti-trust and consumer protection law in the world.\textsuperscript{10}

2.1.2 CANADA

Canada had anticipated U.S.A. 7 anti-trust legislation with an Act of 1889 for prevention and suppression of combines in restraint of trade. The purpose of the legislation was to stamp with illegality the agreements which had been carried into effect for preventing and lessening competition. The scope of the legislation was extended by the enactment of Combines Investigation Act, 1910 which also covered mergers, trusts and monopolies operating to the common detriment. Towards the end of World War-I there was strong public demand to check rising prices. In response to that demand the board of Commerce Act and the Combines and Fair Prices Act were passed in 1919. In 1923, a new Combines Investigation Act was passed which was amended many a times in 1951, 1962, 1960, 1969 and 1976. The scope of the Act is extended to cover resale price maintenance, prohibition of collusive, arrangements, unfair trade practices etc. The Act is directed against preventing, limiting or lessening unduly the manufacture or production of an article, or to enhance unreasonable the price thereof, to restrain or injure trade or commerce in relation to any article formation of a merger or monopoly;

discrimination as between purchasers etc. Misleading advertisements and other deceptive practices were considered and the Combines Investigation Act, 1969 was codified. The Act was further amended in 1976 to make the provisions of Unfair Trade Practices more stringent and effective.\textsuperscript{11}

**2.1.3 UNITED KINGDOM**

In the United Kingdom, the anti-monopoly legislations came immediately after the World War-II. Between 1948 and 1973 a number of statutes were passed for this purpose. These statutes were the Monopolies and Restrictive Practices Enquiry and Controls Act, 1948 amended by the Monopolies and Restrictive Practices Act, 1953, the Restrictive Trade Practices Act, 1968; the Resale Price Act, 1964; the Monopolies and Mergers Act, 1965 and the Fair Trading Act, 1973. All these legislations except the Fair Trading Act, 1973 have been repealed by the consolidating enactments, the Restrictive Trade Practices Act, 1976 the Resale Price Act, 1976 and the Restrictive Practices Court Act 1976. The Restrictive Trade Practices Act, 1976 has been supplemented by the Restrictive Trade Practices Act, 1977.\textsuperscript{12}

The Fair Trading Act, 1973 introduced new and comprehensive legislation. It extended the scope of the existing laws on monopolies and mergers and restrictive trade practices. The Act is wide enough to cover even professions, businesses, nationalized industries and public undertaking. It envisages a twin machinery for its enforcement. Director General of Fair Trading\textsuperscript{13} and Consumer Protection Advisory Committees.\textsuperscript{14} The Act seeks to

\begin{itemize}
  \item Id at. p. 24.
  \item Id at p. 25.
  \item Fair Trading Act 1973, Sec. 1.
  \item Id, Sec. 3.
\end{itemize}
protect the consumers from Consumer Trade Practices,\textsuperscript{15} and Unfair Practices.\textsuperscript{16} It also lays down the provisions in respect of pyramid selling and similar trading schemes. It has enlarged the powers and functions of the office of Registrar of Restrictive Trading Agreements which is now merged in the office of the Director General of Fair Trading.

Further the Competition Act, 1980 has been enacted to make provisions for the control of anti-competitive practices in supply and acquisition of goods, and the supply and securing of services; to provide for the investigation of prices and charges by the Director General of Fair Trading, and to make some amendments with respect to the Fair Trading Act, 1973\textsuperscript{17} and the Restrictive Trade Practices Act, 1976.\textsuperscript{18}

Apart from the aforesaid enactments, the United Kingdom has a number of other legislations to protect the interest of the consumers. These include the Consumer Protection Act, 1961 which empowers the executive to promulgate regulations. Regarding product standards if it is expedient to reduce the risk of personal injury; the Unfair Contracts Terms Act, 1977 which has various provisions to protect the consumers from unfair terms in the standard form of contracts; the Price Commission Act, 1977 which requires that the firms with large turnover should notify price increases and periodical report on profits, and the smaller firms to keep appropriate financial records. Recently, the Consumer Protection Act; 1987 has been passed by the Parliament of Great Britain after extensive debate on the same. This is a legislation of wide range which creates both civil as well as criminal liability.

\textsuperscript{15} Id, Sec. 13.
\textsuperscript{16} Id, Sec. 34.
\textsuperscript{17} See Competition Act 1980, Secs 21 to 24.
\textsuperscript{18} Id, Secs 25 to 30.
The Act consists of five parts and four schedules which deal mainly with three subject i.e. product liability, unsafe goods and misleading price indications.

2.1.4 AUSTRALIA

In Australia, the first anti-trust legislation had been passed in the year 1906. The Australian Industries Preservation Act was based on the Sherman Act, 1890 of the United States. The Act was amended in 1911, but still it remained ineffective. In 1965, another Act was passed following the Restrictive Trade Practices Act, 1956 of the United Kingdom. Finally, the Trade Practices Act, 1974 was passed which replaced the 1965 Act. The Trade Practices Act, 1974 provides very strong legislative measures to promote efficiency and competition in business, to control restrictive trade practices and to protect the consumers from unfair trade practices.\textsuperscript{19} It prohibits contracts, arrangements and understandings in restraint of trade\textsuperscript{20}, monopolization\textsuperscript{21} exclusive dealings;\textsuperscript{22} resale price maintenance,\textsuperscript{23} price discriminations;\textsuperscript{24} and mergers.\textsuperscript{25} It also prohibits, misleading or deceptive conduct;\textsuperscript{26} false representations;\textsuperscript{27} offering gifts and prizes with the intention of not providing them;\textsuperscript{28} bait advertising\textsuperscript{29} referral selling;\textsuperscript{30} and supply of hazardous and risky goods which do not comply with the safety standards.

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\textsuperscript{19} Supra note 10 at p. 26.
\textsuperscript{20} See Trade Practices Act, 1974, Sec. 45.
\textsuperscript{21} Id, Sec. 46.
\textsuperscript{22} Id, Sec 47.
\textsuperscript{23} Id, Sec 48.
\textsuperscript{24} Id, Sec 49.
\textsuperscript{25} Id, Sec 50.
\textsuperscript{26} Id, Sec 52.
\textsuperscript{27} Id, Sec 53.
\textsuperscript{28} Id, Sec 54.
\textsuperscript{29} Id, Sec 56.
\textsuperscript{30} Id, Sec 57.
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2.1.5 JAPAN

In Japan, the anti-monopoly law was enacted in 1947. The Act concerning prohibition of Private Monopoly and Maintenance of Fair Trade.

This act was known as Anti-Monopoly Act. The Act has sought to prevent excessive concentration of economic power by prohibiting formation of any holding company or operation of any company as a holding company. The Act has laid down provisions to check acquisition of business, assets or management of another company; mergers of directorship. The Anti monopoly Act was amended in 1977. Chapter V of the Act contains provisions against discrimination of prices, imposing of undue conditions etc. It also attempts to protect the interest of the consumers from misleading representation, prize competition etc. In addition to the Anti-monopoly Act, there are four supplementary legislations, viz. The Marine Transport Act, 1949; The Export and Import Trading Act, 1952; The Small and Medium sized Enterprise Organisation Act, 1957, and Act against The Unjustifiable Premium and Misleading representations 1962 to deal with the problems of Monopolies, Restrictive and Unfair Trade Practices.31

2.1.6 BELGIUM

In Belgium there was no comprehensive legislation in respect of the monopolistic and restrictive practices before the Act of 1960 on protection against abuse of economic power. This Act proceeds on the basis that economic power in certain cases be abused by use against public interest. It provides for action to be taken to prevent such abuse. It defines economic power as the power possessed by a natural person or body corporate acting

31 Supra note 10 at p. 27.
alone or by a group of persons or bodies corporate acting together to exert through their industrial, commercial, agricultural or financial activities, a dominating influences over market supplies of merchandise or capital or over the price or quality specific merchandise or service.\textsuperscript{32}

Abuse of such power exists when one or more persons having economic power act to prejudice the public interest by practices which distort or restrict the normal play of competition or which interfere with, distort or restrict the normal play of competition or which interfere with the economic freedom of producers, distributors or consumers or with the development of production or trade. The Act provides for investigation of complaints as regards practices amounting to abuse of economic power by a Reporting Commissioner over him, there is – council for Economic Disputes charged with the duty of taking action in the cases reported to it by the Reporting Commissioner. Where the Council finds that there has been an abuse of economic power it well transmit its opinion to the Minister of Economic Affairs together with its recommendations for preventing the abuse. Final decision whether to take action or not rests with the Minister. If the Minister is satisfied that there has been an abuse of economic power, he will inform the parties concerned of the recommendations which he considers advisable to prevent the abuse. The parties may agree to carryout the recommendations. If so, well and good. If they do not agree, the Minister shall confirm the recommendations by a registered letter and mention time limit for them to take the action recommended. In case of non-compliance, a Royal decree may be passed confirming the existence of the abuse and prescribing the measures to

\textsuperscript{32} Ibid.
prevent it. An infringement of a Royal decree is punishable with fine or imprisonment. \(^{33}\)

### 2.1.7 GERMANY

In Germany, after the World War-II, the government launched several programmes to control concentration of economic power. The detailed anti-monopoly legislation in that country was enacted in 1957 namely, Act against Restraints of Competition. The Act has been amended from time to time. The Act has sought to prevent abuse of economic power; to control mergers and takeover; and to create conditions for the enterprises to develop freely in a competitive economy. The Act does not make the market dominance or even monopoly per se illegal, but it prohibits the abuse of such dominance or monopoly. Similarly, a merger is not prohibited if it is not prejudicial to the national economy. The Act also prohibits coercion, boycott and discrimination, whether the one ejected by unilateral or concerted action of enterprises. \(^{34}\)

### 2.1.8 CONSUMER LAWS IN SWEDEN

Sweden is the country, which has done a pioneering work in the field of consumer protection through an active government policy. The main consumer legislations are *The Marketing Practices Act, 1970*, and *The Prohibiting Improper Terms of Contract Act, 1971*. These legislations are implemented through the office of a National Consumer Ombudsman, a senior official with complete autonomy, appointed directly by the King-in-Council for a specified term. The Swedish citizen considers the Consumer Ombudsman as the primary

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\(^{34}\) Supra note. 10.
method of obtaining consumer protection.\textsuperscript{35} The Swedish legislation is a part of package designed to help the consumer and also includes provisions against the undesirable terms of Trading Act (for monitoring standard contracts) and further legislation regarding credit sales, hire purchase, legal aid, holiday travel and food stuffs.\textsuperscript{36}

\textbf{2.1.9 CONSUMER LAWS IN AUSTRIA}

Austrian consumer laws provide a fine example of government’s policy in consumer protection field. The government has sponsored a District Forum to provide consumer representation on the official advisory bodies with a general mandate in the consumer field. The decisions of the advisory board form a basis of concrete legislative or administrative actions. The basic rights of the consumers have been declared. The declaration specifically asks for effective protection against dangerous products, information about the characteristics of all goods displayed and advertised, protection against misleading sales information and the promotion of all institutions and forms of consumer services and consumer consultation by the government and the institutions of its economy.\textsuperscript{37}

\textbf{2.1.10 CONSUMER LAWS IN YUGOSLAVIA}

In Yugoslavia, the consumer organizations for decades, had been keeping a check on irregularities and unfair market practices. There is a special centre in Belgrade for giving expert judgment on the quality of consumer durables and to inform the public about it. The trade associations have

\textsuperscript{35} Sunita Zalpuri Koul, development of consumer law’s through consumer courts in India unpublished Ph.D. Thesis University of Jammu, p. 42.


\textsuperscript{37} Supra note 35 p. 43.
accepted all their judgments and promised the consumer councils that all products, which do not pass their test, will be excluded from sale.  

2.1.11 CONSUMER LAWS IN JAPAN

The upsurge of interest in consumerism in Japan has taken place in a social and political atmosphere substantially different from that of other highly industrialized nations. Since mid-fifties, a discontent born of inflation, urban congestion, pollution and a host of other unwelcome practices, by-products of Japan’s “Economic Miracle” have produced a new wave of manifestations of popular discontent. The consumer movement has acquired a meaning extending beyond a mere interest in a fair treatment. This activism has resulted in the growth of a number of consumer organizations in Japan.

2.2.0 INTERNATIONAL DIMENSION OF CONSUMER PROTECTION

Coordination at the international level is most significant for the success of consumer movement nationally and internationally. Infact, most industrialized countries (MIC), where the consumer movement is now making its headway can learn a lot from the experience of their advanced counterparts (in terms of consumer protection) where the movement is comparatively much older.  

2.3.0 INTERNATIONAL ORGANISATION OF CONSUMER UNION

International Organisation of Consumer Union was formed in 1960. It was originally devised as a mechanism for in house testing of methods but over the years it has developed into an international forum for all kinds of

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38 Ibid, pp. 43-44.
consumer problems. Not the least of its functions, is the representation it provides to consumers within international agencies such as the Economic and Social Council of the United Nations.

Strict rules limit the membership of the I.O.C.U., particularly with regard to members’ commercial and political links and these constraints have tended to prevent the most politically oriented organizations from joining.

The increasing interest in political matters shown by some of the founder members, such as the consumer’s union, may, however, force the international organization to change its policy. It nevertheless seems likely that the influence of the IOCU will continue to develop, because its operations and methods of procedure are responsible and its suggestions tend to be practical and constructive.40

IOCU is a non profit making, political and non-governmental foundation and is principally concerned with the promotion and securing the rights of the consumers. It has standing committees on testing, education and development, and working groups on health, library and documentation.41

The broad areas of work with which IOCU concerns itself are:

(i) promoting co-operation amongst members through the exchange of information, experiences and joint activities;

(ii) expanding the consumer movement and nurturing young consumer organizations;

(iii) representing the consumer interest at the international forums such as the Untied Nations.

40 Supra note 36 pp. 8-9.
41 Supra note 35 p. 57.
The participation of IOCU in certain international campaign networks has been of immense value.\textsuperscript{42} It has recognized the following eight basic consumer rights and has expressed its concern for their promotion:\textsuperscript{43}

(i) The right to safety,
(ii) The right to information,
(iii) The right to choice,
(iv) The right to basic needs,
(v) The right to consumer education,
(vi) The right to representation,
(vii) The right to redress,
(viii) The right to healthy environment,

International Organisation of Consumer Union has consultative status with one of the most important international policy making bodies - the Economic and Social Council (ECOSOC) of the United Nations.

It has also affiliation to international organisations such as:

- International Labour Organisation.
- World Health Organisation.
- United Nations Conference on Trade and Development.
- World Industrial Property Organisation.
- Food and Agriculture Organization.

2.4.0 UNITED NATIONS AND GUIDELINES FOR CONSUMER PROTECTION

Ever since its establishment, the United Nations has been endeavouring to promote cooperation among the member nations on various issues. In the

\textsuperscript{42} Ibid.
context of consumer protection in particular, the UN and its subsidiaries like General Agreement on Tariffs and Trade (GATT), the Organisation for Economic Cooperation and Development (OECD), the United Nations Conference on Trade and Development (UNCTAD), and the United Nations Commission on transnational Corporations (UNCTC) have been actively involved over the years. However in the recent past, the UN has shown a considerable concern for the problem of consumer exploitation especially in the third world and has made serious endeavours in the direction, which inter-alia includes “guidelines on consumer protection”. These guidelines reinforce the increasing recognition in recent years that consumer policy issues can no longer be seen as being of purely local concern but must be seen in an international context. Their importance is certainly not limited to the developing countries and they are as much important to the developed countries as to those countries in transition from socialist to market economy.

The General Assembly after negotiations in the Economic and Social Council adopted, by consensus, a set of guidelines on consumer protection on 9th April 1985. These guidelines are meant to provide framework for countries, particularly for developing countries, to be used in elaborating and strengthening consumer protection policies and legislation to protect consumers and also promote international cooperation in this field.

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These guidelines have the following objectives:47

(a) to assist countries in achieving or maintaining adequate protection for their population as consumers;
(b) to facilitate production and distribution patterns responsive to the needs and desires of consumers;
(c) to encourage high levels of ethical conduct of those engaged in the production and distribution of goods and services to consumers;
(d) to assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers;
(e) to facilitate the development of independent consumers’ groups;
(f) to further international co-operation in the field of Consumer Protection; and
(g) to encourage development of such market conditions as to provide consumers with a greater choice at lower prices.

The guidelines further provide that Government should maintain adequate infrastructure to develop, implement and monitor consumer protection policies. Special care should be taken to ensure that measures for Consumer Protection are implemented for the benefit of all sectors of the population, particularly the rural population. The government should make an effort to ensure to improve the condition under which essential goods are offered to consumers, giving due regard to both price and quality.48

The origins of the guidelines can be traced back to the late 1970, when the Economic and Social Council recognized that consumer protection had an

48 Supra note 10 p. 5.
important bearing on economic and social development. In 1977, the Council asked the Secretary General to prepare a survey of national institutions and legislations in the area of consumer protection. In 1979, the Council prepared a comprehensive report containing proposals for measures on consumer protection for consideration by Governments. In 1981, the Council again requested the Secretary General to continue consultations with the aim of developing a set of general guidelines for consumer protection, taking into account particularly the needs of the developing countries.49 Accordingly, the Secretary General carried out consultation with the Governments and International Organisations and submitted draft guidelines for consumer protection to the Economic and Social Council in 1983.50 The UN Guidelines were passed in the year 1985 and it was mainly around that time that most developing countries including India witnessed the ever-growing concern for consumer protection largely due to the painstaking efforts of the IOCU. In India, there was a mushroom growth of consumer organisations during that period and the year 1986 could probably be called an ‘era of consumer concern’.51

Thus, consumer interests have been shown concern at the international level and efforts have been made at the international level to formulate law and guidelines for protection of interests of consumers.

2.5.0 EVOLUTION OF CONSUMER LAWS IN INDIA

On coming to the Indian scene, the concept of consumerism was active even in the ancient period. As per the Arthshastra of Kautilya. It was the duty

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49 Ibid.
50 Supra note 47 p. 1522.
51 Supra note 35 p. 57.
of Superintendents to put the Government product in the market under favourable conditions and to supervise their sales at reasonably rates. Businessmen who cheated or interfered generally with the normal functioning of the market prices were open to heavy punishment. Similarly, Narada and Brahaspati have also laid down numerous laws and regulations to safeguard the interest of buyers and sellers. Alike Mahatma Gandhi attached great importance to what he described as “Poor Consumer” who according to him, should be the principal beneficiary of the consumer movement.

Therefore, it may safely and authoritatively be said that the consumer protection jurisprudence of India as understood and developed in modern times owns its genesis to the ancient period and the concept of providing protection to consumers through laws relates back to the time immemorial.

2.5.1 CONSUMER PROTECTION LAWS DURING ANCIENT PERIOD

In Ancient India, VEDAS were considered the words emanating from the mouth of God himself and were considered the supreme and sacred injunctions governing supposedly the entire society during the ancient period. It has been to learn the law from the letter of ‘Vedas’ and ‘upnishads’, the law could be easily ascertained by following indications available there in abundance, either in the form of positive Vidhis or negative Nishedhas injunctions. To quote only a few: (i) Tell the truth, (ii) Never tell the untruth, (iii) Never hurt anyone and (iv) Perform the acts which are not forbidden.  

An introspection to these ancient literature reveals various commands/dictates/injunctions/prescriptions regulating different aspects of trade and activities

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52 Taitriya –1 –11 cited in M. Rama Jois Legal and Constitutional History of India.
affecting consumers and providing sanctions in the form of punishment or monetary sanction in the case of their violation.

In Kautilya’s Arthshastra the laws of that time relating to weights and measures are depicted. Similarly YAJANVALKYA had also given views on weights and measures in Yajnvalkya-Samhita. The provision about adulteration in Arth-Shastra have been also made. Manu Smriti contains the views on adulteration and punishment therefore. YAJANVALKYA expresses his views of adulteration.

Main provisions of “YAJNAVALKYA-SAMHITA” are with regard to transaction of sale and purchase. “YAJNAVALKYA” took into account such hard conditions and framed rules for the protection of purchaser providing him some time to judge the utility of purchased goods and permitting him to return the goods in case the goods were found unsuitable to his needs. The sale of sample is also regulated by “YAJNAVALKYA” when he provided punishment to the trader who deceived a purchaser by showing a different article and changing it subsequently at the time of sale or delivery.

In “YAJNAVALKYA SAMHITHA” one finds elaborate mechanism regarding pricing – policy, and profit – ratio charged by the traders on the sold goods.

Principle of caveat emptor and breach of warranty is the modern principle of law applicable in sale of goods – Caveat Emptor (Buyer Beware) – finds place in “NARDA-SAMRITI”

In “MANU’s” code which lays down that: If same commodity is sold or meant to be sold is not delivered, the contract is not made good. It must be of the same quality as contracted for.
“YAGANVALKYA” developed the concept of “constructive theft” which is relevant with regard to the protection of consumers. It is interesting to find out that the wide-spread deceitful practice normally indulged into by Goldsmiths, the ornament makers-seems to be prevalent in ancient times also.

In order to protect consumers from such malpractices, “YAJNAVALKYA-SAMHITA” prescribed certain standard norms regarding deduction in weight due to wastage caused in making ornaments so that the goldsmith might refrain themselves from claiming great wastage and in case they did so, they were to be punished.\(^5\)

Ancient Hindu Code also contain some rules regarding deficient services rendered by the professional persons like Physicians. For instance “YAJNAVALKYA-SAMHITA” provided professional norm to be adhered by the physicians and any dereliction of duty on their part was declared to be severely punishable.

The brief description given above reveals that serious efforts had been made by the law makers in the ancient period of civilization in India to protect the different interests of consumers by providing rules and regulation prescribing certain duties and the violators of these rules/regulations were in most of the cases, subjected to punishment by fine.

### 2.5.2 CONSUMER PROTECTION LAWS DURING MEDIEVAL PERIOD

Although Ancient Hindu Law continued to govern Hindu populace particularly in the field of personal law, the legal principles of Muhammadan

\(^5\) Yajnavalkya-Samhitu op. cit. note 9, Shloka 178 at p. 370.
laws were engrafted in the Indian judicial system with the advent of Islam in India. The “HOLI QORAN” is the first and foremost source of Islamic Law in which also serious concern is found, like Hindu scriptures, for the problems faced by the consumers of the modern days. Some of these are given below for a comparative study.

The use of unjust weights and measures has been condemned by the prophet in the passages found in the QORAN. In the Qoran men are taught to abstain from dishonest dealing lest they be deprived of God’s blessing. It is said: “A perfect and just weight shall then have, a perfect and just measure shall those have; that they days may be long upon the land which the cord by God give the thee”.\(^{54}\)

Prophet Mohammad impressed upon his followers, the duty of strictly fulfilling their contracts. Sura 5 opens with the words: “O believers perform your contracts”.

The problem of excessive rate of interest, charged by the traders from the purchasers particularly in matters of purchase by hire, is a serious one faced by the consumers all over the world. Every where laws have been passed to protect consumers from this menace known as –USURY. In India, the Usurious Loans Act 1918 and the Hire-purchase Act 1972, intend to protect the consumers from excessive rates of interest. Interestingly, the HOLY QORAN took up this matter seriously and the practice of usury was condemned in the severest term.

Thus, it may be said that the genesis of consumerism dates back to ancient period starting from Vedic era. The need to protect consumers from

\(^{54}\) Ibid, at p. 107 Diut 25, 15.
the malpractices indulged into by the traders had always been felt since the dawn of civilization. During the ancient period “VEDAS,” Code of “KAUTILYA”, “MANU SMRITI”, “YAJNAVALKYA-SAMHITA”, “NARADA SAMRITI”, and various other ancient codes contained provisions with a view to cater and protect the interests of the consumers and provided punishment in case of the violations of those provisions containing directives.\(^55\)

This arrangement continued till the modern democratic governments emerged. However, in the medieval period before the emergence of democratic governments with the advent of Muslim invaders, both Islamic Law based on “HOLY QORAN” and Hindu Law based on Hindu scriptures were administered side by side. Similar to ancient Hindu scriptures, the “HOLY QORAN” also contained various prohibitive injunctions, prescription and directives for the purposes of protecting consumers from the malpractices indulged into by the traders.

The basic principles of law provided the foundation of the modern laws of consumer protection in India during the period of British rule and, thereafter, in the post independence period. In the modern times also, similar to ancient period, a consumer is virtually equated with the term citizen.

Efforts to protect consumers through laws were made in Ancient Hindu Codes and “HOLY QORAN” with the advent of British rule in India, the common law system of administration of justice was also implanted on the Indian soil and during 17\(^{th}\), 18\(^{th}\) and first half of 19 centuries, the rights and

interest of consumers were mainly regulated and protected by common law of Tort or Law of Contracts.\textsuperscript{56}

2.5.3 CONSUMER PROTECTION THROUGH LEGISLATIVE MEASURES PRIOR TO INDEPENDENCE

Since the advent of British rule in India along with the application of English Common Law, various legislative measures were also taken, from time to time, since 1600, with a view to protect the interest of public at large (which indirectly covered consumers interests) but most of them were by and large and overshadowed by Common Law Principles in their contents, however inspite of these enactments, principles of Common Law also continued to be applied through the judgments of the Privy Council and the High Courts as and when necessity arose for either interpreting or clarifying these statutes or for dealing with those subjects which were not covered by these statutes.

However, the main Legislative Enactments which either wholly or partially have direct bearing upon the protection of consumers are:

The Punishment Related to Weight and Measures are given in chapter XIII. Chapter XIII of the code is captioned as “of offence relating to weights and measures” and is consisted of section 264 to section 267”. Section 272 and Section 273 provide punishment related to adulteration of an article of food or drink.

Similar to the weights and measures, with regard to the food adulteration also the “prevention of food adulteration Act, 1954” was enacted making provision for prevention but the provisions of Indian Penal Code have

not lost its significance because these sections specifically make the activity of adulteration as punishable offences.

The specific penalties have been provided in sections 274, 275 and 276 for the offences related to adulteration of drugs and sale of such adulterated drugs.

It may be noted that after 80 years from the enactment of the code, a new legislation namely. The “Drugs and Cosmetics Act, 1940” was passed which provides for the regulation of import, manufacture, distribution and sale of adulterated misbranded and spurious drugs and cosmetics, however, sections 274 to 276 of the Indian Penal Code are still relevant as they provide for the offences relating to public health.

In addition to above stated provisions which have direct concern with the protection of consumers or users, the code contains several provisions under which certain types of negligent conduct have been declared as offence and in such cases the aggrieved person can, in addition to seeking remedy under law of torts also initiate criminal proceedings against the person guilty of such negligent act. The provisions related to negligent conduct are given in Sections 284 to S. 288.

To protect interest of contracting parties. The Indian Contract Act, 1872 was passed. The essence of contract is the ‘meeting of minds’.

It was in the later part of the first half of the 20th century that it was realized that meeting of minds may not in every case be real. It may happen that one of the two parties to a contract has in fact no freedom, no volition, he merely sign on dotted lines. This is literally what happens in standard form of contract and in many other deals. A labourer, who hires himself on daily
wages in more often than not has no freedom: he accepts whatever wages are offered to him, in the modern world of shortages in fact the consumer has no volition, no freedom of choice. Hence consumer protection laws assume greater importance.

It is pertinent to note in this connection that the Indian Contract Act, 1872, was based on most of the principles and doctrines of English Common law and initially it also contained the provisions regulating the sale of goods and partnership. Later on, in order to define and amend the law relating to sale of goods and partnership, two separate Acts were enacted namely the Indian “Sale of Goods Act, 1930” and “Indian Partnership Act, 1932”. Besides sale of goods and partnership for which separate legislations were made, the other forms of specific contracts like contract of Indemnity, Contract of Guarantee, Contract of Bailment or Pledge and Contract of Agency, still continue to be governed and regulated by the Indian Contract Act, 1872.

When a person purchases goods or uses the same or hires the services or avails the same, he becomes a consumer and the entire gamut of his contractual relationship is normally governed by the general principles of Law of Contract with regard to the determination of his rights and obligations in addition to the specific provisions made in the other laws dealing with certain specific transaction.

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58 Law relating to “Contract of Guarantee” see. 126 to 147 of contract act 1872.
60 Law relating to contract of Bailment of Pledge Sec. 172 to 181 of Contract Act 1872.
Therefore, for making better appraisal of the laws relating to consumer protection, it would be useful to have a glance over the General principles contained in the contract Act regulating contractual relationship formed on the basis of contract which have also helped in the development of consumer protection laws during the modern period.

The contractual relationship between two person is created by making a proposal by one person to the other.\textsuperscript{62} It acceptance by the other thus making it a promise.\textsuperscript{63} Attachment of consideration to such a promise thus converting the promise into an agreement\textsuperscript{64} and if such an agreement is enforceable by law, it is known as contract.\textsuperscript{65}

All agreement are deemed to be a contract if they are made by the free consent of the parties. Absence of free consent does not make an agreement void an agreement becomes a contract but it is voidable at the option of the party who have not given his consent freely. So much so agreement in restraint of marriage trade, of legal proceeding and by way of wager and agreement without consideration or unlawful consideration are void and on breach of contract, the most usual remedy and usually availed of by the parties is compensation for loss or damage caused to the aggrieved party. Specific performance of certain types of contract can be obtained under specific relief Act, 1963. Accordingly most of the above stated principles of Law of contract either enunciated under common law or contained in the Indian Contract Act, 1872 are applicable when a consumer purchases goods or hires services. In addition to the general principles, he may also have confront with certain

\textsuperscript{62} The Indian Contract Act, 1872 Section 2(a).
\textsuperscript{63} Section 2(b).
\textsuperscript{64} Section 2(e).
\textsuperscript{65} Section 2(h).
specific contracts like, contract of Indemnity, contract of Guarantee, Bailment or Pledge and Contract of Agency.

In addition to the above, a consumer in the modern age is confronted in all walks of life with a peculiar type of contract in which although the two basic conditions of the contract freedom of will and equality between parties are found missing, still such contract has been declared by the court as valid and is in vogue. Such contract is known as “Standardised Contracts” or “Standard Form of Contracts”

The problem arising out of standardized contracts in the case of sale of goods and hire of services are more or less identical and the legislative reforms on the pattern of “British Unfair Contract Terms Act, 1977” and the “supply of goods and services Act, 1982” may prove to be beneficial to consumers.

The concerted actions against the providers of defective goods or deficient services under the standardized contract and launching of a strong consumer movement are required. The sale of goods Act, 1930 was also enacted to protect interest of consumers.

**Express Condition/Warranty in the Contract of Sale and Consumer Protection** :- A Contract of sale may contain certain terms in the form of “condition” or “warranty”. These two terms are used in technical sense and thus it is necessary to see their legal meaning. Section 12 of the “Sale of Goods Act, 1930”, defines “Condition and Warranty.”

In addition to the express conditions of warranties stated in the contract of sale, the “Sale of Goods Act, 1930”, with a view to protect a buyer/consumer, attached some implied conditions or warranties with every transaction of a sale. The implied conditions or warranties are with regard to:
(i) Title of Goods

(ii) Description of Goods

(iii) Merchantability of Goods.\textsuperscript{66}

From the brief description given above it emerges that a buyer has the following main rights or remedies in the case of sale of defective goods:

(i) Right of Rejection of goods.

(ii) Right of Repair or removal of defects or replacement of goods.

(iii) Right to claim damages

(iv) Right of get specific performance.

In the year 1940, on the recommendations of the Drugs Enquiry Committee, the DRUGS ACT, 1940 was passed in British India by the Governor General which may be termed as a consumer protection legislation. Later on by an “Amending Act of 1962”, (the word cosmetic was added in the title and other relevant places in the Act. Along with ‘Drugs’ and the Act was renamed as “THE DRUGS AND COSMETIC ACT”, 1940.

The Act provides for regulation of import manufacture and Sale of drugs and Cosmetics. Any contravention of the regulatory or prohibitory provisions of the Drugs and Cosmetic Act, 1940 has been declared as an offence and made punishable. A recognized consumer association has also been given another valuable right by the 1986 amendment to obtain test for analysis of any drug or cosmetic purchased by it from a Government Analysts and to receive a report of such test or analysis signed by Government Analyst,\textsuperscript{67} such right is also available to purchaser of a drug or cosmetic who is necessarily a consumer.

\textsuperscript{66} Rowland V. Dival (1923) K. B. 500.
\textsuperscript{67} D & C Act 1940, Section 32(2).
The Drugs and Cosmetic Act 1940 which is still operative has, despite excellent legal provision mentioned as above, failed to check the inflow of hazardous, adulterated, misbranded, sub-standard, banned drugs or cosmetics in the Indian market due to lack of proper control, inadequate enforcement machinery, inappropriate infrastructure lack of consumer awareness and indifferent or apathetic attitude of consumers. The delay caused in getting test or analysis report, technical difficulties faced in taking samples, lack of honest and integrated personnel involved in inspection and judicial delay are some of the reasons to make this consumer oriented legislation an ineffective one and consumers and users of drugs or cosmetics available in the Indian market are still in peril and in need of proper and adequate protection by other legislation laws or any special legislation meant for the protection of consumers.

Many legislation have been passed after independence in India for the protection of interests of consumers.

2.5.4 CONSUMER PROTECTION THROUGH LEGISLATIVE MEASURE DURING POST INDEPENDENCE PERIOD

When India attained independence, it adopted the Anglo-Saxson system of administration of justice and most of the legislative enactments dealing with the protection of consumer continued to operate. However, a new dimension was provided by the adoption of Constitution in the year 1950, to the legislation making, relating to Citizens in general and consumer in particular. The Constitution itself contained various guarantees to the citizens of India and also provided guidelines-in the form of “Directive Principles of State Policy” to be followed and nurtured by the state in its future legislative activities and the post-independent era has witnessed a large number of
enactments meant for the benefit of consumers. The major enactments which have direct bearing upon consumer are:

(i) The Drugs (Control) Act, 1950;


2.5.5 CONSTITUTIONAL MANDATES AND CONSUMER PROTECTION

The PEOPLE OF INDIA have solemnly resolved, through the Constitution to secure fellow citizens. Justice – Social economic, political, Liberty of – thought, expression, faith and worship. Equality of – status and opportunity and to promote among them all Fraternity, - assuring dignity of the individual and the unity and integrity of the nation.68

In this direction the constitution of India endeavours to establish a social service state which, in the words of W. Friedmann, functions as protector, as dispenser of social services, as Industrial Manager, as Economic Controller and as an Arbitrator.69 Therefore, although the word consumer is not found in the constitution, social service state has to take within its functional ambit the protection of consumers. The word “Consumer” is a compendious word and it embraces all people irrespective of their sectional or group denomination or territorial bounds. The well known consumerist – RALAPH NADAR has equated the word “Consumer” with the word

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68 The Preamble, Constitution of India, 1950.
“Citizen”.\textsuperscript{70} On this logic, it can safely be said that the absence of the word consumer in the constitution does not have much significance because the preamble of the constitution and other provision are focused towards the interests of “All the Citizens” which necessarily and inevitably would mean and include the interests of consumers.

Moreover Art. 14 of the constitution guarantees equality before law and equal protection of laws. Therefore, manufacturers, producers, traders, sellers and consumers enjoy equal treatment before law either for receiving reward or punishment. It is now well-established that under Art. 14 of the constitution, no state monopoly could be arbitrary in its dealings with the consumer.\textsuperscript{71}

Under Article 21 which guarantees right to life and personal liberty\textsuperscript{72} denial of an essential service by the state might amount to violation of this right. Further, the consumer is entitled to constitutional Protection under Art. 38, which reads as – “The state shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic, and political, shall inform all the institution of the national life. Under clause (b) and (c) of Article 39, the state is duty bound to direct its policy towards securing the distribution of the ownership and control of the material resources of the community in such away as “to serve the common good”.

Art. 42 directs that the state shall make provision for securing just and humane condition of work and for maternity relief. Art. 43 directs that state shall endeavour to build an economic organization or to make suitable

\textsuperscript{70} Ralph Nadar as cited in Ross Cranston, Consumer and the Law 1978 p. 378.
\textsuperscript{71} See R.D. Shelly v. International Airport Authority of India, AIR 1979 S.C. 1628.
\textsuperscript{72} See Bandhua Mukti Morcha v. International Air Port Authority of India, AIR 1979.
legislation to ensure a decent standard of life to all the workers who constitute the bulk of the consumers.

Art. 46 of the Constitution of India mandates that the state shall promote with special care the educational and economic interest of the weaker sections of the people and shall protect them from social injustice and all forms of exploitation. The expression “Protection from all form of exploitation” would when applied in the context of consumers means that the consumers should be saved from all kinds of harassment and fraud at the market place.

Interestingly, by the constitution (Forty-Second Amendment) Act, 1976, the state was given an additional responsibility under newly added Article 39-A “to secure that the operation of the legal system promotes justice on a basis of equal opportunity” and in order to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, a constitutional duty was imposed upon the state “to provide free legal aid by suitable legislations or scheme or in any other way”. The consumer by and large due to poverty, ignorance and lack of organization find the existing justice dispensation machinery inaccessible and very often are unable to assert their rights. The right to free legal aid is enshrined in Art. 39-A. 73

In order to transform the constitutional mandates into reality and fulfill the aspirations of the people of India, several legislations have been enacted during the post independent era dealing with and protecting the rights of consumers and other inter-related persons.

73 See op. cit. note 2 at p. 383.
So much so, the main enactments which are directly related with the protection of consumers require a close examination with a view to trace out the development of consumer protection laws during post-independent period through legislative measures and to assess the efficacy of the Protection being given thereunder to the consumers, individually or as a class or a group.

As already discussed, in order to regulate the import, manufacture, distribution and sale of drugs and cosmetics, the “Drugs Act, 1940” was enacted and later on in the year 1962, its scope was extended to cosmetics also, thus changing the name of the Act as “Drugs and Cosmetics Act, 1940”. Its scope was enlarged in the year 1982 and alongwith drugs and cosmetics Ayurvedic Drugs. Thus act is mainly concerned with standard and quality of drugs manufactured in India and also deals with the prevention of sub-standard drugs. Although the Act of 1940 dealt with regulation of manufactures, sale and distribution of drugs and cosmetics particularly misbranded and adulterated.74

Art. 47 of the constitution imposed a duty upon the state to improve public health and keeping in view this mandate and to make drugs available at reasonable price to all the persons without any discrimination, the Drugs (Control) Act, 1950 was enacted and it came into force on 7th April, 1952.

Inspite of so many provisions contained in the Drugs (Control) Act, 1950 discussed in the preceding topics which are much beneficial to the purchaser of drugs (consumers). It is surprising that individual purchaser or any consumer organization representing them has not been permitted to institute any proceedings under this Act against the producer, dealer or retailer manufacturing, supplying or distributing the drug or holding the drugs in contravention of the restrictions imposed under the Act or conditions

74 The Drugs (Control) Act 1950 (referred hereinafter to as D(C) Act, 1950) – Preamble.
prescribed by the Chief Commissioner or the Government.\textsuperscript{75} Therefore, this beneficial legislation does not seem to be of much utility to the consumers in general.

As has been observed earlier,\textsuperscript{76} the adulteration of food, drugs and other goods was prevalent even in ancient India and the Hindu scriptures provided regulatory devices and punishment for such malpractices. Although several thousand years have passed since then the adulteration of food still remains one of the serious problematic evil to be tackled in India.

The various provisions were made in Chapter XIV of Indian Penal Code regarding offences affecting public health and safety but many forms of adulteration did not come within the ambit of the said penal code. Since the Indian Penal Code failed to check the evil of adulteration effectively and protect consumers. Different states enacted separate legislations but such legislations also proved to be failure. In order to plug in the Loopholes the parliament passed the “Prevention of Food Adulteration Act, 1954”.

Although “The prevention of food Adulteration Act, 1954” came into operation from June 1, 1955 and major Amendments were made in it several times with a view to make the same more effective and pungent, it had not succeeded in achieving its objectives till the year 1976 as is evident from the confessional statement made by Government.\textsuperscript{77}

“Adulteration of food article is rampant in the country and has become a grave menace to the health and well being of the community. It makes a heavy dent in the already low nutritional standards and the benefits of many

\textsuperscript{75} D(c) Act 1950, Section 15(2).
\textsuperscript{76} See, Supra Chapter one at p. 8.
\textsuperscript{77} Gazette of India Extraordinary Part II Section 1 dated February 17, 1976, p. 295.
public health programme on which large sums of money are spent, are insidiously undermined. Therefore, keeping in view the gravity of problem and the growing danger which it poses to the health of the nation, it has become necessary to amend the “Prevention of Food Adulteration Act, 1954”. “So as to plug loopholes and provide for more stringent and effective measures with a view to curb the menace”.

Late on, the Act was Amended in 1976 and 1986, in the amendment Act, 1986 giving a statutory right to a recognized consumer association, whether the purchaser of the food article is a member of that association or not, to take sample for the purposes of analysis and to initiate prosecution proceeding by filing a complaint in the appropriate court.

However, the right of the consumer association to file complaint was also circumvented by imposing the condition precedent of getting the food article analysed from the public analyst.

“The Prevention of Food Adulteration Act, 1954”\(^\text{78}\) also does not provide any type of remedy to consumer or group of consumers in the case of any injury or loss caused to them due to use of such adulterated, misbranded or prohibited article of food covered under the “Prevention of Food Adulteration Act, 1954.”

Although he Supreme Court has tried to give a positive dimension to “Prevention of Food Adulteration Act, 1954”, it is to be noted in a case also, the vendor was convicted and sentenced for six months simple imprisonment and to pay a fine of rupees one thousand and in default of payment of fine a further simple imprisonment of two months.

\(^{78}\) D.N. Saraf “Legal Regulation of Pesticides problems and Perspectives” in C.E.R.C. Publication” – Pesticides Residues in foods, 1969, p. 221.
The chronic shortage of certain necessities of life and their non-availability at reasonable rates to every one, the growing tendency in the conduct of unscrupulous traders and distributors to hoard essential commodities with a view to profiteering, the illiteracy, ignorance and the poor purchasing capacity of the vast majority of population – particularly rural folk, the absence of competitive market and many other factors alike, necessitated to empower the Government to regulate production, price, supply and distribution of essential commodities. The need for enactment of a suitable legislation had been felt, even before the partition of the country, to curb certain undesirable tendencies of unscrupulous elements in the trade and commerce. The Essential Commodities Act was first enacted in 1946. In 1955, on the basis of the constitution adopted by the country the essential commodities Act, 1955 was enacted. The objective of the legislation was, and continuous to be, to regulate the production, supply and distribution of those commodities which are essential for the people and to ensure that the unscrupulous elements of the trade do not corner the stocks or unduly inflate the prices which would disable the common people from procuring them.

The past experiences has shown that “Essential Commodities Act, 1955” has always been a subject of great agitation amongst the traders as they feel the provisions of the Act highly stringent and non-judicious. On the other hand the traders continued to indulge in anti-social activities like hoarding and black-marketing and the evil of vicious inflationary prices was magnified.

To conclude, it may be said that the volume of delegated legislations under the “Essential Commodities Act, 1955” through the issuance of orders indicates the complexity of the legislation and a large number of commodities
have been brought under its sweep. It indicates the relevance of such legislations which has been severely criticized during the last 3 decades by the business community. In a vast country like India in which it is usual phenomenon to come across conditions of acute scarcity in one or several parts when other areas have abundance of those essential commodities.

In such a situation the profiteers and black marketers tend to use various devices to raise prices and even those areas, where an essential commodity is available in abundance, artificial scarcity is created by these anti-social elements. The use of this law has to be tolerated until production is raised to meet the demands of the masses. Thus, saving consumers form the problems they encounter at the hands of unscrupulous traders.

The scientific steps are required to be taken by suitable legislation for the protection of general masses of consumers. Although in the year 1986 the “Consumer Protection Act, 1986” was enacted with a view to provide better protection to consumers. The Consumer Protection Act, 1986 deals only with the problems of an individual consumer. It does not deal with the issue and problems related to “maintaining or increasing supplies of any essential commodity or for securing their equitable distribution, and availability at fair prices or dealing with persons indulging in hoarding and black-marketing of, and profiteering in, essential commodities and with the evil of vicious inflationary prices” for which the essential commodities Act 1955. The Essential Commodities (Special Provisions) Act 1981, and “Prevention of Black-Marketing and Maintenance of Supply of Essential Commodities Act, 1980” were enacted and are still in operation.

Some of the orders issued by the Central/State Governments are indicative of the range powers exercised under the E.C. Act, 1955.
2.6.0 MONOPOLISTIC, RESTRICTIVE AND UNFAIR PRACTICES AND CONSUMER PROTECTION

From the description given above, it emerges that prior to the enactment of “Consumer Protection Act, 1986”, although the Monopolistic Restrictive and Unfair Trade Practices Act, 1969 was the only legislative device meant for providing relief in respect of monopolistic and restrictive trade practices prejudicial to public interest or prejudicial to consumers, the “Monopolistic Restrictive and Unfair Trade Practices Act, 1969” initially lacked in containing effective provisions relating to Protection of Consumers and therefore the Sachar Committee in the year 1978 had to recommend for its complete overhauling, the committee gave various suggestions with regard to protection of interests of consumers. However the recommendations made by the committee did not find place in the statute book for approximately 5 years and at last in the year 1984, major amendments were made in the “Monopolistic Restrictive and Unfair Trade Practices Act, 1969”, two year later by another amendment “a consumer” and a ‘registered consumer association” were also given Locus Standi to make a complaint. The Amendment of 1986 added an important and valuable right in the armoury of consumers.

The provisions of the “Monopolistic Restrictive and Unfair Trade Practices Act, 1969” (inserted by the Amending Act of 1986) definitely are derogative and discriminatory to consumers’ association in comparison to

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80 This requirement is made essential under all the other enactments under other enactments a consumer association suo moto gets the status of recognized consumer association immediately after getting itself registered for the purposes of availing the right given to it under the concerned statutes.

trade association, the provisions also dilute the importance and statute of consumers’ association which they enjoy under other enactments dealing with the protection of consumers interest.

In addition to the above, a consumer or consumers’ association has not been given any right to make a complaint in the court of Law for taking cognizance of the offences committed under the “Monopolistic Restrictive and Unfair Trade Practice Act, 1969”. Such a right is enjoyed by consumers or their associations under other enactment affecting directly or indirectly the interests of consumers. The “Monopolistic Restrictive and Unfair Trade Practices Act, 1969” suffers with a deficiency that it provides for multiplicity of proceedings for the same act of contravention viz., before the “Monopolistic Restrictive and Unfair Trade Practices commission and the session court. And surprisingly, no right is given even to Monopolistic Restrictive and Unfair Trade Practices Commission to refer the matter of contravention to, or file a complaint in, the court of session for initiating criminal action against the guilty person.82

But inspite of the above stated shortcomings the “Monopolistic Restrictive and Unfair Trade Practices Act, 1969”. After the changes incorporated, therein by the 1984, 1986 and 1991 amending Acts has gradually assumed much relevance and importance in the context of consumer protection and its importance is not minimized or diminished even after the enactment of the specific consumer legislation. “The consumer protection Act, 1986, because the “Monopolistic Restrictive and Unfair Trade Practices Act, 1969” has wider scope and jurisdiction even in several such situations in which

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consumers have been denied appropriate remedy by various consumer disputes redressal agencies set up under the provisions of the said Act. The “Monopolistic Restrictive and Unfair Trade Practices Act, 1969”\textsuperscript{83}, also inflicts severe punishment with the intent to cause deterrent effect even in those cases in which only compensation may be awarded under the Consumer Protection Act, 1986.

\section*{2.7.0 QUALITY CERTIFIED PRODUCTS AND CONSUMER PROTECTION (THE I.S.I ACT, 1986)}

The year 1986 may be said to be the golden year for consumers as not only the consumer protection act, 1986 was enacted in that year, a new legislation namely— The Bureau of Indian Standards Act, 1986 was also enacted which repealed the earlier act made on the subject.

Inspite of the detailed provisions regarding standardization and certification Marking Scheme operated by Bureau of Indian Standards and provisions for heavy penalty for contravention of the provisions of the Bureau of Indian Standards Act, 1986 and the ISI Mark is misused by the manufacturer nowadays. The tactics used by manufacturers is to put a huge sign of ISI on the goods and write in minute letters underneath it the word “Conforms” or “Conforms to”. It is to be remembered that in such a case Bureau of Indian Standards is not in the picture at all.\textsuperscript{84}

To conclude, it may be said that if the Bureau of Indian Standards Act, 1986 is implemented in its true spirit and letters and with full vigour and the Bureau of Indian Standards and the enforcement agencies come out of their “shell”, the Indian consumers would be highly benefited because, barring the

\textsuperscript{83} MRTP Act 1969 Section 11(1), Section 36C and Section 10(b).

\textsuperscript{84} Pushpa Girimaji “Misuse of ISI Mark” The Time of India New Delhi, 18-12-1992 at p. 11.
“Consumer Protection Act, 1986” it is the only legislative measure, which arranges the replacement of the defective or sub-standards products having ISI mark to the consumers under its third part guarantee.

Law is quite potent and has sharpest teeth, only its enforcement is to be geared up and consumers’ association can play an important role in this regard in putting effective pressure upon the Government and the enforcement agencies for implementing the provisions of the Act and various orders issued thereunder. Thus, various pieces of legislation were enacted for protecting interest of consumer.

But only a little could be achieved in the field of consumer protection from the enactment of the aforesaid consumer laws. Thus, The Consumer Protection Act, 1986 was passed for the better protection of the consumers. The Consumer Protection Act, 1986\(^{85}\) provides an extremely good opportunity to the consumers for the quick redressal of their grievances and it is rightly considered to be a milestone in the history of socio-economic legislation in India. For this purpose a three tier quasi judicial machinery was set up at the National, State and District level to deal with the consumer disputes in the fields of defective goods, deficient services, unfair trade practices, restrictive trade practices, over changing and hazardous goods, etc. The basic objective of the Act is to provide speedy and inexpensive justice to the consumers. However, consumer protection as a specialized field has emerged only recently in India; when the consumers in order to save themselves from the clutches of traders, started protecting their interests by organizing their

\(^{85}\) Consumer Protection Act 1986 (No. 68 of 1986), assent of the President of India was accorded on 24-12-1986.
activities to enhance their rights. This in turn has led to the emergence of consumer protection as a powerful socio-economic movement.

The Consumer Protection Act, 1986 was welcomed from all quarters of society as a welcome. The Act seems to be having full and extensive intensity to deal with matters of every kind efficiently. The aims and objectives are well settled and reflect the intent and decision of legislature. The sheer voice of consumers and their organisations has become a ‘roar’ with the coming of this Act. Their problems and troubles have taken a special consideration at every important place. There were teething troubles at the initial stages but the Act, with the passage of time will surely act as an abstergent against the unfair trade practices, for the Act is not a mere logomachy, but is eclectic. The Consumer Protect Act is regarded as “Magna Carta” in the field of consumer protection for checking the unfair trade practices and deficiency in goods and services.