



# Evolution of consumer Protection legislations in India: A study

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## Abstract

Consumer Protection is a Socio-economic activity that is to be carried out by government and business with a prime interest of consumer satisfaction. Consumer protection has been a part of the responsibilities of the rulers in India even before independence. The sovereignty of the consumer in the market is no more than a myth, at least in the Indian situation. The consumer is a king only in name without any power or privilege or rights. The mercantile maxim, 'Caveat emptor' (let the buyer beware), prevails in the Indian market environment, and the seller does not hold himself responsible for the quality of what he sells. This, more or less, is the plight of the illiterate as well as the educated consumer. What is true of India, it would seem, is true of many other developing and under developed countries of the world. Consumers are trapped in a maze of unethical business practices. Consumers are bearing all these silently without protest though they have every right to protect themselves against the evils of the market environment. Consequently to protect the basic consumer rights Government of India has taken development steps by way of enactment of various Acts and other measures to define, aware and help consumers. In India, the concept of consumer protection is not new, it is as old as trade and commerce itself. The Consumer Protection Act, 1986 (68 of 1986) is a milestone in the history of socioeconomic legislation in the country. The main objective of the new law is to provide for the better protection of the consumers unlike existing laws, which are punitive or preventive in nature. In reality, Consumers have to realize their role and importance. With the rise of digitalization and E-commerce platform, the CPA, 1986 contain many flaws to work in the synchrony with consumer protection in the present scenario, where new kind of issues are arising with the use of modern facilities like multi-level marketing, direct selling, teleshopping, and online sale, etc. To enhance consumer protection Government of India has enacted a new law i.e., the CPA, 2019 as important measures to

deal with lacunae in the CPA, 1986. The CPA, 2019 is framed to ease the procedures involves in providing basic rights to the consumer, Hence the CPA, 2019 can be seen as a new milestone in empowering consumer.

**Key Words: Caveat Emptor, Consumer, Education, E- Commerce, Exploitation, India, Protection.**

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### **I. Introduction-**

According to Mahatma Gandhi, “A customer is the most important visitor on us. We are dependent on him. He is not an interruption in our work. He is the purpose of it. He is not an outsider on our business. He is part of it. We are not doing him a favor by serving him. He is doing a favor by giving us an opportunity to do so.”<sup>1</sup>, “The State is known by the rights it maintains.”<sup>2</sup> We all are consumers in one form or another. But in the present socio-economic set up we find that consumer is the target of many unfair and unethical ways adopted in the marketplace. The untrained consumer is no match for the businessman marketing goods and services on an organized basis and by trained professionals. He is very often cheated in the quality, quantity and price of goods and services. A consumer is said to be a king in a free market economy. An individual begins consuming as soon as he enters this universe. He requires food, clothes, home, and several other necessities, which he will fulfill in various ways throughout his life. As a matter of fact, we all are consumers in the sense that we consume the goods purchased from sellers. The relationship between the buyer and the seller has changed over a period. The principle of caveat emptor which meant buyer beware regulated the relationship between seller and buyer in the olden days. In the days of open marketplaces, the buyer and seller met face to face, the seller displayed his commodities, and the customer examined them carefully before buying them. It was expected that he would enter the transaction with intense caution and skill.<sup>3</sup> The earlier approach of caveat emptor, which means (Let the buyer beware) has now been switched to caveat venditor (Let the seller beware).<sup>4</sup> Taking advantage of the sheer helplessness of the consumer means, foul and fair, were devised by the manufacturer, distributor and the retailer to have a firm control of the market place. Consumer Protection through consumer law is a serious concern of countries in every continent in every stage of development and even in every kind of ideology. Legislative and administrative reforms in the consumer field have not been spontaneous but are response to pressure of consumer association and consumer activist. It may be instructive to trace the developments of consumer law during last few decades which exhibited concern towards the problems of the consumer.<sup>5</sup>

### **II. CHRONOLOGICAL DEVELOPMENT OF THE CONSUMER PROTECTION IN INDIA**

In ancient India, the problem of consumer protection has much deeper roots and human values were cherished, and ethical practices were considered of great importance. The paramount consideration for the rulers was the welfare of their subjects. They showed keen interest in regulating not only the social conditions but also the economic life of the people. They established many trade restrictions to protect the interests of buyers. In ancient times thinkers and spiritual masters started propagating the ideas of consumer protection. Any kind of adulteration was considered as an “Adharma” in the Shastras and the Vedas. In the West, the seeds of consumer protection can be traced in the Talmudic legal jurisprudence.<sup>6</sup>

#### **(A) CONSUMER PROTECTION IN ANCIENT INDIA-**

<sup>1</sup>S. A. Sherlekar, *Trade, Practices and Consumerism* 5 (Himalaya Publishing House, Bombay, 1977).

<sup>2</sup>J.S. Badyal, *An Introduction to Political Theory* 45 (Raj Publishers, Jalandhar, 2006).

<sup>3</sup>Tabrez Ahmad and Jai Manglam “Concept of consumerism in India: judicial attitude” Available at SSRN: <http://dx.doi.org/10.2139/ssrn.1877744> (Visited on June 12, 2021).

<sup>4</sup>Caveat Emptor, available at: <http://www.schools.aglasem.com> (Visited on November 5, 2021).

<sup>5</sup>K. Dameron, “The Consumer Movement” Vol. No.18(8) *Harvard Business Review* 71- 89 (1989).

<sup>6</sup>Charles Auerbach, “The Talmud: A Gateway to the Common Law.” Vol.No.3, *Western Reserve Law Review*, 6-8, (1951).

India has a long history of consumer protection. It dates to the Vedic age (5000 BC to 2500 BC). The Vedic Age is believed to be the first literary source of Indian civilization. It is seen as a glorious period of cultural evolution in the ancient world. The word 'Veda' signifies the knowledge of growing civilization and intimate problems of life. The Vedas are not books of law but are the repository of culture delineating the feelings and habits of the people of the time which indicate and give vivid ideas of legal concepts in a developed civilization. Matters relating to civil rights and criminal offences are explained in the Vedas. One comes across four broad types of relevant criminal offences in ancient India adulteration of food stuff, charging of excessive prices, fabrication of weights and measures, and selling of forbidden articles for which statutory measures and punishments have been recommended by the leading texts of the time. 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 'Upanishads', the law could be easily ascertained by following indications available there in abundance, either in the form of positive Vidhi's 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.<sup>7</sup> All sections of society followed Dharma-Shastras (Dharma) which laid out social rules and norms and served as the guiding principle governing human relations in ancient India. The principal of Dharma was derived from Vedas. Vedas were considered the words of God, and Law was said to have divine origin which was transmitted to society through sages. Thus, Vedas were the primary source of Law in India.<sup>8</sup> Among them the Manu Smriti<sup>9</sup> (800 B.C. to 600 B.C.); Kautilya's Arthashastra<sup>10</sup> (400 B.C. to 300 B.C.) ; Yajnavalkya Smriti<sup>11</sup> (300 B.C. to 100 B.C.); Narada Smriti<sup>12</sup> (100 A.D. to 200 A.D.) Brihaspati Smriti<sup>13</sup> (200 A.D. to 400 A.D.); and Katyayana Smriti<sup>14</sup> (300 A.D. to 600 A.D.)<sup>15</sup> are considered as authoritative texts.<sup>16</sup> The Narada Smriti has clearly delineated the channels of the civil and criminal law. The Yajnavalkya Smriti appears to be more systematic than the Manu Smriti and is also considered to be a great authority in the realm of Hindu law as well as a great authority on vyavahara (behaviour) and personal rights of a man. The chronology of the history of Indian literature is shrouded in truly terrifying darkness and most of the riddles remain to be solved by research. It is much better to clearly recognize the fact that for the oldest period of Indian literature we can give no certain dates and for the later period only a few. So far as the above chronology is concerned, the actual dates of different periods, scholars, and texts are indeed very difficult to ascertain.<sup>17</sup>

<sup>7</sup>M. Rama Jois, *Legal and Constitutional History of India*, 105, (N.M Tripathi; Fred B. Rothman Bombay, Littleton, Colo., (1990).

<sup>8</sup>S.R. Myneni, *Consumer Protection Law*, 1, (Asia Law House, Hyderabad, 1<sup>st</sup> edn., 2010).

<sup>9</sup>Chakradhar Jha, *History and sources of Law in Ancient India*, pp. 115-116, (Ashish Pub. House, New Delhi, 1987).

<sup>10</sup>*Id.* at 94-95.

<sup>11</sup>*Id.* at 116-17.

<sup>12</sup>Gurjeet Singh, *The Law of Consumer Protection in India Justice Within reach*, 44, (Deep & Deep Publications, New Delhi, 1996).

<sup>13</sup>S.R. Myneni, *Consumer Protection Law*, 93-94, (Asia Law House, Hyderabad, 1<sup>st</sup> edn., 2010).

<sup>14</sup>The Katyayana Smriti extensively deals with the substantive and procedural law as well as with the rules of evidence and various other matters concerning judicial trial.

<sup>15</sup>*Supra* note 13 at 38-39.

<sup>16</sup>Arthur Jay Silverstein, "Consumer Protection in Talmudic Law." Vol. No. 79, *Commercial Law Journal*, 279 (1974).

<sup>17</sup>*Supra* note 7 at 116.



**(B) CONSUMER PROTECTION IN MEDIEVAL INDIA-**

Protection given to the consumer can be traced during the Mughal times which started from 1526 onwards. India is believed to have been governed by Muslim rule from 712 A.D to 1765 A.D. Imad Uddin- Muhammad bin Qasim, General was perhaps the first Muslim who made conquest over the local ruler of Sindh in India and established a Muslim Indian dominion in 712 A.D. However, according to an eminent historian Basheer Ahmad, the Muslim institutions did not get any foothold in India until 1206 A.D. He has further written that the Mughal rule was firmly established in India only in 1526 A.D. by Zahir Uddin Babar who defeated the last Lodhi Sultan of Delhi and brought the Sultanate to an end. According to Basheer Ahmed, the Mughals ruled India effectively until 1750 A.D. and nominally up to 1857, when the last Mughal Emperor was succeeded by Queen Victoria as the Empress of India. The seeds of consumer protection were found during the Mughal times.<sup>18</sup> The seeds of consumer protection are also found during the time of the Khiljis. It is said that Sultan Alauddin Khilji (1296 A.D to 1316 A.D) had introduced strict price control measures based on production costs.<sup>19</sup> In his region, prices of most of the consumer products were fixed at lower rates to make them within the reach of the common man. For the breach of prices of goods and services severe punishments were prescribed. During Muslim Rule, many units of weights were used in India. During the Sultanate period, the prices used were determined by local conditions. Alauddin Khilji took drastic measures to save the state economy from the vicious circle of inflation and price rise. The fixation of prices was not done by the Sultan arbitrarily, nor his price structure was based upon fluctuating supply and demand, good or bad weather, or the speculative trends of business community, who raised or lowered the prices with motives of making the maximum profits.<sup>20</sup> Sultan Alauddin Khilji had introduced strict price-control measures based on production costs.<sup>21</sup> He had also established separate shopping centres in Delhi for grain, cloth, sugar, dried fruits, herbs, butter, and oil, horses, slaves and cattle, and miscellaneous commodities. The supply of grain was ensured by collecting tax in kind in the producing areas and keeping it in the royal storehouses. Hoarding of grain was forbidden. Elsewhere the growers were ordered to sell their grain for cash in their fields at fixed prices and were not allowed to take any grain home for private sale. The market controller, the state intelligence officers and the Sultan's secret agents each submitted independent reports on these shopping centres to the Sultan. Even a minor violation of the rules was not tolerated. The shopping centre for cloth, known as the sara-i-adl, was established near one of the royal palaces on the inner side of the Badaun Gate. All goods, including imports were first taken there and their prices fixed. Every merchant was registered with the commerce ministry and had to sign a bond guaranteeing a regular supply of the goods in which they traded. The Hindu Multani merchants were advanced money by the treasury to import rare commodities for the sara-i-adl. Some prices were subsidized. Costly fabrics and luxury goods could be sold only to

<sup>18</sup> J.N. Sarkar, *Mughal Administration*, 29 (MC Sarkar Publishers, Calcutta, 4<sup>th</sup> edn.,1952).

<sup>19</sup> *Ibid.*

<sup>20</sup> J.L. Mehta, Vol.III *Advanced Study in the History of Medieval India*, 107 (Sterling Publishers Pvt.Ltd New Delhi, 1987).

<sup>21</sup> S.A.A. Rizvi, Vol.2 *The Wonder That was India*, 38 (Pan Macmillan India, 1987).

those who had obtained permits from the government. The prices of cattle were also fixed, and unscrupulous merchants were deprived of their trading rights.<sup>22</sup>

**(C) CONSUMER PROTECTION IN CONTEMPORARY INDIA** The British came to India in 1600 AD as traders in the form of the East India Company and it was established under the Crown's Charter of 1600.<sup>23</sup> The victory of the Company in the battle of Plassey in 1757 against Sirajudindaulla, Nawab of Bengal, laid the foundation of the British Empire in India. In 1765, Shah Alam granted the Diwani i.e., the responsibility of the collection of revenue to the company which automatically involved the administration of civil justice.<sup>24</sup> The British started the process which culminated in the transformation of India's economy into colonial economy. The foreign trade of Bengal, which at time was the richest part of India became the monopoly of the company while internal trade in more important commodities like raw cotton was monopolized by the superior servants of the Company in their personal capacity. The British rule came to an end in 1947 with the coming into force of the Indian Independence Act, 1947.<sup>25</sup> During the British regime (1765 to 1947), government's economic policies in India were concerned more with protecting and promoting the British interests than with advancing the welfare of the native population. The administration's primary pre-occupation was with maintaining law and order, tax collection and defense.<sup>26</sup>

There were some pieces of legislations which protected the overall public interest though not necessarily the consumer interests.<sup>27</sup> These were- the Indian Penal Code, 1860, the Dangerous Drugs Act, 1930, the Sale of Goods Act, 1930 and the Drugs and Cosmetics Act, 1940. In a sense, the Sale of Goods Act, and the principles of the law of torts were more for the protection of the trader than the consumers. These legislations are general in nature. But most of them were by and large and overshadowed by common law principles in their contents, however, despite 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 have direct bearing upon the protection of consumers are discussed hereinafter. Under Criminal Law, the first ever notable provisions for consumer protection adopted in India are found in the Indian Penal Code, 1860.<sup>28</sup> This is the most relevant Act for the prevention of food adulteration. Like 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. Sections 272 and 273 dealing with the offences affecting public health, made certain offences like adulteration of food or drink intended for sale, making it noxious, and sale of

<sup>22</sup>Id., at 39.

<sup>23</sup> J.K. Mittal, *Indian Legal History*, 1(Central Law Agency, Allahbad,1998).

<sup>24</sup> Available at: <http://www.wisdomquotes.com/cathistory.html> (visited on 12.04.2022).

<sup>25</sup> J.N. Pandey, "*Constitutional Law of India*", 14, (Central Law Agency, Allahbad2007).

<sup>26</sup> Dharma Kumar and Meghnad Desai, Vol.2 "*The Cambridge Economic History of India*", 947 (Cambridge University Press, Cambridge1982).

<sup>27</sup> D.N. Saraf, *Law of Consumer Protection in India*, 13, (N. M. Tripathi Pvt. Ltd., Maharashtra,1990).

<sup>28</sup> The Indian Penal Code, Bare Act with comments, case law, All India Reporter Pvt. Ltd, Nagpur, (2008).

noxious food or drink, punishable with six months' imprisonment or with fine up to one thousand rupees or with both.<sup>29</sup>

Sections 274 to 276 made the offences of adulteration of drugs intended for sale, sale of adulterated drugs and sale of drugs as a different drug, or preparation, punishable with similar sentence.<sup>30</sup> The punishment related to weight, and measures are given in chapter XIII of the Indian Penal Code. Chapter XIII of the code consists of sections 264 to 267. Sections 264 and 267 of the Code made punishable the fraudulent use of false instruments for weighing, and fraudulent use of false weight or measure, possession and making and selling of false weights and measures punishable with imprisonment extendable to one year or with fine or with both.<sup>31</sup> Section 478 to 489 deals with offences relating to property and other marks. The fraudulent and misleading description of articles of trade and fake packages. Section 486 covers offences pertaining to counterfeit trademark or property mark.<sup>32</sup> The offence of public nuisance has been defined under Section 268, in general, to mean an act or illegal omission which may cause any common injury, danger or annoyance to the public or people. Further Sections 269 to 278 deal with certain specific categories of public nuisance. The provisions related to negligent conduct are given in Sections 284 to 288.<sup>33</sup>

and made punishable. However, sections 274 to 276 of the Indian Penal Code are still relevant as they provide for the offences relating to public health. The objective of this Act is to prevent the supply of substandard drugs and cosmetics for maintaining high standards of medical and health care. The Act has also prohibited the import of any drug or cosmetic which is not of standard quality; any misbranded drug or misbranded or spurious cosmetic, any adulterated or spurious drug, any patent or proprietary medicine not having proper display of its formula or ingredients in the label, any harmful or unsafe cosmetic and any drug making false claims. 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.<sup>34</sup> However, the Drugs and Cosmetic Act, 1940 has 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 attitude of the consumers. The delay caused in analysis report, lack of honest personnel involved in inspection and judicial delay are some of the reasons to make this consumer-oriented legislation an ineffective one. However, the aggrieved person can in addition to seeking remedy under law of tort also initiate criminal proceedings against the person guilty of negligent act recognised under Indian Penal Code. Section 133 of Criminal Procedure Code, 1973 provides special powers to the District and Sub divisional Executive Magistrate in case of violation of consumer rights specially relating to public nuisance.<sup>35</sup> To protect the interests of contracting parties, the Indian Contract Act, 1872 was passed. Under Law of Contract, the law relating to buyer and sellers, their rights and responsibilities and

<sup>29</sup>Shailender Malik, *Indian Penal Code*, 360-361, (Allahbad Law Agency, 2011).

<sup>30</sup>*Id.*, at 362.

<sup>31</sup>*Id.*, at 357.

<sup>32</sup>*Id.*, at 705-709.

<sup>33</sup>*Id.*, at 358-363.

<sup>34</sup> Section 32(2) of The Drugs and Cosmetic Act, 1940.

<sup>35</sup>Batuk Lal, *The Code of Criminal Procedure*, 183 (Central Law Agency, Allahbad2011).



conditions on which the contract is to be executed is contained in The Indian Contract Act, 1872.<sup>36</sup> This Act has specified basic principles by which an agreement becomes a contract. This Act contains important provisions relevant to consumer interest. Hence, the third party cannot seek remedy generally under the Act which leads to the exclusion of large number of consumers from the purview of the Act. Despite such limitations, the Act is important from the consumer perspective. In this respect judiciary has played an important role in protecting the interest of the consumers. 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 signs on dotted lines. This is literally what happens in standard form contracts.<sup>37</sup>

Initially the Indian Contract Act, 1872, contained the provisions regulating the sale of goods and partnership. Later, 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, Contract of Pledge and Contract of Agency, continue to be governed and regulated by the Indian Contract Act, 1872.<sup>38</sup>

The Sale of Goods Act, 1930 was enacted to protect interest of consumers. For 55 years, the Sale of Goods Act of 1930 was the exclusive source of consumer protection. Earlier, the Indian Contract Act, 1872 contained provisions about sale of goods in Sections 76 to 123. They were found inadequate to investigate the whole law on sale of goods. The Sale of Goods Act, 1930 was passed to serve the purpose of regulating the sale of goods.<sup>39</sup> This Act provides for the settlement of consumer and seller disputes. This Act has changed the principles of 'Caveat Emptor' casting a responsibility on the seller to offer mercantile goods. The ordinary rule in sale of goods is that conditions and warranties are not implied. It provides several important exceptions to this rule. Further there is an implied condition that the goods are free from any charge or encumbrance, are of the description tendered and shall perform according to usage and standards. Beside the return of price or free repair or replacement, damages can also be claimed for any loss or harm, or injury suffered by the buyer. The myth of consumer sovereignty has been eroded because of the helplessness of the consumer as a buyer of goods and recipient of services. With the progress of science and technology we have entered an age marked by sophistication of industrial products for the use of the consumer. It has become extremely difficult to judge quality, nature, and performance of the product at the time of purchase. In view of this, it is becoming increasingly important to compel a manufacturer, or retailer to make disclosures regarding the composition, performance, and hazards, if any, of the product. The older notions of merchantability, fitness of purposes, warranties and conditions have increasingly been the target of attack.<sup>40</sup>

<sup>36</sup> Avtar Singh, *Contract and Specific Relief*, 35, (Eastern Book Company, Lucknow, 2008).

<sup>37</sup> R.K.Bangia, *Contract-I*, 54 (Allahbad Law Agency, 2012).

<sup>38</sup> R.K.Bangia, *Contract-II*, (Allahbad Law Agency 2012). (Law relating to Contract of Indemnity covered under Sections 124 & 125; Law relating to Contract of Guarantee covered under Sections 126 to 147; and Law relating to Contract of Agency covered under Sections 182 to 238).

<sup>39</sup> S.K. Verma, *A Treatise on Consumer Protection Laws*, 24 ( Indian Law Institutes, New Delhi, 2004).

<sup>40</sup> D.N. Saraf, *Law of Consumer Protection in India*, 22, (N. M. Tripathi Pvt. Ltd., Maharashtra 1995).

**(D) CONSUMER PROTECTION IN SOVERIGN INDIA-** The new constitution of India was adopted by the Constituent Assembly on 26 November 1949. The Constitution of India came into force on 26th January 1950. With the adoption of the constitution in 1950, these aspirations of the people of India found an explicit expression in the preamble, the fundamental rights, and the directive principles of state policy respectively. Free India adopted a socialistic pattern of society. After independence, the government of India assumed an active role in the socio-economic development of the country. The constitution of India endeavors 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.<sup>41</sup>

Though the word 'consumer' is not to be found in the constitution, the consumer breathes and peeps out through many of the blood vessels of the constitution.<sup>42</sup> consumption of intoxicating drinks or drugs which are injurious to health.<sup>43</sup>

The Constitutional guarantees under Article 14 in the form of equality before law and equal protection of the laws, aim at establishing equality of status as enshrined in the preamble of the Indian Constitution.<sup>44</sup> 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 Article 14 of the constitution, no state monopoly could be arbitrary in its dealings with the consumer.<sup>45</sup> Article 14 enjoins a duty on the state to participate in the task of protecting all the persons positively, deliberately, and effectively irrespective of any other considerations against harmful actions and omissions of others. As a constitutional postulate, the state is obliged to protect the helpless consumer in his various dealings by passing necessary laws and enforcing them. Further, the consumer is entitled to constitutional Protection under Article 38. In all civilized countries most of the functions (regarding goods and services) have been undertaken by the State to provide socio economic justice to the people. It is the duty of the state to protect the people from exploitation by the producers, industrialists, and traders. Parliament enacted the Consumer Protection Act, 1986. Thus, consumer protection is one of the duties imposed on the state.<sup>46</sup>

State may impinge upon the fundamental rights of the individual to carry on any trade, business, or profession. Article 19 (1) (g) guarantees a right to all the citizens to carry on any occupation, trade, or business. However, under Article 19(2) such a right cannot be enforced where the business is dangerous or immoral. Such a business may be absolutely prohibited or may be required to be licensed. Moreover, restrictions can be imposed on business in terms of place and time also. There is no right to carry on a business at every place or at any time. There can be reasonable restrictions on business on the streets and any harmful trade. Reasonable restrictions can be imposed for public convenience also. Thus, it is subject to reasonable restrictions under Article 19(6).<sup>47</sup> Right to life and personal liberty

<sup>41</sup> W. Friedmann, *Law in a Changing Society*, 378 (University of California Press, 1959)

<sup>42</sup> P. Leelakrishnan, *Consumer Protection and Legal Control*, (Eastern Book Company, Lucknow, 1981).

<sup>43</sup> *Supra* note 14 at 72

<sup>44</sup> *Supra* note 14 at 73.

<sup>45</sup> R.D. Shetty v. International Airport Authority of India, AIR 1979 SC 1628.

<sup>46</sup> J.N. Panday, *Law of Torts & Consumer Protection Act*, 38 (Central Law Publications, Uttar Pradesh 2014).

<sup>47</sup> *Supra* note 43 at 209.



enshrined in Article 21 of the Constitution of India ensures that every person in India should live with human dignity, free from all type of exploitation. It includes protection of the health and wellbeing of all people. Article 21 guarantees the right to life and personal liberty. The Supreme Court in *Bhandhua Mukti Morcha v. Union of India*<sup>48</sup> observed that it is fundamental right of everyone in this country assured under the interpretation given to Article 21 by this court in *Francis Mullelin's case* to live with human dignity, free from exploitation. The right to live with human dignity enshrined in Article 21 derives its life breath from the directive principles of state policy and particularly clauses (e) and (f) of Article 39, Articles 41 and 42 and therefore, it must include protection of health and strength of the workers men and women. The directive principles in chapter IV of the constitution enjoin upon the states to initiate policies calculated to raise standard of living and to create a favorable climate for the purpose of happiness and for the development of human personality. The term 'life' is interpreted by the judiciary to include any kind of dangerous or spurious activities that affect life falls under the ambit of Article 21 of the Constitution. Judiciary played an important role in protecting the life of citizens from such dangerous activities under this Article. It is one of the most important fundamental rights that prohibit all kinds of exploitation.<sup>49</sup> In pursuance of the constitution of India, consumer protection legislations enacted after India's independence from Britain include, the Essential Commodities Act, 1955 and the Prevention of Food Adulteration Act, 1954 etc. Accordingly, the Prevention of Food Adulteration Act of 1954 was aimed at protecting the consumers from the hazards of food adulteration and to ensure the sale of wholesome food to the people and the Essential Commodities Act, 1955 provided for the control of production, supply, and distribution of, and trade and commerce in essential commodities. 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 remains one of the serious problematic evils to be tackled in India. 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.<sup>50</sup>

The Prevention of Food Adulteration Act, 1954<sup>51</sup> 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. Under the Essential Commodities Act, 1955, the issuance of orders indicates the complexity of the legislation and many commodities have been brought under its sweep. It indicates the relevance of such legislation 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. Another enactment the Indian Companies Act, 1956 also constituted an important landmark in the history of Indian

<sup>48</sup> AIR 1984 SC 802.

<sup>49</sup> *Supra* note 43 at 231.

<sup>50</sup> Gazette of India Extraordinary, Part II, Section 1, p. 295, dated Feb. 17, 1976.

<sup>51</sup> Act 37 of 1954.

company legislation, for it was one of the largest socio-commercial enactments ever passed by the Indian Parliament to regulate the functioning of the corporate form of organizations in the broader public interest in India.<sup>52</sup>

Provisions contained in the Drugs (Control) Act, 1950 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 prescribed by the Chief Commissioner or the Government.<sup>53</sup> Similarly, the Indian Standards Institution (Certification of Marks) Act, 1956 provided for the operation of certification for marketing schemes in order to ensure quality in marketable products. The Bureau of Indian Standards Act, 1986 was also enacted in the year of 1986. In spite 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. Thus, it may be said that if the Bureau of Indian Standards Act, 1986 is implemented in its true spirit and letters and with full vigor 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 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. However, despite these pieces of legislation, unscrupulous traders continued to cheat innocent consumers, especially in times of scarcity. A benefit of these Acts is that they do not require the consumer to prove mens rea, rather, the offences are of strict liability and not dependent on any intention or knowledge.

Prior to the enactment of the Consumer Protection Act, 1986, the Monopolistic Restrictive and Unfair Trade Practices Act, 1969 was the legislative device meant for providing relief in respect of monopolistic and restrictive trade practices prejudicial to public interest or consumers. The Monopolistic Restrictive and Unfair Trade Practices Act, 1969 initially lacked in containing effective provisions relating to protection of consumers and therefore the Sachhar Committee<sup>54</sup> 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 armory of consumers.<sup>55</sup>

<sup>52</sup> V.D. Kulshreshtha, “Emerging Trends of Corporate Management in India: Some Suggestions” Vol.1, *Company Law Journal*, 29-36 (1970).

<sup>53</sup> The Drugs (Control) Act, 1950 (Act 26 of 1950), s. 15(2)

<sup>54</sup> Sachhar Committee Report, para 22-27, (1978).

<sup>55</sup> In 2002 MRTP Act was replaced by The Competition Act, 2002.

The provisions of the Monopolistic Restrictive and Unfair Trade Practices Act, 1969 (inserted by the Amending Act of 1986) are derogative and discriminatory to consumers' association in comparison to trade association. The provisions also dilute the importance and statute of consumers' association which they enjoy under other enactments dealing with the protection of consumer's 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.<sup>56</sup> The Monopolistic Restrictive and Unfair Trade Practices Act, 1969, 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.<sup>57</sup>

However, there was no specific consumer protection legislation on the lines of British Statutes like the Consumer Protection Act, 1987. Any how the government has tried to provide legal umbrella to safeguard consumer interests. These laws if properly enforced, the consumer will be certainly adequately protected. Due to the loopholes present in the different enactments, the Indian consumer became an easy prey in the hands of the powerful traders. Whatever protection was available to the consumer under these laws was haphazard and piece-meal. In our country there was absence of an enlightened and vigilant consumer movement. Individual consumer always found himself at the receiving end because in comparison with an industrial establishment or a trading organization, his bargaining power, resources, knowledge, and familiarity with his legal rights were very weak. There was an immediate need for a comprehensive code of substantive and procedural laws designed to secure and promote consumer protection. The existing arrangements have not led to the growth of an effective consumer protection movement. These laws are either preventive or punitive in approach, and they don't provide for speedy relief and compensation to the aggrieved consumers. The procedures are long drawn and cumbersome. Besides, at present there is no statutory machinery which could function as a common platform for official or non-official to discuss the consumer problems and to advise the government in relation to various policies and measures to promote and protect the rights and interest of consumers.<sup>58</sup>

The rapid technological and industrial revolutions have changed the lifestyle of people by multiplying the needs of consumer products and services in various respects. In view of the socio-economic changes a great need is felt to set up a healthy and strong consumer movement to give boost and bring about social measure in the direction of

<sup>56</sup> MRTP (Recognition of Consumers Association) Rules, 1987.

<sup>57</sup> MRTP Act, 1969 (Act 54 of 1969) Ss. 11(1), 36C 10(b).

<sup>58</sup> Lok Sabha Debates, Vol. XXIII, No. 26, 8th Lok Sabha, 7th Session, (9th December 1986). Available at, <https://eparlib.nic.in/handle/123456789/7?offset=20> Visited on 20 December 2022.



consumer protection. With the continuous industrialization and urbanisation, environmental problems also came more to the forefront. Consumers are becoming vigilant and aware. In early times the consumer may have been able to protect himself since the products were sophisticated & could be inspected before purchase. But now the conditions have changed. The consumer knows little or nothing about these highly sophisticated goods. In real life, products are complex and due to great variety consumers and retailers have imperfect knowledge. The consumers need protection by law when goods fail to give up to their promises or indeed cause injury. The importance of the Consumer Protection Act, 1986 lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempts to remove the helplessness of a consumer which he faces against powerful business.<sup>59</sup>

In the month of December 1986, the Indian Parliament passed the Consumer Protection Act, 1986.<sup>60</sup> The Bill received the assent of the President on 24th December 1986, but it came into force on 15th April 1987. The Consumer Protection Act, 1986 has made a beginning and is a step forward in establishing egalitarian consumerism. The enactment of the legislation is to safeguard the interest of the community. The objectives of the Act, explain the scope and extent of the Act. However, this Act extends to the whole of India except the State of Jammu and Kashmir and secondly, this Act shall apply to transactions of all goods and services. The Consumer Protection Act is a small enactment consisting of 31 sections divided into four chapters. The Consumer Protection Act, 1986 starts with a preamble as follows: "An Act to provide for better protection of the interest of consumers and for that purpose to make provisions for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and for matters connected therewith." The object of this Act has been aptly described by the Supreme Court in the case Lucknow Development Authority v. MK Gandhi.<sup>61</sup>

In fact, the law meets long felt necessity of protecting the common man from such wrongs from which the remedy under the ordinary law for various reasons has become illusory, various legislations and regulations permitting the state to intervene and protect interest of the consumers have become a heaven for unscrupulous ones as the enforcement machinery either does not move or it moves ineffectively, and for reasons which are not necessary to be stated. The scheme laid down under the Consumer Protection Act, 1986 is as follows: Chapter 1 of the Consumer Protection Act, 1986 consists of three sections. This Chapter deals with preliminary, various important definitions and it says that this Act shall be in addition and not in derogation of the provision of any other law for the time being in force. Chapters 2 of the Consumer Protection Act 1986 consist of five sections. This chapter provides for the establishment of Central, State and District Councils to create awareness among the Indian consumer with respect to their rights at various levels. Chapter 3 of the Consumer Protection Act, 1986 consists of nineteen sections. It deals with establishment of Consumer Dispute Redressal Agencies at National, State and District level to resolve the consumer disputes. Further, it deals with composition, procedure in filing consumer complaint, jurisdiction, and appeals. A three-tier mechanism comprising the District Forum, the State Commission and the National Commission

<sup>59</sup> V. K. Agarwal, *Law of Consumer Protection*, 99 (Bharat Law House Pvt. Ltd., New Delhi, 1989).

<sup>60</sup> Act 68 of 1986.

<sup>61</sup> AIR 1994 SC 787.

came to be envisaged under the Act for redressal of grievances of consumers. Chapter 4 of the Consumer Protection Act, 1986 consists of four sections. This chapter deals with miscellaneous provisions like power to remove difficulties, power to make rules and regulations and the power of the National Commission to make regulations. This Act was enacted keeping in mind the following important features in administration of consumer justice. The main objective of this legislation is to provide for the better protection of the consumers through settlement of disputes and to provide the setting of Consumer Dispute Redressal Forum in every District, a Commission at the State level, and the National Commission at the Central level.

The State and National Commission will be vested with the appropriate appellate and revisionary powers. It envisages the establishment of Consumer Protection Councils at the Central, State and District<sup>62</sup> level for the promotion and protection of consumer rights. To make the enactment effective penal and punitive provisions have been incorporated to protect consumer rights. The provisions of the Act are in addition to and not in derogation of any other law for the time being in force. It applies to all goods/classes of goods or all services/classes of services except those which are specifically exempted by notification by the Central Government. The complaint can be on account of any unfair trade practices resulting into loss or damage, defect in goods, deficiency in services. Complaint can be filed by a consumer or an organization being a Society registered under the Societies Registration Act or a Consumer Organization registered under the Company's Act. An aggrieved consumer can avail himself of simple procedures under the Act. The Consumer Dispute Redressal Agencies under the Act are required to resolve the consumer complaints early without going into the technicalities of law and evidence as is adopted in civil litigation.<sup>63</sup>

The Act is an improvement on the earlier Consumer protection legislation. The Consumer Protection Act, 1986 was amended in the years 1991, 1993 and 2002 respectively to provide more powers to the consumer redressal agencies in redressing consumer complaints and for better protection of consumers. Accordingly, the Consumer Protection (Amendment) Ordinance, 1991 was promulgated to provide inter alia for amendment of sub-section (2) of Section 14 to provide that every proceeding of the District Forum shall be conducted by the President and at least one member thereof sitting together; that every order made by the District Forum shall be signed by its President and member or members, who conducted the proceeding; that where the proceeding is conducted by the President and a member of the District Forum and they differ on any point or points, the same shall be referred to the other member on such point or points and the opinion of the majority shall be the order of the District Forum; to validate the orders which have been signed by the President and one member of the District Forum or the State Commission before the amendment; and that in the case of vacancy in the office of the President, the person who is qualified to be appointed as President of the District Forum or the State Commission may be temporarily appointed to hold such office.<sup>64</sup>

<sup>62</sup> Inserted by (Act 62 of 2002)s. 8 A.

<sup>63</sup> Y.K. Tiwari, "Consumer Protection Law and Peoples Participation - Problems and Prospects", Vol. IX, *IJLS*, Jodhpur, 64 (1989).

<sup>64</sup> Act 34 of 1991.

The Consumer Protection (Amendment) Bill, 1993 sought to plug these loopholes and enlarge the scope of areas covered and entrust more powers to the redressal agencies under the Act. Accordingly, the Bill inter alia, sought to provide to enlarge the scope of the Act so as to enable the consumers to file class action complaints where such consumers have a common interest and to file complaints relating to restrictive trade practices adopted by a trader; to enable the consumers who are self-employed to file complaints before the redressal agencies where goods bought by them exclusively for earning their livelihood, suffer from any defect; to add services relating to housing construction; to provide for the constitution of selection committees for the selection of non-judicial members of various redressal agencies; to increase the monetary jurisdiction of District Fora/ State Commission and the National Commission; to confer additional powers on the redressal agencies by way of awarding costs to the parties for ordering removal of defects or deficiencies from the services, and for empowering to recall of goods likely to endanger the safety of the public; to impose punishment on the complainant in case of frivolous or vexatious complaints; and to provide for a limitation period of one year for filing complaint.<sup>65</sup>

A long waited comprehensive amendment Bill to amend the Consumer Protection Act, 1986 has been passed by the Parliament and became an Act on 17th December, 2002 that is Consumer Protection (Amendment) Act, 2002.<sup>66</sup> The objectives and highlights of the recent Amendments are creation of benches of the National Commission and the State Commission and holding of circuit benches of these Commissions; prescribing time frame for admission of complaints, issue of notices and disposal of complaints and appeals; recovery of compensation amount ordered by the redressal agency through certificate case in the same manner as arrears of land revenue; no adjournments to be ordinarily allowed, and if allowed than, a speaking order giving reasons would be made; revision of pecuniary jurisdiction in respect of redressal agencies at different levels i.e. District Forum — from Rs. 5 lakhs to Rs. 20 lakhs, the State Commission—from Rs. 20 lakhs to Rs. 1 crore, the National Commission — from above Rs. 1 crore; provisions for charging of fee in respect of complaints filed before the Consumer Dispute Redressal Agencies; provisions for depositing, either fifty percent of the amount of compensation or fine or the amount mentioned below whichever are less, before the admission of appeal; Exclusion of services availed for commercial purpose from the purview of the Consumer Dispute Redressal Agencies; prescribing minimum qualifications as well as disqualifications for members of the Consumer Dispute Redressal Agencies; provisions for re-appointment of President and Members of the District Forum, State Commission and the National Commission; extending the provisions of the Act to service providers indulging in unfair and restrictive trade practices or offering services which are hazardous; bringing sale of spurious goods or services within the meaning of unfair trade practices; expressly conferring the powers of a Judicial Magistrate of the First Class on the Consumer Dispute Redressal Agencies with a view to try offences under the Act; provisions for recovery of amounts ordered to be paid by the Consumer Dispute Redressal Agencies as arrears of land revenue; provisions for substitution of legal heir or representative as a party to the complaint in the event of the death of the complainant or the opposite party; provisions for issue of interim orders by the redressal agencies; and establishment of Consumer Protection Council

<sup>65</sup> Act 50 of 1993.

<sup>66</sup> Act 62 of 2002.



at District level for the promotion and protection of consumer rights. The NCDRC, as per the powers conferred under Section 30A of the Act, has made the regulations with prior approval from the central government. These regulations are known as Consumer Protection Regulations, 2005.<sup>67</sup>

The Consumer Protection Act, 1986 is one of the benevolent social legislations and is considered as one of the most important legislations enacted for the benefit of the consumers. The word “Consumer” is a compendious word which includes all people irrespective of their sectional or group denominations. The word “Consumer” is synonymous with the word “Public” and “Consumer Interest” is tantamount to “Public Interest”. the entire Act revolves round the consumer and is designed to protect his interest. The Act provides for business-to-consumer disputes and not for business-to- business disputes.<sup>68</sup>

The Consumer Protection Act of 1986 was amended in the years 1991, 1993 and in 2002 to make it more effective and purposeful. To effectuate this objective, a provision has been made in Chapter II of the Act for the constitution of the Central Consumer Protection Council and the State Consumer Protection Councils. The purpose as indicted in section 6 is to promote and protect the rights of consumers against the marketing of goods and services which are hazardous to life and property; the right to be informed about the quality, quantity, potency, purity, standard and price of goods or services so as to protect the consumer against unfair trade practices; the right to be assured, wherever possible, access to a variety of goods and services at competitive prices; the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate forums; the right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers and the right to consumer education. It is for the same purpose after post-independence, the management of India’s food economy and monitoring of prices and availability of essential commodities are carried out by Ministry of Food and Civil Supplies.<sup>69</sup>

complaintsexpeditiously with no costs or small costs. The legislature has given an option to the parties before the consumer forums to either personally appear or be represented by an 'authorized agent' or by an advocate, then the court would not be justified in taking away that option or interpreting the statute differently. While a consumer forum may permit an authorized agent to appear before it, but authorized agent shall not be one who has used this as a profession. These provisions are enacted for providing proper guidelines and safeguards for regulating appearance and audience of the agents.

. Prior to the Act, the consumers were required to approach the Civil Court for securing justice for the wrong done to them and it is a known fact that decision in such suits takes years in the court. As such, the Consumer Forum is an alternative forum established under the Act to discharge the functions of a Civil Court. Finally, 3-decade old Consumer Protection Act 1986 has been replaced by Consumer Protection Act, 2019. This replacement was the need

<sup>67</sup> Available at: <http://ncdrc.nic.in/Regulations2005.html>, Visited on 30.12.2022.

<sup>68</sup> (1995) 3 SCC 583.

<sup>69</sup> Dharma Kumar and Tapan Rai Chaudhary, Vol. II, *The Cambridge Economic History of India*, 947 (Orient Blackswan Pvt. Ltd. Hyderabad, 1954).

of modern Indian consumer. If we look at statistics it is projected that nearly 329 million Indian citizens are going to buy products online, which means 70% of mobile internet users will shop online<sup>70</sup>If we look at this number then we can say that new consumer protection act 2019 is going to be very helpful to Indian consumers. New consumer protection bill has many new provisions for customers. It is designed to help customers and it tries to overcome problems in providing basic rights to consumers of a major sector called e-commerce<sup>71</sup>The Consumer Protection Act, 2019<sup>72</sup> was enacted by the Indian legislature to deal with matters relating to violation of consumer's rights, unfair trade practices, misleading advertisements, and all those circumstances which are prejudicial to the consumer's rights. The intention of the Parliament behind enacting the Act was to include provisions for e-consumers due to the development of technology, buying and selling of goods and services online have considerably increased during the last few years. The Act seeks to provide better protection of the rights and interests of the consumers by establishing Consumer Protection Councils to settle disputes in case any dispute arises and to provide adequate compensation to the consumers in case their rights have been infringed. It further provides speedy and effective disposal of consumer complaints through alternate dispute resolution mechanisms. The Act also promotes consumer education to educate the consumer about their rights, responsibilities and also redressing their grievances.

### III. CONCLUSION-

The problem of consumer protection has much deeper roots and human values were cherished, and ethical practices were considered of great importance. The paramount consideration for the rulers was the welfare of their subjects. They showed keen interest in regulating not only the social conditions but also the economic life of the people. Consumer protection refers to a number of activities that are designed to protect consumers from a wide range of practices that can infringe upon the rights that consumers are believed to possess in the marketplace. From the ancient period, the need of consumer protection was strongly felt to safeguard the rights of a consumer. His protection is the need of hour due to growing tendency of greed for profit.

<sup>70</sup>Available at, <https://www.statista.com/topics/2454/e-commerce-in-india/>, Visited on 2<sup>nd</sup> January 2023.

<sup>71</sup> Available at, <http://vikaspedia.in/social-awareness/consumer-education/consumer-rights> visited on 5<sup>th</sup> January 2023

<sup>72</sup>Act 35 of 2019.