

CHAPTER-1

PHILOSOPHY AND JURISPRUDENCE OF CONSUMER RIGHTS WITH SPECIAL EMPHASIS ON CONSUMERS RIGHT TO BE INFORMED

1.1 Prelude

Consumer protection existed in all major legal systems of the world from ancient period. The main reasons for having such a system were, firstly sellers and buyers in reality never stood on equal footing²⁷ and more importantly, traders and entrepreneurs being more organized had always a tendency to create artificial conditions of scarcity and thus impeding free competition.²⁸ In the history of consumer protection, at its formative and early stages trade regulation based on religion and social percepts was common phenomenon globally.²⁹

1.1.1 Concept of ‘Caveat Emptor’ and the common law protection for consumer:

In the early nineteenth century Adam Smith, in his classic work, “The Wealth of Nations” proposed some fundamental changes in the assumptions of the market place.³⁰ He considered it as the place where the buyer and the seller have personal encounters. In that market place demands for the product could be generated if the vendor respected the freedom of choice of the buyer.³¹ This implicit presumption about the relationship between the two in the market place was regarded by Adam Smith and early thinkers as the key towards development of appropriate conditions and convention for the growth of the market and economy.³² The relation in their opinion had potential to ensure a fair bargain for the purchaser and reasonable profit assured to the seller and was regarded as perfect model for securing ‘*Consumer Sovereignty*’.³³

²⁷ See W. Friedmann Law in a Changing society, Universal 2nd edition, 2001, pp. 119 – 129).

²⁸ Rudolf Callmann, False advertising as a competitive tort, 48 Colum. L. Rev. 876 (1948)

²⁹ Two specific Biblical references warned against the misuse of weights and measures. The gravity of such misconduct was emphatically expressed in the Talmud, see Aurthr J. Silverstein, Consumer Protection in Talmedic Law, 79.7 Commercial L. Jour. 279 (1979). See also the Indian position Balakrishnan Eradi, *Consumer protection jurisprudence*, Butterworths , 2005

³⁰ Smith. A , *Wealth of Nations* (Oxford, New York: (Oxford World's Classics) Oxford University Press, 1998), p 345

³¹ Ibid.

³² Susan S. Sibey, *Who Speaks for Consumers?*, 84 Am. B. Found. Res. J. 429 (1984)

³³ Saraf D.N, *Law of Consumer Protection in India*, (Bombay, Tripathi, 1990)

This golden era of individualism³⁴, was responsible for the development of the legal maxim “*caveat emptor*”³⁵ which was considered as an appropriate rule to determine the relationship between the buyer and the seller.³⁶ This rule assumed that a buyer would use all care and skill while entering into a transaction and the sellers’ obligation is to make disclosures about the quality of the product which the buyer could discern by a bare inspection. This classical individualism value had an impact in the natural development of the consumer protection system for a significant span of time. The dominant philosophy of enlightenment and liberalism in this era forced a conscious move from abandonment from states power of intervention to the control of market forces as a consequence providing maximum individual autonomy. Remedies in law of tort or breach of contract were considered as means for the unsatisfied consumer against the seller.³⁷

History of consumer movement in common law can be traced back from several leading judgments of the English courts including the landmark decision of *Carlill v. Carbolic Smoke Ball Company*³⁸. The classical common law position towards faulty or defective goods was that of *caveat emptor* (let the buyer beware). In 1893 with the incorporation of the first Sale of Goods Act the purchasers were provided some cushion of protection. The early development of law on product liability was mainly based on tort law of negligence and contract. But one major limitation to the effectiveness of contract law as a means of general consumer protection against defective goods was due to the rule of ‘*privity to contract*’³⁹. This rule imposed that a person who is not a party to the contract cannot generally benefit from the contract. But during this era the contribution of judicial pronouncement tried to occasionally evade the consequences of the

³⁴ It was the formative era of modern industrial and capitalist society, (See W. Friedmann *Law in a Changing society*, Delhi, Universal 2nd edition, 2001p. 119).

³⁵ The maxim states Buyer beware. (See *Jan Narveson* , *Consumers' Rights in the Laissez-Faire Economy: How Much Caveat for the Emptor?*, 7 Chap. L. Rev. 181 2004).

³⁶ This phrase can be traced in a case concerning ravishment of a wealthy ward, *Moore v. Hussey*, Hobart 94, 80 Eng. Rep 3 (1601).

³⁷ *Jan Narveson* , *Consumers' Rights in the Laissez-Faire Economy: How Much Caveat for the Emptor?*, 7 Chap. L. Rev. 181 2004

³⁸ [1893] 1 Q B 256.

³⁹ The ‘*privity of contract*’ doctrine dictates that only persons who are parties to a contract are entitled to take action to enforce it. A person who stands to gain a benefit from the contract (a third party beneficiary) is not entitled to take any enforcement action if he or she is denied the promised benefit. [*Dunlop Pneumatic Tyre Co Ltd v Selfridge & Co* [1915] AC 847]

rule of privity to contract to protect consumer under the common law jurisprudence.⁴⁰ For instance in *Lockett vs. Charles*⁴¹ case where a lady had suffered food poison after consuming food purchased by her husband from a restaurant succeeded to establish her claim by arguing that her husband was acting as an agent on her behalf and the restaurant had contractual liability for the selling spurious food.

In a number of judicial decisions in common law principle of negligence was used with some success by the plaintiffs to establish liability for defective goods. In one of the earlier case *Winterbottom vs. Wright*⁴² wherein the plaintiff's employer a driver of a coach was seriously injured due to certain existing defects in a coach claimed damages against the manufacturer of the coach. But the plaintiff's claim was denied on the basis of the rule of privity of contract. Liability for defective products in law of negligence till 1931 was limited to only defects in relation to goods 'dangerous to themselves'⁴³ and in respect to known defects of which no warning of defects was given by the supplier.⁴⁴ Finally in 1932 Lord Atkins path-breaking opinion in *Donogue vs. Stevenson*⁴⁵ upheld that a tradesman or professional has a 'duty of care' towards every end consumer and their property; and the standard of degree of care agreed upon is a reasonable standard.⁴⁶ This means that when a manufacturer or a seller is producing or selling the goods has to adopt a duty of care in the 'preparation' or 'putting up' of the product and in any negligence in performance makes him liable to the end user.⁴⁷ The practical implication of this rule is if a consumer has bought a faulty goods and the matter can't be resolved with the trader,⁴⁸ the consumer can bring an action under negligence law against the manufacturer of the good.⁴⁹ Manufacturers' guarantees have been legally enforceable.⁵⁰

⁴⁰ See the decisions of English Courts in *Dickson v Bell* (1816) 5 M & S 198; *Langridge v. Levy* [1837] 10 M & W 519; *Winterbottom v. Wright* (1842) 10 M & W 109 and *Haven v. Parker* (1833) 11 QBD 503

⁴¹ [1938] 4 All ER 170

⁴² (1842) 10 M & W 109

⁴³ *Longmeld vs Holiday* (1851) 6 Exch 761

⁴⁴ *Clarke vs Army and Navy Co-operative Society* [1903] 1 KB 155, CA

⁴⁵ [1932] AC 562, HL

⁴⁶ *Donoghue v. Stevenson* [1932] AC 562

⁴⁷ This was compiled by the court in its famous "Narrow Principle", See *Donoghue v. Stevenson* [1932] AC 562 at 599

⁴⁸ *Lockett v. Charles* [1938] 4 All ER 170 and *Hobbs v. Baxenden Chemicals* [1992] 1 Lloyd's Rep 54

⁴⁹ *Watson v. Buckley* [1940] 1 All ER 174, *Andrews v. Hopkins* [1957] 1 QB 229 and *Branett v. H and J Packer & Co* [1940] 3 All ER 575]

⁵⁰ *Murphy v. Brehtwood District Council* [1991] 1 AC 398

Similarly in United States the rigid contract rule of privity was set aside in the case of *MacPherson v. Buick Motor Co*⁵¹. In this case the plaintiff was injured while he was driving the car, brought from a retailer, which fell to pieces, causing the car to crash. He brought action for negligence against the manufacturer. The court upheld the plaintiff's claim on the ground that liability arose if the nature of the product is such that it is reasonably possible to place life and limb in danger when negligently made, it is a thing of danger, and in such cases the manufacturer of such dangerous goods cannot escape liability under the privity of contract rule. In US the Macpherson judgment was the main basis for a general rule commanding liability upon any supplier for payment of any chattel.

1.1.2 Demise of the 'Caveat Emptor' rule and emergence of 'Caveat Vendor'

The dominant philosophy of 'caveat emptor' had governed the legislative and policy structure on consumer protection in the early part of the nineteenth century. A defender of this classical individualistic market philosophy based on enlightenment and liberalism has argued in his paper that

... [W]ise merchant will do his best to see to it that the consumer says Yes-after all, that's how he makes his living. But his "best" after all has to be compatible with making a profit, and this means among other things keeping costs down. Absolute certainty that the customer is going to be happy is not to be had and attempts to achieve it would make all goods prohibitively expensive. That, of course, does no service to the consumer either. A happy medium is needed, and that medium is best understood as an understanding, between seller and buyer, that is rational from both points of view. In that respect, the proposals in this essay have merely been faithful to the idea of the market. And that idea is a good one-the market answering to that idea is by far the best institution we can have for such things.⁵²

Freedom of contract⁵³ was the most cherished right that was legitimized in this ideology governing the market place.

But with the advent of industrialization, technology revolution and changing needs of the market practices rendered this liberal ideal of ineffective to tackle the milieus of the consumers. This

⁵¹ 217 NY 382, 111 NE 1050.

⁵² Jan Narveson, *Consumers' Rights in the Laissez-Faire Economy: How Much Caveat for the Emptor?*, 7 *Chapman Law Review* 181 at 199

⁵³ The social functions of contract was summed up in four elements: freedom of movement insurance against calculated economic risk; freedom of will; and equality between parties. (See W. Friedmann *Law in a Changing Society*, Delhi, Universal 2nd edition, 2001, pp. 119 – 129).

was marked by proliferation of sophisticated and complex consumer goods. Invention of different gadgets made human life dependable on such goods as an essential item of their lives. Unlike the earlier age when a personal relationship between a seller and buyer preceded an economic relationship, the new creed was marked by sophistication of business techniques and impersonal relations between the two. Also the emergence of multinational corporations, equipped with latest technology and marketing experts made a fundamental change in the status of the consumers.

The earlier concept of “*Consumer is king*” of the classical era was ridiculed by the “techno - structure” of the new globalized market. The activists maintained that, a combination of new business methods, complexity of goods, new distribution pattern and changing forms of advertising, rendered consumer puzzled and no choice but to accept a product thrown into the market by the multi-billion corporate houses. Summarizing the situation Jhon Kenneth Galbraith stated that “*It is not the consumer who is the king, but it is the large corporation who is the king in the economy. Whatever happens is not because the consumer wants it that way, but simply because powerful large corporations prefer it that way*”.⁵⁴

A similar conclusion was arrived at by the Molony Committee Report⁵⁵ appointed to analyze the needs of consumer protection in United Kingdom. The committee in its final report stated that in the modern era the idea of consumer sovereignty is fallacious. In truth it is, it is the producer’s interest which easily prevails over the welfare of the consumers. It will continue to remain same until a pro-active state with a strong legal framework for consumer protection arrives to their defense. The Melony Committee report, with adequate empirical evidence recommended the need for a departure from the caveat emptor rule to a more pro-consumer legal system.

From the middle of twentieth century there was development of strong movement demanding for an increased state and public law regulation for protection of consumers. The era witnessed from its beginning an expansion of the statutory and common law remedies on consumer protection

⁵⁴ According Jhon K. Galbirth as cited in Saraf D.N, Law of Consumer Protection in India, (Bombay, Tripathi, 1990)

⁵⁵ A Committee on Consumer Protection in United Kingdom, constituted in 1959 under chairmanship of Lord Melony. The terms of reference of the committee was to consider and report what changes if any in the law and what other measures, if any, are desirable for the further protection of the consuming public.

globally.⁵⁶ New statutes were enacted to increase grip of consumer safety and product liability and remedial actions were enhanced to ensure consumers are secured from deceptive trade practices by making amendments to existing laws dealing with unfair market conditions. However in spite of the quantitatively large number of steps taken by many countries during period between 1940-70 with the declared objective of aiding the consumer, the advocates of consumer protection and legal scholars still argued that it has not helped significantly to correct the existing market imbalance between producers and consumers.⁵⁷ Professor Arthur R. Miller explains the reasons behind the more progressive views on product liability:

When it finally became clear that the profusion of new and complex products on the market had the unfortunate consequence of increasing the accident toll, the policy of promoting industrial expansion had to give way to the policy of promoting human life and limb. The law responded by slowly chipping away at the old precedents; more and more exceptions were carved out from the basic rule, and an increasing number of cases were found to fall within the exceptions. The result has been a shift in the law of 180 degrees away from caveat emptor: The seller now has a duty to watch out for and guard against potential hazards associated with the use of his product. And sometimes the seller will be held liable to a person injured by his product, even though the seller's behavior was entirely reasonable.⁵⁸

Professor Laura Nader one of the leading scholar in this group of critics conceptualized this situation by stating as the “*dark side of the market injustice*”.⁵⁹ She concluded that majority of consumers faced with suppliers or manufacturers who were not prepared to meet their obligations, had no choice but to abandon their complaints unless they were determined enough

⁵⁶ In England, USA, Australia, Germany, Spain, Sweden and India many statutes were enacted protect fair competition, prohibition against manufacture and sale of adulterated products and to control price and hoarding. The common law courts also delivered judgments which had tremendous impact towards development of a body of judicial law for consumer protection. One remarkable decisions of this era is *Donoghue v. Stevenson*, (1932) AC 562. (See Lowe and Woodroffe, ‘Consumer Law and Practice, London, Sweet & Maxwell, 6th ed. 2004 , p. 217)

⁵⁷ These studies fundamentally challenged the proposition of conceptualizing consumer law theory which takes contract law as its starting point; without a precise definition of the consumer. They advocated for a more interventionist approach which makes clear that the state has responsibility for the well-being of consumers in cases of power imbalance even if the approach is characterized as paternalistic.(See *generally Deutch*, Are Consumer Rights Human Rights, 32 *Osgoode Hall L.J.* 537(1994) ; *Barber*, Government and Consumers, 64 *Mich. L. Rev.* 1203 (1963); *Deutch*, Are Consumer Rights Human Rights, 32 *Osgoode Hall L.J.* 537(1994); *Consumer law and legal theory: Reflections of a common lawyer*, (1990) 13 *J. Consumer Policy* 113 etc).

⁵⁸ Arthur R, Miller, *Products Liability: Must the Buyer Beware?* in READINGS IN PHILOSOPHY OF LAW: PHILOSOPHICAL ISSUES IN CIVIL LAW 42842

⁵⁹ Garth, *How Consumer Remedies Fail*, 81 *Mich. L. Rev.* 984 (1982)

to launch them upon the uncertain seas of litigation. The prospect of such action caused the consumer considerable anxiety, and the poor consumer saw access to his legal rights guarded.⁶⁰ Professor Nader's research with aid of empirical evidence collected from over ten different countries exposed the existing barriers for consumers in securing justice. She pointed out in her research that absence of pro-active and preventive mechanisms for implementation and enforcement of concerns and existing organizational obstacles due to diffused character of consumer interests consumer protection cannot be effectively met with unless there is a radical transformation of the traditional rules and institutions.⁶¹

Another motivating factor for the activist and critics was the general move of the ideological position from individualism to collectivism⁶². These factors led to the development of an active consumer movement demanding new approaches to consumer protection. Activists like Ralph Nader began their campaign against unsafe products and generate consumer awareness through sustained research and publicity effort aimed at exposing the mechanics of government's failure to protect consumers against foul and unfair deals in the market place. The helplessness of consumers especially the low-income consumers and the dominant position of the traders and manufacturers in the market control was the primary topic of the research and it showed how the consumers were left to suffer. The consequence of these efforts made the subject of consumer justice at the center of public attention and a serious social problem. The legal scholarship of this period out rightly challenged the individualistic assumptions of Caveat Emptor and the law of the market society. These authors contested the very notions of liberal legalism – minimum control and maximum autonomy – as problematic, demanding fundamental reconstruction of the basic principles of the common law system.⁶³ In their research these scholars presented a landscape of

⁶⁰Laura Nader, *No Access to Law: Alternatives to American Judicial System*, (New York, Academic Press, 1980)

⁶¹ Laura Nader, *No Access to Law: Alternatives to American Judicial System*, (New York, Academic Press, 1980)

⁶² *Collectivism* is a concept of political theory which means a theory of political system based on the principle that all of the farms, factories, and other places of work in a country should be owned by or for all the people in that country. See *Cambridge Advanced Learner's Dictionary* (available at <http://dictionary.cambridge.org/dictionary/british/>).

⁶³ J. Goldring, *Consumer law and legal theory: Reflections of a common lawyer*, (1990) 13 J .Consumer Policy 113.

injustices that the consumers suffer due to the inherent lacunas that are existing in the majority of the legal systems globally.⁶⁴

1.1.3 Era of the ‘Caveat Vendor’: The shift of Consumers Rights from private law to public law:

The latter half of the twentieth century witnessed an unprecedented universal advocacy for developing increased governmental intervention in administrative and legal regulations of consumer interests. The advocates of consumer protection demanded for a pro-active role of government in controlling the forces of modern market, in particular in the areas of policy-making, legislation and the development of institutional capacity for the enforcement of consumer law. This period of the economic history was marked as the beginning of the ‘*age of consumerism*’. This nomenclature seems highly appropriate as never before the interest of consumers received such pre-eminence. In all levels government and in private sector as well, the voice of consumers was heard loud and clear. The old law of the market place, ‘*caveat emptor*’, saw its demise during this period and a new principle emerged called ‘*caveat vendor*’.⁶⁵

A consciousness for a pro-active state action and public law initiative to protect consumers against fraud and deceptive practices in the market place was born globally. Great emphasis was placed on developing preventive remedies and generating consumer awareness to ensure product safety, fair terms of warranties and guaranties and truth in advertising, packaging and lending. Majority of the developed countries stated recognizing consumer protection as a part of their welfare agenda and active interest and effort was made to understand the major consumer problems and seek for their solution. Comprehensive consumer protection program were developed, which aimed at expanding the jurisdiction of the state control and recognizing the new remedies. These agencies were empowered to represent consumer interests, monitor actions, publish useful information for consumers, conduct economic survey and research and promote consumer education and awareness. They also aimed at developing new safety regulations, comprehensive testing and stiffer quality control mechanism.

⁶⁴ See generally Nader, *Disputing Without the Force of Law*, 88 Yale L.J 998 (1979); Barber, *Government and Consumers*, 64 Mich. L. Rev. 1203 (1963); Consumer law and legal theory: Reflections of a common lawyer, (1990) 13 J. Consumer Policy 113

⁶⁵ This is an antithesis of the earlier rule of common law. Literally it means ‘sellers beware’, and it was interpreted widely as to ‘let the maker beware or seller make full disclosure’.

This era was also characterized for evolution of a number of innovative legal remedies in the field of consumer protection. The enactments introduced during this period in many countries attempted to introduce several types of new remedies such as:

1. Preventive remedies⁶⁶
2. Affirmative Disclosure of information requirements⁶⁷
3. Substitution claims⁶⁸
4. Restitution actions, refunds, compensation⁶⁹
5. Corrective advertising⁷⁰
6. Fines and incarcerations.

Also in countries like US and Canada a new form of litigation emerged to protect interest of large group of consumers. This is type of lawsuit are known as class action suits and which was used as a legal mechanism where a representative of large number of consumers who have similar claims against the same defendant can sue on behalf of them and the others similarly situated. Amendments were made to the procedural laws to make available a more practical and less mechanical criterion for filing class action suits and placed importance on adequate and fair representation of class interests. This change allowed consumers with a common complaint about a deceptive practice or fraudulent selling to pool their damage claims against merchants and manufactures.

However in context of consumer protection another significant development of this era was evolution of basic rights of the consumers. This has its source in the US movement on consumer protection. President Kennedy of United States delivered a special message to the US congress introducing the “Consumer Rights Bill” which for the first time recognized certain basic rights of

⁶⁶ This are measures which attempt to eliminate an abuse of power, remedies include establishment of Codes of conduct.

⁶⁷ Measures that ensure sufficient information for the consumer to facilitate him a value comparison in the marketplace

⁶⁸ It is a remedy against unfair or illegal advertisement, without having any reasonable basis for the claim made in the advertisement.

⁶⁹ A reparation made by giving an equivalent or compensation for loss, damage or injury caused.

⁷⁰ A remedy against providing inaccurate information in an advertisement

consumers.⁷¹ He considered that adequate enforcement of these consumer's rights are a matter of national interest. President Kennedy in his historic address stated that

...[I]f a consumer is offered inferior products, if price are exorbitant, if drugs are worthless, if consumers are unable to choose on an informed basis, then his dollar is wasted, his health and safety may be threatened and national interest suffers...⁷²

The American President in his speech identified consumer as a discrete class or group, and thus is entitled to specific legal rights he observed. He declared four basic consumer rights:

1. Right to safety,
2. Right to be informed,
3. Right to choose, and
4. Right to be heard.

President Kennedy emphasized the need for recognition of these basic rights for the consumer as an integral part of the international law and policy, and creating an obligation for all the member states of United Nation to enforce the same in their domestic jurisdiction. The advocates of consumer protection called for universal ratification of these basic rights for consumer. It was argued that these rights focus on every person to whom basic rights to fair trade and safe products are granted. One of the main ideas behind recognizing these rights is to afford protection to consumer notwithstanding on the basis of a cost-benefit examination, the economy might gain if the individual consumer receive imperfect or unsafe products.

Following the US example States in North America and Europe started enacting laws and policies recognizing the basic consumer rights. They also established institutions for comprehensive enforcement and monitoring of the implementation of these rights. However the developing States were still lagging behind. Further the consumer protection pressure group, which began in Europe and North America in the 1960s, reached the global stage in the 1970s. It was argued that in the era of globalization more and more transactions are conducted by multi-national corporations. Commerce has developwd into increasingly international and the crisis of

⁷¹ JHON. F. KENNEDY, Special Message to the Congress on Protecting the Consumer Interest, March 15, 1962,(available at <http://www.presidency.ucsb.edu/ws/?pid=9108>)

⁷² JHON. F. KENNEDY, Special Message to the Congress on Protecting the Consumer Interest, March 15, 1962,(available at <http://www.presidency.ucsb.edu/ws/?pid=9108>)

manufacture and flooding of unsafe and defective products reached to a cause of international concern.⁷³

So taking account of the major impediments in the protection and enforcement of consumer rights United Nation took up the task to develop some common principles for promotion and enforcement of basic consumer rights.⁷⁴ In 1982, the working group of ECOSOC prepared the first draft of the document which was circulated to various governments for their comments. After several rounds of intense negotiations and extensive discussions a consensus resolution was arrived and this led to the unanimous adoption of the **UN Guidelines on Consumer Protection** on 9 April 1985.⁷⁵

UN Guidelines on Consumer Protection – An International Declaration of Consumer Rights

The United Nations adopted new guidelines on consumer protection.⁷⁶ The guidelines were aimed at

- i. *ensuring some minimum consumer protection mechanism among its member countries;*
- ii. *to facilitate production and distribution patterns responsive to the needs and desires of consumers;*
- iii. *to assist countries in curbing abusive business practices at the national and international levels that adversely affect consumers;*
- iv. *to facilitate the development of independent consumer groups;*
- v. *to further international cooperation in the field of consumer protection;*
- vi. *to development of market conditions that provide consumers with greater choice*
- vii. *to promote sustainable consumption.*⁷⁷

⁷³ The importance of multinational and transnational corporations is growing. There is an enormous body of literature on the subject, including the Suffolk Transnational Law Journal, a law review dedicated entirely to this subject. Some of the leading articles on this subject include: E.M. Fox, "Harnessing the Multinational Corporation to Enhance Third World Development-The Rise and Fall and Future of Antitrust as Regulator" (1989) 10 Cardozo L. Rev 1981; W. Kolvenbach, "The European Economic Community and the Transnational Corporation" (1984) 5 N.Y.L. Sch. J.Int'l & Comp. L. 253

⁷⁴ Development and International Economic Cooperation. Consumer Protection. Report of the Secretary-General, 29 May 1992, UN Doc. E/1992/48. The activities that led to the adoption of the *UNGCP* are recorded in several articles. See D. Harland, "Implementing the Principles of the United Nations Guidelines for Consumer Protection" (1991) 33 L Indian L Inst. 189; P. Merci A, "Consumer Protection and The United Nations" (1986) 20 L World Trade L 206.

⁷⁵ Background paper for the United Nations Inter-Regional Expert Group Meeting on Consumer Protection and Sustainable Consumption: New Guidelines for the Global Consumer, January 1998, Sao Paulo, Brazil (available at <http://www.un.org/documents/ecosoc/cn17/1998/background/ecn171998-consumer.htm>). Also see D. Harland, "Implementing the Principles of the United Nations Guidelines for Consumer Protection" (1991) 33 L Indian L Inst. 189; P. Merci A, "Consumer Protection and The United Nations" (1986) 20 L World Trade L 206.

⁷⁶ UN GUIDELINES FOR CONSUMER PROTECTION, Resolution No.39/348, dated April 9, 1985

As a matter of general principle the Guidelines desired that member states are required to build or ensure a strong consumer protection policy, taking into account the guiding principle set out UN Guideline and other relevant international agreements. In doing, each member state were required developing its own priorities for the protection of consumers in accordance with the economic, social and environmental circumstances of specific country and the needs of its population, bearing in mind the expenses and benefits of planned measures.

Guidelines emphasized that in advancing consumer welfare, particularly in countries with emerging economies, Governments should, where suitable, give precedence to areas of essential concern for the wellbeing of the consumer, such as food, water and pharmaceuticals. Policies should be adopted or developed for product quality control, sufficient to secure distribution facilities, maintain homogeneous international labelling and information, as well as education and research programmes in these areas. Government guiding principle in regard to specific areas should be developed in the context keeping in mind the provisions of the UN Guidelines.

The United Nation urged the Governments of the member countries to undertake efforts to implement the guidelines, including by creating appropriate legal frameworks and establishing means to develop, implement and monitor policies and programmes for consumer protection. The United Nation also recognized the need to encourage greater participation of the civil society, in particular non-governmental organizations, in the implementation process. It also adopted measures in cooperation with the relevant organizations and bodies of the United Nations system and regional commissions to provide assistance to Governments, at their request, in implementing the guidelines for consumer protection. It also mentioned that Governments needs to cooperate to advance the conditions under which necessary goods are offered to consumers, giving due consideration to both price and quality. Such collaboration could consist of joint procurement of essential goods, exchange of information on diverse procurement possibilities and agreements on regional product specifications.

But the most significant aspect of this Guideline is declaration of basic rights of consumers. The Guideline provided that every consumer should be able to avail a) .the right of access to non-

⁷⁷ See the objectives of UN GUIDELINES FOR CONSUMER PROTECTION, Resolution No. 39/348, dated April 9, 1985

hazardous products; b). promotion and protection of the economic interests of consumers; c). access of consumers to adequate information to enable them to make informed choices; d). consumer education; e). freedom to form consumer association; f). access to effective grievance redressal mechanism and g). promotion of sustainable consumption patterns.

Consumer law has developed prior to the UN Guidelines as a mixture of contract, tort, criminal, and administrative law. Some jurisdiction had recognized that consumer have common law rights which *bind* individuals. But because consumer rights originated typically from private law they were regarded as not similar to rights recognized as fundamental in the public law system. However upon the adoption of UN Guideline scholars have argued that consumer rights have received that status of international law. It has reached to a point that justifies a serious consideration that they should be given a status not inferior to fundamental human rights. This view is based on the idea that consumer rights focus on every person to whom basic rights to fair trade and safe products are granted. In this respect, the UN Guideline on consumer protection is arguably resemble the *International Covenant on Economic Social and Cultural Rights*, which lay down the international commitment to promote economic rights but with limited enforcement and not intended for immediate total implementation due to the expense involved in its enforcement. Also it is argued that International Covenant on Economic Social and Cultural Rights provides a detailed list of economic rights that can serve as a basis for acknowledging consumer rights. Also the right to an adequate standard of living briefly stated in the *Universal Declaration of Human Rights*, for instance, was elaborated upon in Article 11 of the *ICESCR* of 1966. Article 11(1) refers to "*adequate food, clothing and housing, and to the continuous improvement of living conditions.*" Measures to ensure consumer welfare and protection can be considered an implementation of these human rights and also represents the effective means to achieve these rights. Adequate food includes quality of food, which is achieved through consumer protection legislation. Adequate housing contains two elements: the ability to obtain housing and the adequate quality and safety of the housing. The first is an issue of public policy and public expense. The second is based upon consumer protection legislation and is regulated by various legal means. Thus, although consumer protection was not mentioned in the *ICESCR*, it is a method by which the above goals can be achieved. Discussing on the relevance legal scholars has observed

A close analysis of the *UNGCP* reveals that it can be viewed as an implementation of the *ICESCR* and the *Universal Declaration*. The two most relevant provisions that deal with the requirement of an adequate standard of living are article 25 of the *Declaration* and article 11 of the *ICESCR*. This demand can be satisfied *inter alia* by an adequate system of consumer protection. The first group of rights under the *UNGCP* dealing with physical safety is an expansion of the right to health described in article 12 of the *ICESCR*. Promotion of economic interests of consumers is also a realization of basic rights in the *ICESCR*.⁷⁸

It is for this reason the UN Guideline are regarded as international declaration of the basic "Rights of Consumers" in international law. The Secretary-General of the United Nations referring to the UN Guideline on consumer protection has called it an "*international consumer bill of rights*."⁷⁹

However some scholars have opposed government regulation to protect consumers based on this argument of the "economic approach to law" relying on influential economists. Prof. **M. Wiedenbaum** a proponent of anti-regulation view observes that regulation leads to inferior products at a higher price and claimed that the *right based regime as proposed by the UN Guidelines* would lead to a waste of economic resources.⁸⁰ Transactions in the free market philosophy based society are *voluntary*. The potential purchaser is under no broad obligation to buy, and the seller is under no compulsion to sell. Both agents, then, are in the marketplace because they have benefits, needs, desires, and values that they expect to satisfy by their market participation maximizations of the above goals and that they should be left to decide the best for them. Another argument against a right based approach to consumer protection is that its impact on a host of competing interests. Critics claim that small and medium sized business and developing world manufacturers are not sufficiently stable. These business and manufacturers cannot afford to compete or face the stringent quality control standards set by First World counterparts. The effect of strict enforcement of product standards may be to force struggling entrepreneurs out of business.

⁷⁸ Deutch, *Are Consumer Rights Human Rights*, 32 Osgoode Hall L.J. 537(1994)

⁷⁹ Development and International Economic Cooperation Consumer Protection Report of the Secretary-General, 29 May 1992, UN Doc. E/1992/48

⁸⁰ **M. Wiedenbaum**, "The Case Against the United Nations Guidelines for Consumer Protection" (1987) 10 *L Consumer Policy* 425 at 428

However these criticisms have not appealed the legal scholars, policy framers and law makers globally. The popular view among the consumer activists asserts that market principles cannot serve as the sole means of consumer protection. Market efficiency should not be the sole and ultimate justification for uncontrolled contractual control. Similarly this may be true to some extent, but recognition of consumer rights serves bigger state interests whilst it allows every consumer to trust in what they buy, thus encouraging increased commercial growth and stimulating the economy. The dominant school of thought considers that standard contracts as private lawmaking by large economic corporation has an inherent inequality of bargaining power in build in its very character which leads to contracts of adhesion and to the erosion of the basic right to negotiate. Where a particular consumer is one party and a strong commercial organization or trading merchant the other party, the organization can impose its will on the consumer on "a take it or leave it" basis, thereby disregarding the consumer's honour and dignity. Since every individual is a consumer from time to time, it is a widespread problem. In order to establish equality and fairness into the market, the disparity of control must be alleviated by the national consumer protection laws and policy. Consumer rights are purposeful to prevent exploitation and abuse of power and, in this sense as well, are similar to other well-defined human rights, which protect the human being against cruelty, inhuman conditions and abuse of power by the dominant group or a Government.

Thus in the context of our current era, a complete dependence on the economic approach to law has to be rejected as the only factor in shaping the law of consumer protection. This is evident from the Report submitted by the UN Secretary-General of the United Nations on consumer protection in 1997⁸¹ elaborating on the progress of implementation of the UN Guidelines and states that

Governments have indicated the usefulness of the framework of the guidelines for consumer rights in the consideration of the development of consumer policy and law and related codes for the protection of the consumer are initiating action for consumer protection. The guidelines have been in background in several countries to define policies and legislation in order to protect the consumer in such areas as health and safety, access to goods and services, and measures for redress. In other

⁸¹ REPORTS, CONCLUSIONS AND RECOMMENDATIONS OF SUBSIDIARY BODIES: ECONOMIC AND ENVIRONMENTAL QUESTIONS, Consumer Protection. Report of the Secretary-General, Geneva, 30 June-25 July 1997,E/1997/61.

countries, the guidelines generally continue to serve as an instrument to assist Governments in identifying areas where further supportive actions are necessary for the protection of citizens as consumers.⁸²

It was also discussed in the Report that a number of Governments have reported that they have made use of and cited the guidelines as a framework for their efforts to develop and strengthen consumer protection policy and legislation. The action undertaken includes the establishment of ministries and offices concerned specifically with issues of consumer affairs; the formulation of national consumer policy and relevant laws and acts; the elaboration of competition law; the elaboration of consumer education programmes and the dissemination of consumer protection information; and the promotion of participation by consumers' organizations in aspects of the decision-making process in areas of consumer protection. The report cited several countries who have adopted their state policy on consumer protection by the incorporating of elements of the guidelines (physical safety, consumers' economic interests, redress measures) in consumer protection law and as an important point of reference in the encouragement of activities in this area.

It is also important note the UN Guidelines on Consumer Protection is not a mandatory international document, it is not fully voluntary and it does have an effect on national and international consumer protection law. *Esther Peterson* an eminent consumer right activist⁸³ has observed on the significance of the guidelines that “*international guidelines can serve as a Charter of Human Rights in the consumer area. That does not mean that every nation would scrupulously obey and implement those principles. Many may not. But the existence of an UN-sponsored Charter of Consumer Rights can simply not be ignored by any nation which wishes to be considered civilized.*”⁸⁴ Another eminent scholar Prof. Haraland⁸⁵ has observed on the

⁸² REPORTS, CONCLUSIONS AND RECOMMENDATIONS OF SUBSIDIARY BODIES: ECONOMIC AND ENVIRONMENTAL QUESTIONS, Consumer Protection. Report of the Secretary-General, Geneva, 30 June-25 July 1997,E/1997/61.

⁸³ Esther Peterson was a representative of the International Organization of Consumer Unions (IocU) before ECOSOC at the United Nations. She served under two United States Presidents as Special Assistant to the President for Consumer Affairs and as Chairman of the President's Committee on Consumer Interests. From 1970 to 1977, Ms. Peterson was Vice President of Consumer Programs and Consumer Adviser to the President at Giant Food Corporation.

⁸⁴ E. Peterson, "The Case Against 'The United Nations Guidelines for Consumer Protection'" (1987) 10 *L Consumer Policy* 433

⁸⁵ Professor David Harland is a Professor of Law in the University of Sydney Law School and is a leading international scholar in consumer law. papers on the *UNGCP*.

importance of this Guideline stating “*the principal significance of the UNGCP is that it represents international agreement toward the minimal principles that consumer protection should contain and that its unanimous adoption is a significant development in international recognition of the principles of consumer protection.*”⁸⁶ Prof. Harland through his research in 1990 has shown several examples of pro-active action taken by countries following the. In a lengthy article, Professor Harland details actions, subsequent to the adoption of the *UNGCP*, taken in several countries including Uruguay, Ecuador, Australia, Korea, Malaysia, Brazil, Argentina, Chile, Peru, and the Philippines.⁸⁷ He has concluded that even without binding power, the guideline’s have a substantial influence on consumer protection in many countries.

1.1.4 Recognition of Consumer Rights under Public International Law:

It can be concluded that although the philosophy of ‘consumer protection’ started with a more individualist market oriented approach the shift has been clearly towards welfare and rights oriented system. With the adoption of the UN Guidelines on Consumer Protection by international consensus in 1985, consumer rights have been firmly established as the dominant philosophy in the consumer protection jurisprudence. It is a well established proposition that these consumer rights recognized in the guidelines is an expression of the international commitment to empower citizens as consumers through a number of entitlements and a set of principles for their implementation.⁸⁸ Recognition of consumer rights in explicit grants to the individual consumer minimum rights that cannot be waived or bargained away through an agreement between the parties. By operation of law, minimum safeguards are automatically incorporated to ensure that the consumer rights are enforced. This has the effect of equalizing the playing field by elevating the position of the consumer, and forcing the merchant to comply with fair trade practices.

⁸⁶ D. Harland, "The United Nations Guidelines for Consumer Protection. Reply to the Comment by Wiedenbaum in JCP, 10, 1987/4" (1988) 11 3. Consumer Policy 111

⁸⁷ Harland describes the actions taken by those countries, such as legislation and establishment of consumer protection departments. He also details the extensive action taken by consumer organizations throughout the world, with special emphasis on cooperation in South Pacific and Asian countries. (See D. Harland, "International Agreements and Guidelines as a Means of Consumer Protection" (1992) 38 J. Behav. & Soc. Sci. 114 & D. Harland, "Implementing the Principles of the United Nations Guidelines for Consumer Protection" (1991) 33 L Indian L Inst. 189.)

⁸⁸ AN INTEGRATED CONSUMER POLICY, THE RATIONAL BASE FOR PROTECTING CONSUMERS, (Briefing paper published by Consumer Unity & Trust Society, 3rd April, 1996)

Consumer experts and scholars have observed that the UN Guideline presents a statement of consumer rights and the governments are called upon to develop their consumer protection policies in line of right based approach. It now an accepted view that the rights based framework laid down in the UN Guideline serves as a basis for the national policies and legislation for recognition and enforcement of a right based approach to strengthen consumer protection.⁸⁹ The effect of a right based approach to consumer protection has potential to influence the following issues: (1) creating additional legislation on consumer protection where such legislation is lacking; (2) promoting the enforcement of existing laws and regulations; (3) balancing consumer rights and other conflicting human rights, such as freedom of contract or freedom of occupation; (4) influencing governments and the judiciary to intervene within the existing legal rules and regulations; and (5) interpreting current legal rules to avoid conflict with other human rights.⁹⁰ However each government had the flexibility to develop its framework based on its own priorities according to the economic and social circumstances of its country and population.

It has served as an instrument for reforms in law and policy on consumer protection at international and domestic level. Governments have utilized this guideline in developing their internal framework to recognizing consumer rights and introduce effective measures for their enforcement. Activists have also used this right based framework to examine the adequacies of the laws and policies on consumer protection.⁹¹ Also a consistent policy level effort has been in place to forge a multilateral cooperation in implementation of rights of the consumer to ensure that they are equipped to deal with the globalized market economy. Therefore since 1960's the global consumer jurisprudence has witness of a successful transformation of the fundamental approach and basis to protect consumers, not only for economic efficiency, but also as part of the quest for "*social justice and human rights*".

The UN efforts on consumer protection have further progressed with the globalization of financial markets and liberalization of trade, emergence of borderless economic spaces and deregulation in many areas of economic activity to assist the member states to meet the new

⁸⁹ Deutch, *Are Consumer Rights Human Rights*, 32 Osgoode Hall L.J. 537(1994)

⁹⁰ Deutch, *Are Consumer Rights Human Rights*, 32 Osgoode Hall L.J. 537(1994)

⁹¹ International Perspective on Consumers Access to Justice, a book edited by Professor Rickett published fifteen papers containing studies on consumer's access to justice in ten different jurisdiction of the world. See Rickett & Telfer, *International Perspective on Consumers Access to Justice*, (Cambridge Univ. Press, 2003).

challenges in the functioning of the international markets.⁹² The guidelines have generally served as an instrument to assist Governments in identifying areas where further supportive actions are necessary and a model for future policy action on consumer rights discourses.⁹³

1.2. Recognition of Consumer Rights in Indian law

India has a long history of consumer protection, dating back to the ‘*Vedic*’ period. The reminiscence of a skeletal structure of consumer protection can be traced in the Vedas. The Vedas recognized acts like adulteration of food stuff, charging of excessive prices, fabrication of weights and measures, and selling of forbidden articles as a wrongful conduct and prescribed for highest moral amercement. The advent of the Islamic rule marked the beginning of introduction of Muslim Law in India soil. Old tradition of consumer protection under the Hindu era remained unchanged and few new features were introduced by the Muslim emperors only for their administrative convenience. State control market regulation governed price control, regulation of weights and measures and restriction of unfair trade practices. The main emphasis of consumer protection measures in this era was based on social control by state and imposition of the ‘*duty of care*’ on the manufacturer and seller. The basic presumption was sellers had a responsibility if the goods after sale, had inherent faults which cannot be determined by the buyer. This indicates that the legal norms were philosophically driven by ‘*caveat vendor*’ concept. This made many scholars in the West to conclude that the seeds of economic planning and state controlled mechanism for consumer protection existed in India from the dawn of its civilization, which is unparalleled in any other civilization of that time.⁹⁴

1.2.1 Liability on manufacturers, suppliers and producers in India under private and public law:

The genesis of legislative history on consumer law in India however made its beginning during the British period. The British introduced their ideology of sale and purchase of goods in the market shall be based on the basic voluntary will of the buyer and the seller based on mercantile customs, conventional norm of the market. With the introduction of the Indian Contract Act,

⁹² REPORTS, CONCLUSIONS AND RECOMMENDATIONS OF SUBSIDIARY BODIES: ECONOMIC AND ENVIRONMENTAL QUESTIONS, (Consumer Protection, Report of the Secretary-General E/1997/100)

⁹³ Eradi.B.V, Consumer Protection Jurisprudence,(New Delhi, Butterworths 2005) at p. 3

⁹⁴ Sarkar, *Review of Breloer Account of State Ancient Indian Economy*, 11 Indian Historical Quart. 34 (1935).

1872 contractual rules relating to sale of goods, based on the English law came into force in Indian system. But with the passage of time certain defects were revealed, which prompted the British Parliament to enact the Sale of Goods Act, in 1930. These two legislations were the first instruments that contained important provisions relevant to consumer interest. So the ancient Indian customary norms imposing pro-active regulation of market by State was replaced by the western philosophy of 'caveat emptor'. This was also complemented by common law remedy in law of tort and criminal law statutes. Scholars enumerated several theories where a consumer action may lie against a manufacturer or seller to recover for product caused harm, they are: a) negligence; b) breach of warranty; c) tort; d) fraud; e) misrepresentation; f) defendant's violation of statute or ordinance designed to protect the injured person; g) nuisance; and. h) defendant's wilful act.

Traditionally the basis of a consumer claims have been divided into three general categories: a) contractual liability, which may include breach of warranty, misrepresentation or fraud; b) tort, which may include the concept of strict liability in tort, negligence, c) criminal law and d) law, which may cover ordinances, statutes and administrative regulations violated by the defendant.

Contractual Liability

Section 27 of the Indian Contract Act, 1872 declaring '*agreements in restraint of trade as void*', is considered to have served consumer interests by promoting competition and restricting monopolistic tendencies. The claim for compensation for loss or damage by breach of contract is also relevant in consumer interest. But the '*conditions and warranties*' laid down in Chapter III of the Sale of Goods Act of 1930 has been considered as the most significant. These provisions in the Indian legislation were based on the English Sale of Goods Act of 1893. The '*conditions and warranties*' of the Act were claimed primarily aimed at protecting the consumer's interest in:

- a. the time for payment and delivery of goods;
- b. the right to reject goods or claim damages in certain situations;
- c. the merchantability and fitness of goods, for the purpose of their sale; and
- d. the correspondence of the goods sold with the description or sample as offered by the seller.

Section 14 of the Sale of Goods Act, of 1930 provided for an '*implied condition as to title of goods*'. The effect of this provision was that in every contract of sale unless the circumstances of the contract shows a different intention, there is an implied condition on the part of the seller that he has a right to sell the goods. This implied warranty provided the consumer a right to enjoy peaceful possession of the goods, which will be free from any charge or encumbrances. The implied warranty as to quality and fitness of the goods by the seller laid down under Section 16 of the Sale of Goods Act, of 1930 had also major relevance in the contemporary consumer interests. The provision made the seller liable to limited extent for any defects in the goods supplied to the consumer. But '*latent defects*' which could not be detected by mere physical examination were exempted from the liability regime. Although what amounts to a '*patent*' and '*latent*' defect was not defined in the code and remained as a very controversial question and a potent source of litigation.⁹⁵

Liability in law of tort

In several jurisdiction the bases of actions for products-liability where the statutes does not expressly provide for the cause of action specifically, are mainly on tort. Even principles like *res ipsa loquitur* and assumption of risk have been tempered with the underlying rationale - the protection of the buying public against the stronger class, the manufacturers and their privies, the dealer and the seller. As was stated, where there is no privity between the plaintiff and the defendant, the courts in their effort to favor the plaintiff-consumer invoke the principles in tort and even go to the extent of creating concepts like the concept of strict liability in tort for products-liability cases.

In addition to these codes and statutes, the common law remedies were also available to consumers. The Privy Council and High Courts in British India applied the common law principles of tort to compensate the injured consumer. Where a buyer of goods cannot claim damages under law of contract the courts applied the rules of liability under the law of tort to compensate for the wrongs or losses suffered by the consumer.⁹⁶ Under law of tort the consumers

⁹⁵ See the opinion of the High Court of Madras and Calcutta in S.P. Joshi & Co v. V.M. Ismail AIR 1960 Mad 520 and Chhedilal v. Brit Over Ltd. 52 CWN 42.

⁹⁶ The Rule of Donoghue v. Stevenson (1932) AC 562 was made applicable in India.

could claim compensations for losses caused to him due to defective, unfit or dangerous products, willful negligence, deceit or fraud. But Indian scholars have argued that the concept of consumer protection, as it is understood in the contemporary legal thoughts was unknown in the British laws.

Liability under criminal law

The Indian Penal Code, 1860 also contained provisions for consumer protection. It is considered as the first legislative instrument which contains notable provisions for consumer protection in modern India legal system. The Code made '*fraudulent use of false instruments for weighing and their possession, manufacturing or sale punishable*'.⁹⁷ The other significant provisions were relating to '*adulteration of food and drink intended for sale*',⁹⁸ '*sale of noxious food*'⁹⁹ and '*preparation or sale of adulterated drugs*'¹⁰⁰ and '*use of false property mark*'¹⁰¹ which were all punishable with either imprisonment or fine or both.¹⁰² The Drugs and Cosmetics Act, of 1940 and the Indian Telegraph Act, of 1858 had some provisions to assist consumers too.

Legislations to curb unfair market practices:

In the post independence a large volume of consumer centric welfare legislations were also enacted.¹⁰³ These legislative interventions were aimed to introduce increased state regulation of market and imposition of increased responsibility on the business sector. The legislation dealt with regulation and maintenance of supply of essential commodities; controlling hoarding; preventing adulteration of food stuff; maintaining fair rates and prices; standardizing weights and measures as per the international norms; and restricting unsolicited trade and control of monopoly of market in the hands of a few industrialists and capitalists.

But it was a daring reality that although these laws were in place yet it could assist the consumer very little to secure safety and protection from the deceptive manufactures and vendors; and

⁹⁷ See Sections 264-267 of Indian Penal Code,1860 (Act 45 of 1860)

⁹⁸ See Section 272 of Indian Penal Code,1860 (Act 45 of 1860)

⁹⁹ See Section 273 of Indian Penal Code,1860 (Act 45 of 1860)

¹⁰⁰ See Section 274& 275 of Indian Penal Code,1860 (Act 45 of 1860)

¹⁰¹ See Section 481 to 483 of Indian Penal Code,1860 (Act 45 of 1860)

¹⁰² See Section 479 to 489 of Indian Penal Code,1860 (Act 45 of 1860)

¹⁰³ Prevention of the Food Adulteration Act, 1954; Essential Commodities Act, 1955; Monopolies and Restrictive Trade Practices Act 1969; Bureau of Indian Standards Act, 1986, Standards of Weights and Measures Act, 1976 etc

hostile market practices. The legislations were rarely used by consumers, and convictions under these laws was even rare. The penalties provided for contravention of the law were insufficient to deter the resource rich business class. The penal provisions were not invoked regularly as the common men were not aware of the statutory provisions and their claims either perished or minimally compensated. Corruption of the state officials in the public distribution system made it easy for the unscrupulous traders to escape from the grip of law. The government staffs responsible to protect the consumer interest were not trained properly. There was a severe shortage of manpower to regulate and address the problems from the grass root level.

Also the Commission established for control and prevention of monopoly in the market where had its own problems. It exempted from its purview all undertakings owned or controlled by the government which was a serious lacuna as large number of public services were controlled by the government.¹⁰⁴ The procedure of the Commission was not streamlined and it was located in Delhi¹⁰⁵ which made it almost impossible for large number of consumer or consumer organizations to access it. The inquiries took very long period and the delay was a thorn in its accessibility. Class action¹⁰⁶ as remedy for consumer cases was hardly used. The diffused consumer interest almost remained unrepresented and even after the growth of Public Interest Litigation (PIL) system. Consumer related PIL was rare in the Courts. Moreover the inordinate delay and technicality of the legal system made most of the legal efforts fruitless.

The existing social and economic differences in the Indian society, uneven distribution of resources, and inappropriate implementation make most of the initiatives futile.¹⁰⁷ Under the existing laws it became an impossible task for these poor consumers to take any step to redress their grievances regarding unsatisfactory service or goods. Referring to plight of these poor consumers the Supreme Court in a case before it expressed,

The malady is becoming so rampant, widespread and deep that the society, instead of bothering, complaining and fighting for it, is accepting it as part of life. They could

¹⁰⁴ Sec 3 of the Monopolies and Restrictive Trade Practices Act, 1969

¹⁰⁵ Sec 16 of the Monopolies and Restrictive Trade Practices Act, 1969

¹⁰⁶ For the Definition of 'Class Action' See Rule 23 of US Federal Rules of Civil Procedure, for commentary see *Class Actions for Consumer Protection*, 7 Harv. CR- C.L.L Rev 60 (1972) and Homburger, *Private Suits in the Public Interest in United States of America*, 23 Buffalo L. Rev. 343 (1974). For Indian law on Class Action See Rule 8 of Order I of Code of Civil Procedure, 1908.

¹⁰⁷ Verma & Wani, *A Treatise on Consumer Protection Laws*, (New Delhi, Indian Law Institute Publication, 2004)

hardly afford the luxury of availing the existing dispute resolution system in view of the expense and dilatory character of the process.¹⁰⁸

It can be further inferred without much doubt that the laws enacted in the post-independence era to regulate the market condition and protect consumers from unscrupulous and deceptive market practices was insufficient to protect consumers in the newly emerging market condition era of globalization.¹⁰⁹ The legal and administrative measures created by these enactments were largely outside the reach of the majority of the poor consumers, the public distribution system had evils like corruption, short weight, adulteration, but poor consumer had very little choice, since the open market which had comparatively greater transparency and competition was too expensive for him.¹¹⁰ In the words of Supreme Court of India

[C]onsumers were helpless faced against powerful business, described as network of rackets or a society in which, producers, have secured power to rob the rest and the might of public bodies which are degenerating into store house of inaction where papers do not move from one desk to another as a matter of duty and responsibility, but for extraneous considerations leaving the common man helpless, bewildered and shocked.¹¹¹

These prevailing inadequacies in the existing legal framework, coupled with path breaking developments in international arena on consumer protection forced the Government to find out better methods and procedures to protect its consumers, as a result the Consumer Protection Bill was introduced in the parliament.¹¹²

1.2 Consumer Protection Act 1986 – The right based legal regime to ensure consumer welfare

Realizing the issues relating to consumer welfare affects millions of people of the nation, since everyone is a consumer in one way or the other, the Govt of India have attempted to undertake several measures to ensure consumer welfare in the country. A new leaf was added to Indian consumer protection laws when the Government introduced the Consumer Protection Bill in the parliament.¹¹³ The bill was considered to be unique in several respects and argued to accommodate the basic features of the UN Guidelines on Consumer Protection adopted by the

¹⁰⁸ Lucknow Development Authority v. M.K. Gupta, (AIR 1994 SC 787)

¹⁰⁹ Srinivasan, *A New Era in Consumerism*, The Hindu, Oct. 31, 1999

¹¹⁰ Mamta Rao, *Public Utility Services under the Consumer Protection Act*, (Delhi Deep & Deep, 1999)

¹¹¹ Lucknow Development Authority v. M.K. Gupta, (AIR 1994 SC 787)

¹¹² Introduced on 5th December 1986

¹¹³ Introduced on 5th December 1986

General Assembly in 1986.¹¹⁴ The bill aimed at providing better protection to the interest of consumers by adopting a right based approach to consumer protection. It was drafted after in-depth study of consumer protection legislations in a number of countries and in consultation with representatives of consumers, trade and industry and extensive discussions within the Government.¹¹⁵ The important features of this legislation are as follows:

- Recognition of the rights of consumers such as safety, choice, information, consumer education, redressal and representation;
- Established a special quasi-judicial institution at nation, state and district level to ensure that consumers have a speedy and inexpensive institution to approach for violation of their rights;
- Created consumer protection council at the central, state and district level for enhancing the monitoring of the implementation of consumer rights and promote consumer education;
- Introduce stringent penalties for violation of the consumer rights¹¹⁶

Explaining the noble objective of the parliament behind enacting this statute the Supreme Court of India expressed,

[T]he importance of the legislations in the opinion of its framers lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy and an attempt to remove the helplessness of a consumer, which he faces against powerful business.¹¹⁷

The Supreme Court held that the term consumer as referred in the Act is identifying consumer as a class and therein aims to Act is to apply to provide effective protection to the whole class of consumers. Referring to this in *Indian Medical Association v. V.P. Shantha*¹¹⁸ the Supreme Court held

In this context it is necessary to bear in mind that the Act has been enacted "to provide for the protection of the interests of "consumers" in the background of the guidelines contained in the Consumer Protection Resolution passed by the U.N. General Assembly on April 9, 1985. These guidelines refer to "achieving or maintaining adequate protection for their population as consumers" and "encouraging

¹¹⁴ UN GUIDELINES FOR CONSUMER PROTECTION, Resolution No. 39/348, dated April 9, 1985

¹¹⁵ Saraf D.N, Law of Consumer Protection in India, (Bombay, Tripathi, 1990)

¹¹⁶ See the Statement of Objective attached to the Consumer Protection Bill, 1986.

¹¹⁷ Lucknow Development Authority v. M.K. Gupta, (AIR 1994 SC 787)

¹¹⁸ AIR1996SC550

high levels of ethical conduct for those engaged in the protection and distribution of goods and services to the consumers". The protection that is envisaged by the Act is, therefore, protection for consumers as a class. The word "users" (in plural), in the phrase 'potential users' in Section 2(1)(o) of the Act also gives an indication that consumers as a class are contemplated.

Consumer Protection Act introduced several new features for securing effective justice for whole class of consumers. It recognized in explicit and positive language six basic rights of consumer that State is obligated to secure to every consumer by developing an enabling policy and legal regulatory framework. The Act envisaged an effective mechanism for expeditious and effective implementation of the consumer rights. This constituted of

a. increased role of public functionaries and greater State control

The Act provides greater scope for the public authorities to become more involved in the litigation of claims on behalf of individuals whose claims were generally not represented.¹¹⁹ The involvement of public bodies seeking injunctive and declaratory relief seems better than class action model available in many other countries where it has almost exclusively been used for high ticket value cases and not for the mass, small, widely dispersed consumer claims.¹²⁰

b. creation of consumer protection councils

The Act established the institution of consumer protection councils at district, state and national level with to promote, implement and monitor the rights of the consumers.¹²¹ The councils were to be constituted by the Government and representatives from different walks of life, having association in consumer movement.¹²² These councils are statutorily obligated to meet at least twice in a year, and discuss about contemporary policy issues to strengthen the mechanism for consumer protection and implementation of consumer rights.¹²³

c. greater involvement of consumer organizations

The Act encourages greater scope for participation of the civil society organizations by increasing their opportunity in representing consumer problems before the forums and the administration, participating in the policy decision process and actively complements the state

¹¹⁹ Howells & James, *Litigation in the Consumer Interest*, 9 ILSA J. Int'l & Comp. L 1(1999)

¹²⁰ Bassetti, *Constructing Class Action Reality*, BYU.L. Rev (2006)1415

¹²¹ Section 4 of the Consumer Protection Act 1986 (Act 68 of 1986)

¹²² See section 4, 7, 8A of the Consumer Protection Act 1986 (Act 68 of 1986).

¹²³ See section 5 of the Consumer Protection Act 1986 (Act 68 of 1986).

machinery in ensuring legal aid and consumer education for the poor and small consumers.¹²⁴ The legislation entrusts the responsibility on the civil society organizations to represent the diffused interest groups and small claims to enhance protection of the consumers with small claim. These organizations are entitled to receive adequate grants from the state charged from the 'consumer welfare fund' in growth of a more pro-poor consumer justice system.¹²⁵

d. establishment of the consumer forums

This constituted of a three tier dispute redressal agency established at the National, State and District level.¹²⁶ The Act defined a 'consumer dispute' as a complaint filed by a consumer alleging the opposite party has committed all or any of the following acts and the same is disputed by the opposite party. A consumer complaint can be filed when:

- a. unfair trade practice or a restrictive trade practice adopted by any trader,
- b. defect in the goods bought or agreed to be bought by the consumer, deficiency in the service hired or availed of or agreed to be hired or availed of by the consumer,
- c. charging by a trader price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods and offering for sale to public,
- d. goods which will be hazardous to life and safety when used, in contravention of the provisions of any law for the time being in force requiring traders to display information in regard to the contents, manner and effect of use of such goods.¹²⁷

Therefore this quasi-judicial institution was envisaged as institutions to provide speedy and inexpensive remedy to consumers only for violation of their rights as recognized in Section 6 of the Act. Also for this purpose the procedures prescribed was simple and free from technicalities.¹²⁸ The forums under the Act in the apex court's opinion were an alternative

¹²⁴ See Sec 2(1)(b) of the Consumer Protection Act, 1986(Act 68 Of 1986), Final Draft of National Consumer Policy, adopted during Consultation held at New Delhi, 3rd March 1998, and the Legal Services Authority Act, 1988.

¹²⁵ Agarwal, *Speedy Justice Under the Consumer Protection Act: A Critical Evaluation*, 2 Comp L.J (2004) 97

¹²⁶ See Sec 17B & 22C of the Consumer Protection Act, 1986(Act 68 Of 1986)

¹²⁷ Indian Medical Association v. V.P. Shantha, AIR1996SC550

¹²⁸ Nayak R.K, Consumer Protection Law in India : An Eco-Legal Treatise on Consumer Justice, (Bombay N.M. Tripathi, 1991)

forum¹²⁹ and empowered to follow such procedures, which avoid delay of the proceedings.¹³⁰ The principal goal was to arrive to a just decision of the case by restoring to the principles of natural justice.¹³¹ For removing further obstacles in efficient working of these agencies and securing their effective implementation, the Act was subsequently amended by the Consumer Protection (Amendment) Act 1993¹³² and Consumer Protection (Amendment) Act 2002¹³³.

This three-tier special quasi-judicial institution was envisaged by the Act as an institution to provide speedy and inexpensive justice outside their doors to a class of litigants designated as consumers. For this purpose the procedures prescribed were simple and free from technicalities. Describing the structure and hierarchy of this institution as created by the Act the Supreme Court in *Indian Medical Association v. V.P. Shantha*¹³⁴ has stated

The Act sets up a three-tier structure for the redressal of consumer grievances. At the lowest level, i.e., the District level, is the Consumer Disputes Redressal Forum known as 'the District Forum'; at the next higher level, i.e., the State level, is the Consumer Disputes Redressal Commission known as 'the State Commission' and at the highest level is the National Commission. (Section 9). The jurisdiction of these three Consumer Disputes Redressal Agencies is based on the pecuniary limit of the claim made by the complainant. An appeal lies to the State Commission against an order made by the District Forum (Section 15) and an appeal lies to the National Commission against an order made by the State Commission on a complaint filed before it or in an appeal against the order passed by the District Forum. (Section 19). The State Commission can exercise revisional powers on grounds similar to those contained in Section 115 CPC in relation to a consumer dispute pending before or decided by a District Forum [Section 17(b)] and the National Commission has similar revisional jurisdiction in respect of a consumer dispute pending before or decided by a State Commission. [Section 21(b)]. Further, there is a provision for appeal to this Court from an order made by the National Commission on a complaint or on an appeal against the order of a State Commission. (Section 23).

¹²⁹ See the decision of Supreme Court in *Charan Singh v. Healing Touch Hospital* [(2000) 7 SCC 668] and *Synoco Industries v. State Bank of Bikaner & Jaipur* [(2002) 2 SCC 1].

¹³⁰ *CCI Chambers Coop. HSG. Society Ltd. v. Development Credit Bank Ltd.* [(2003) 7 SCC 233]

¹³¹ By virtue of Section 3 of the Act its scope and application is stated to be in addition and not in derogation of any other law dealing with the subject matters related to consumer protection. Section 3 states "*The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force*". This is a very important feature of this Act in terms of defining its scope and application. The Supreme Court has therefore consistently upheld that the protection provided under the CP Act to consumers is in addition to the remedies available under any other statute. It does not extinguish the remedies under another statute but provides an additional or alternative remedy. [See *J.J. Merchant v. Srinath Chaturvedi* [(2002) 6 SCC 635]

¹³² Act 50 of 1993, (w.e.f 18th June 1993)

¹³³ Act 60 of 2002, (w.e.f 15th March 2003)

¹³⁴ AIR 1996 SC 550

Also to enlarge the scope of the Act so as to enable the consumers, consumer organization or the government to file complaints where such consumers have a common interest a provision was included.¹³⁵

1.2.1 ‘Consumer Rights’ as a Public Law Rights in India:

The Constitution of India is called the foundation stone of the consumer rights jurisprudence in India. Even though the Constitution does not contain any explicit provision on the subject of consumer rights, there are many provisions that have direct bearing on the consumer interest and securing rights to consumer. The democratic goals and the desire of social justice as promised in the Constitution of India had a tremendous impact in shaping a conscious attempt of the state policy to protect and promote consumer rights and articulate a clear philosophy of equal justice to all consumers. It has also helped in simultaneous growth of a pledge of mass awakening and conscious development of a sustained struggle to demand for better consumer protection against exploitive market malpractices.

The economic policy envisaged by the Constitution of India was to secure social and economic justice for all citizens¹³⁶ and to take steps for adequate distribution and control of the material resources so as to serve the common good.¹³⁷ Its endeavor was to promote the welfare of all, transparency and good governance, and to encourage the concentration of the wealth and means of production to the common detriment.¹³⁸ The Constitution of India imposed an obligation on the government to adopt measure to improve public health and to ensure that essential goods are available at reasonable price.¹³⁹

The legislations introduced to fulfill the constitutional objectives to ensure consumers security of health and safety, availability of consumer goods at a fair price and informed choice were actually an attempt to promote consumer rights. But consumer rights were not explicitly recognized prior to introduction of the Consumer Protection Act. Also due to lack of consumer

¹³⁵ See Sec 2 (1) (b) & 14 of the Consumer Protection Act, 1986(Act 68 Of 1986)

¹³⁶ Preamble of the Constitution of India, and as interpreted by the Supreme Court of India in *Akdoshi Padhon v. State of Orissa* AIR 1963 SC 104 and *Excel Wear v. Union of India* AIR 1979 SC 25

¹³⁷ See Art 39(a) of the Constitution of India

¹³⁸ See Art 39 (c) of the Constitution of India

¹³⁹ According to Part IV (Chapter on the Directive Principles of the State Policy) of the Constitution of India

awareness and education mechanism in these legislations the level of awareness among the consumers about their rights and interest was pretty low. An average Indian consumer was noted for his patience and tolerance.

Also the concern over safeguarding the interest of Indian consumer was felt with the growing size and complexity of manufacturing and allocation systems. The increased level of complexity in promotional schemes and newer methods of advertising, mass marketing methods and emergence of e-commerce result in decrease of personal interface between buyers and vendors made them increasingly vulnerable to unfair and deceitful trade practices. The level of consumer consciousness towards effective enforcement of their rights was nominal. But since early nineteen eighties voices for promoting the interest of consumers became visible. A civil society led advocacy started demanding for promotion and protection of consumer interest with effective legal and regulatory framework.

The Consumer Protection Act for the first time explicitly recognized six consumer rights in India. The rationale behind this also stems from Article 39 of the Constitution of India which has enshrined the Directive Principles to be followed by the State to ensure all-round welfare of the citizens of the country. The basic premise of these rights is to ensure that goods, services and technology are available to consumers at reasonable prices and acceptable standards of quality. Section 6 of the Act included right 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, as the case may be, 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.

The significance of these consumer rights has been already discussed earlier in Chapter-I. Since the adoption of the Consumer Protection Act Government has aimed at enforcing these rights by making goods, services and technology are available to consumers at reasonable prices and acceptable standards of quality. For an effective implementation and enforcement of these rights it was resolved that the government will endeavour to support the legal framework that

comprises of towards enabling a more effective means to ensure consumer welfare. The Government has further resolved to achieve in the domestic market a system of production and distribution patterns which are responsive to the needs of consumers, and with the goal of promoting sustainable consumption on an equitable basis.¹⁴⁰ There is a consumer dimension in almost every area of governance, and therefore a need to take into consideration consumers' interests in all policy decisions and implementation thereof. The Consumer Policy seeks to provide guidelines to different branches of the Government and agencies at all levels in maintaining the appropriate consumer dimension while taking any step or decision which will have an impact on consumers' interests.

Subsequently in the *Draft National Policy for Consumer in 1998*¹⁴¹ endorsed by the government of India recognized that protection consumer rights is a primary priority of the State and to effectively comply with this objective the policy initiated strategic initiatives for advocacy and promotion of ethical conduct, transparency, consumer participation and responsiveness in the choice of appropriate technology and environmental responsibility in providing goods, services and technology to consumers at all levels. It also aims to develop market conditions which provide consumers with appropriate choices at fair prices and right quality; lesser burden on the environment.

The Consumer Policies in India has adopted measures

- to protect consumers from hazards to their life and safety by adoption of national as well as international standards for the safety and quality of goods, services and technology;.
- to ensure access of consumers to adequate and reliable information develop and strengthen consumer information programmes to encourage people to act as discriminating consumers. Give special attention to the develop mass media programmes to cater to the needs of the disadvantaged consumers and ensure adequate information to enable them to make informed and environmentally benign choice of goods, services and technology according to individual as well as societal needs;

¹⁴⁰ AN INTEGRATED CONSUMER POLICY, THE RATIONAL BASE FOR PROTECTING CONSUMERS, (Briefing paper published by Consumer Unity & Trust Society, 3rd April, 1996)

¹⁴¹ Final Draft of National Consumer Policy, adopted during Consultation held at New Delhi, 3rd March 1998 (available at <http://cuts-international.org/NCP.htm>)

- to promote and protect consumers' interests to make informed choice of goods, services and technology strengthen measures to prevent restrictive and unfair business/trade practices which are harmful to consumers and maintain and strengthen a fair competition policy with a view to provide consumers with appropriate range of choice of goods, services and technology at the lowest prices;
- Provide and strengthen representation to consumer organizations in the decision-making process of the Government at all levels as well as business and co-operatives;
- Strengthen legal and administrative measures to enable individual consumers, consumers as a class and consumer organizations to obtain redressal through quasi-judicial procedures and encourage consumers to take recourse to alternative dispute resolution systems such as arbitration, conciliation and /or ombudsmen schemes; and
- to help consumers in their decision making: promote consumer education and undertake publication of consumer educational material for mass distribution.

Indeed, consumers share several identifiable interests: economic efficiency, diversity of purchasing choice, avoidance of monopoly profits and consumer fraud, optimal purchasing information, and good quality products and services in relation to price. When a product is inadequate, the consumer may feel she did not receive full value for her money. She has three options: to resolve not to patronize that particular business or brand again, to make a formal complaint, either directly to the establishment, or to seek redress through official channels. When she chooses not to complain to the store directly, she is, in effect, waiving her rights as a consumer and reinforcing the merchant's bad behavior. The Consumer Act recognizes that ordinary citizens entering into transactions in good faith can expect to face difficulties and frustrations. Despite best efforts of the most scrupulous and quality-oriented manufacturer, a defective product will crop up every so often. The Consumer Act gives the buyer, the seller, the manufacturer or importer or distributor a way of resolving the problem.

1.3 Consumers 'right to be informed' and 'informed choice'

Consumer information can be classified according to the general communication theory¹⁴² by distinguishing the sources (origins or senders): Besides information given by public authorities

116 Stefan Lezble, *Consumer Information beyond Food Law, 2010 EFFL 316 2010*

(especially risk communication) and (semi-) independent institutions such as the media or product testing organizations. However the main source for consumer information is the business operator itself. In the *B2C*¹⁴³ relation, information contained in messages is transmitted either on the product, via labelling, or through profitable means of statement such as marketing and advertising. The shopper can be addressed either via internet, the media, or in a face to-face discussion.

It is generally observed that consumer's choices are principally influenced by the information about the products or services provided by the manufactures of suppliers.¹⁴⁴ This is the reason why everyday consumers are bombarded with dozens of messages from marketers and advertisers through T.V commercials, highway billboards, internet banner ads, SMS in mobile phones etc. However there are some fundamental questions that can be raised about the independence of the information because they flow from the producers or their agents; and the factual accuracy of the information. So to secure that consumers have access to independent and reliable information, legal instruments on consumer protection at both international and domestic level have recognized it as a right of all consumer and an obligation of the governments to secure the same to consumers.¹⁴⁵

The starting point for the consumer movement demanding for '*consumer right to be informed*' was primarily necessitated with the advent of the period of large-scale, impersonal production, in which consumers were removed from close relationship with the producer. Prof. Kenneth Dameron an eminent scholar and advocate of consumer rights in United States had observed that

Under the present-day conditions, the technique of consumer buying has tended to atrophy, while the seller has found improved techniques of stimulating wants and selling goods. It has often been stated that consumer information is essential because our society has learned to produce commodities and services faster than it has learned to use them. Consumers are confronted with the problem of maintaining or increasing their standard of living on the same, if not lower, income. Hence, it is necessary for them to get the most for their money.¹⁴⁶

¹⁴³ Business to Consumer

¹⁴⁴ *Stefan Lezble*, Consumer Information beyond Food Law, 2010 EFFL 316 2010

¹⁴⁵ UN GUIDELINES FOR CONSUMER PROTECTION, Resolution No.39/348, dated April 9, 1985

¹⁴⁶ Kenneth Dameron, Advertising and the Consumer Movement, 5 Journal of Marketing, (1941), pp. 234-247

1.3.1 Defining the concept and scope of consumers “*right to be informed*”:

Therefore conceptually ‘*consumer right to be informed*’ involves a right of every consumer to have factually accurate and reliable information that provided knowledge about products, services, laws or anything that relates to the things consumer buy and use in everyday life. The UN Guidelines¹⁴⁷ lays down that “*every consumer should have access of to adequate information to enable them to make informed choices*”. The UN Guidelines specifies the scope of right to include access to reliable, independent and accurate information on all aspects of consumer products to enable consumers to take informed and independent decisions. The UN Guideline obligates Governments to take adequate measures to make sure that manufactures, producers or suppliers of goods and services mandatorily provide necessary information about their products; effective instruction on the proper use of goods; information about the risks involved in intended or normally foreseeable use and vital safety information conveyed to consumers by use of internationally understandable symbols wherever possible in accordance with fair business, advertising and marketing practices.

Similarly the *OECD Guidelines for Consumer Protection in the Context of Electronic Commerce*¹⁴⁸ has recognized ‘*right to consumer information*’ as an integral part of the proposed regime to protect consumer in the online environment. The OECD Guideline states that businesses engaged in electronic commerce are required to make information accessible about themselves or the merchandise or services they supply. They should present such information in a plain, prominent, precise and easily accessible manner. Businesses should conform with any representations they make concerning policies or practices involving to their transactions with customers. The business are also required to disclose information unfolding the goods or services offered; adequate to enable customers to make an informed choice about whether to enter into the transaction and in a manner that makes it possible for consumers to preserve an adequate documentation of such information. The business are also required to give adequate information about the terms, conditions and expenses connected with a transaction to facilitate consumers to make an informed choice about whether to go into the transaction and not make any

¹⁴⁷UN GUIDELINES FOR CONSUMER PROTECTION, Resolution No.39/348, dated April 9, 1985

¹⁴⁸Available at <http://www.oecd.org/sti/consumer/oecdguidelinesforconsumerprotectioninthecontextofelectroniccommerce1999.htm>

representation, or exclusion, or employ any practice that is likely to be deceptive, misleading, deceptive or iniquitous.

The Consumer Protection Act recognizes “**Right to be informed**” under Section 6 (b).¹⁴⁹. This provision aims to ensure that every Indian consumer should be provided with all the information on the basis of which he decides to buy goods or services and legal rules are adopted to enforce this right. The information that are part and parcel for implementation of this provision relates to quality, purity, potency, standard, date of manufacture, method of use, etc. of the commodity. Also producer is required to provide all such information in a proper manner, so the consumer is not cheated or subjected to any unfair or deceptive trade practice.

Observing on the scope of this right as provided in the Act the Supreme Court in *Indian Medical Association v. V.P. Shantha*¹⁵⁰ held

...[T]he Act affords protection to the consumer against unfair trade practice or a restrictive trade practice adopted by any trader, defect in the goods bought or agreed to be bought by the consumer, deficiency in the service hired or availed of or agreed to be hired or availed of by the consumer, charging by a trader price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods and offering for sale to public, goods which will be hazardous to life and safety when used, in contravention of the provisions of any law for the time being in force requiring traders to display information in regard to the contents, manner and effect of use of such goods.

1.3.2 Significance of consumers ‘right to be informed’ and system to ensure that consumers have access to proper information:

The international instruments encourage States to develop general consumer education and information programmes for effective implementation of the right because among the different consumer rights recognized in legal instruments ‘right to consumer information’ is regarded as the most basic and fundamental to implementation of consumer welfare. It has close links with all other consumer rights. Firstly, the ‘*right to physical safety*’ is crucially linked with consumer information because without such information consumers are unaware about the health and

¹⁴⁹ The Act in Section 6 (b) provides that “*the right to be informed about the quality, quantity, potency, purity, standard and price of goods 1[or services, as the case may be], so as to protect the consumer against unfair trade practices*”

¹⁵⁰ AIR1996SC550

environmental hazardous that are associated with a particular product or service. Similarly ‘*right to make an informed choice*’ becomes totally meaningless without adequate and appropriate information to make the informed choice. If a consumer lacks information about the availability of goods and services, how it performs, its ingredients, warranties and guaranties provided by the manufacturer of supplier, its cost and whether it represents value for the money spend he cannot make an informed choice. Beside consumer can make such an informed choice only if also information about the alternatives is also available. Also if after purchasing or availing a product or service, if things go wrong, consumer needs information about the legal and other mechanisms for redressing their grievances and enforcement of his consumer rights. So realization of all basic consumer rights depends on consumers ‘*right to information*’. To outmost prioritize the need to ensure consumers have access to adequate and accurate information the UN Guidelines¹⁵¹ mentioned that

...Governments should encourage all concerned to participate in the free flow of accurate information on all aspects of consumer products...Governments should develop or encourage the development of consumer education and information programmes, including information on the environmental impacts of consumer choices and behaviour and the possible implications, including benefits and costs, of changes in consumption, bearing in mind the cultural traditions of the people concerned.¹⁵²

Apparently two systems are available to ensure that consumers have access to proper information about products and services. Firstly, self-regulation imposed by the market itself and secondly legal and regulatory rules enacted by domestic laws. These systems are not mutually exclusive of each other. Initially in the era of open markets, the concept of self-regulation was seen as the suitable means to ensure consumer are provided with adequate information. Providing independent, factual and accurate information about their products and services is one of the moral and ethical obligations of the manufacturers, sellers, traders and retailers. Buyer and seller came face to face, trader exhibited his merchandise, and buyer thoroughly examined them and then purchased them. It was implicit that the buyer would use all mind and ability while entering into a transaction.¹⁵³

¹⁵¹ JHON. F. KENNEDY, Special Message to the Congress on Protecting the Consumer Interest, March 15, 1962,(available at <http://www.presidency.ucsb.edu/ws/?pid=9108>)

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¹⁵³ Jan Narveson , Consumers' Rights in the Laissez-Faire Economy: How Much *Caveat* for the *Emptor*?, 7 Chap. L. Rev. 181 2004

But due to technological innovations it has now become nearly impracticable for the buyer to scrutinize and have absolute comprehension about the goods and services beforehand and to make the matter worse; most of the communication are concluded by correspondence. Moreover, due to the intricate structure of contemporary goods and services, it is by and large only the producer or the seller who can assure the buyer about the quality of the goods and services being sold.¹⁵⁴ It is also argued that with the advent of globalisation the problems faced by the consumers have also diversified, the consumers are subjugated by way of numerous forms of unscrupulous and unfair practices such as supply of substandard goods, deficient services, dubious hire purchase plans, expensive products, counterfeit drugs, adulterated food, poor deceptive advertisements, hazardous products and black marketing among others. Also, with the expansion of the age of revolutionized information technology and with the surfacing of e-commerce, the consumers have been further deprived of complete information to a great amount and have to depend upon the information provided on the website either by the manufacturer or vendor.¹⁵⁵ Therefore the general consensus has been to have along with the self-regulatory system adequate legal framework established by laws to ensure accurate information to consumer along with appropriate regulatory institutions and for its compliance.

To fulfill the requirement of ensuring quality, safety and purity of products and services offered to consumers in India, Government has enacted various legislations to introduce sector-specific rules which determine the labelling, standards for manufacturing and processing. One of the regulatory approaches tries to protect consumers by providing them with information that should be accurate, intelligible and appropriate at the very least in order to meet the specific consumer's situation and demands. In other words, the quality of information' is decisive. It is vital that we take into consideration the effort consumers must go through to inform themselves, and how much of this effort is in fact reasonable. Discussed below are some of these legislation and

¹⁵⁴ See *Donald B. King*, In search for consumer justice, 23 J. Legal Educ. 151, 1970 – 71 and Saraf D.N, Law of Consumer Protection in India, (Bombay, Tripathi, 1990)

¹⁵⁵ See generally Deutch, *Are Consumer Rights Human Rights*, 32 Osgoode Hall L.J. 537(1994) ;; Deutch, *Are Consumer Rights Human Rights*, 32 Osgoode Hall L.J. 537(1994); State of Indian Consumer Report, 2012. The report is a part of a project: 'Indian Consumers in the New Age: A Forward Looking Agenda to Address the Concerns of the Common People' (*ConsumersUp*) in partnership with Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, Government of India, source: http://www.cuts-international.org/CART/consumersup/pdf/Overview-State_of_the_Indian_Consumer-2012.pdf, accessed on November 9, 2012.

provision to secure consumer information about the mandatory standards of quality and safety required to be followed in the manufacturing, production and supply of the products or services.

1. Food and Drugs

Food laws in India are currently governed under the *Food Safety and Standards Act 2006*. The Act establishes the Food Safety and Standards Authority of India to lay down scientific based principles for articles of food and to standardize their manufacture, storage, circulation, sale and import. The authority has issued regulation relating labelling and packaging requirements for food items which every package product necessarily require follow to ensure information to the consumer.¹⁵⁶ It rules require that all information and every pronouncement statutorily required shall be placed on the label in clear, prominent, permanent and readily legible form. Where any pronouncement on a package is written either in the form of a handwriting or hand script, such pronouncement shall be clear, instantly recognizable and legible. No pronouncement shall be made so as to necessitate it to be read through any liquid product contained in the package. Where a package is provided with an outside container or wrapper, such container or wrapper shall also enclose the entire pronouncement which is required to appear on the package. Labels not to contain false or ambiguous statements: A label shall not contain any declaration, claim, design, device, fancy name or short form which is false or deceptive in any particular with reference to the food contained in the package, or in relation to the quantity or the nutritive assessment or in relation to the source of the said food. The label shall also disclose the name and complete address of the manufacturer and the manufacturing unit if these are located at different places and in case the manufacturer is not the packer or bottler, the name and complete address of the packing or bottling unit as the case may be shall be declared on every package of food. Also the label shall provide directions for use, including reconstitution, where appropriate, shall be included on the label, if necessary, to ensure accurate utilization of the food.¹⁵⁷

¹⁵⁶ FOOD SAFETY AND STANDARDS (PACKAGING AND LABELLING) REGULATIONS, 2011, Notification New Delhi, dated the 1st August, 2011.

¹⁵⁷ Clause 2.2: Labelling 2.2.1: General Requirements 1. Every prepackaged food shall carry a label containing information as required here under unless otherwise provided, namely,— 2. The particulars of declaration required under these Regulations to be specified on the label shall be in English or Hindi in Devnagri script: Provided that nothing herein contained shall prevent the use of any other language in addition to the language required under this regulation. 3. Pre-packaged food shall not be described or presented on any label or in any labelling manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character in any respect; 4. Label in pre-packaged foods shall be applied in such a manner that they will not become separated from the container; 5. Contents on

Similarly for drugs and pharmaceutical products the *Drugs and Cosmetics Act, 1940* requires that for patent or proprietary medicines (medicines not listed in the Indian or other pharmacopoeia), the medicine should conform to the ingredients displayed in the approved manner on the label or container and such other standards as may be indicated. The Drugs and Cosmetics Rules (DCR) contains these standards. There are wide-ranging standards for all patent or proprietary medicines, tablets, capsules, liquid orals, injections and ointments. In the case of drugs integrated in the Indian pharmacopoeia (IP), the drug must comply with the standards of character, purity and potency specified in the recent edition of the IP (or if not specified in the current IP, then in the previous IP), as well as such other standards as may be prescribed. If the medicine contains a material specified in Schedule-G of the Drugs and Cosmetics Act, 1940, the label should enclose the statutory caution that such drugs must be consumed only under physician's direction.

2. Packaged commodities

A "packaged commodity" has been defined as a article of trade which without the purchaser being present is placed in a package of whatever character, whether sealed or not, so that the merchandise contained therein has a pre-determined quantity.¹⁵⁸ The *Legal Metrology (Packaged Commodities) Rules, 2011* has been framed under the *Legal Metrology Act, 2009* to guarantee that consumers are provided with essential information about "packaged commodity".¹⁵⁹ Every manufacturer or packer or importers of pre-packaged commodities require complying with the norms of disclosure under the Rules and also providing the statutory declarations on in the prescribed manner.¹⁶⁰ The statutory declarations for manufacturers and packers includes Every person who either procure or sells any Commodity in Pre-packed shape should guarantee that it bears the following declarations:- i. Name and entire address of the Manufacturer, Packer and /

the label shall be clear, prominent, indelible and readily legible by the consumer under normal conditions of purchase and use; 6. Where the container is covered by a wrapper, the wrapper shall carry the necessary information or the label on the container shall be readily legible through the outer wrapper and not obscured by it (FOOD SAFETY AND STANDARDS (PACKAGING AND LABELLING) REGULATIONS, 2011)

¹⁵⁸ As defined in the Mannul , Chapter 18 available at <http://www.delhi.gov.in/wps/wcm/connect/afd6148043c4f00491b1910fa6aaa61e/W%26M++Manual+17-FAQs.pdf?MOD=AJPERES&lmod=-362591794&CACHEID=afd6148043c4f00491b1910fa6aaa61e>

¹⁵⁹ Section 4 of the Legal Metrology (Packaged Commodities) Rules, 2011 states "*Regulation for pre-packing and sale etc. of commodities in packaged form. - On and from the commencement of these rules, no person shall pre-pack or cause or permit to be prepacked any commodity for sale, distribution or delivery unless the package in which the commodity is pre-packed, a label is securely affixed and such declarations as are required to be made under these rules.*"

¹⁶⁰ Section 6 of Legal Metrology (Packaged Commodities) Rules, 2011

or importer of the packaged commodities. b. Net contents in terms of weight, volume or number. c. Date of manufacture/packing/import of the commodity (month and year). d. Maximum Retail Price (inclusive of all taxes). e. Generic name of the commodity. f. Customer Care Number with name, address, Telephone No. of the person/office which can be contacted in case of consumer complaints. g. Size, if applicable.

3. Insurance Products

The insurance sector has undergone numerous changes over the years. There has been due to an enlargement in number of insurers, new categories of insurance intermediaries, multiplicity in the products on offer. The basic framework for safety of policyholders' interests of insurance consumers is controlled and governed by Insurance Regulatory & Development Authority (IRDA) established under the *Insurance Regulatory & Development Authority Act, 2009*. For protection of policyholders' interests of insurance consumers IRDA has framed Protection of Policyholders' Interests Regulations 2002¹⁶¹ specify that a prospectus of any particular insurance product shall in unmistakable terms explain the condition and warranties, exceptions and allied features governing the insurance policy cover. Also in case of life insurance policies the policy certificate requires to specify whether the particular insurance product is participating (with-profits) or non-participant (without profits). Further the permissible rider or riders on the insurance product shall be specified in unqualified and unmistakable terms with regards to the extent of their benefits.¹⁶²

4. Telecom services and products

For regulating the telecommunications and broadcasting sectors the Telecom Regulatory Authority of India (TRAI) is a statutory body established under the *Telecom Regulatory Authority of India Act, 1997*. Its main functions incorporate the standards of quality of service provided to consumers, setting tariff policy, specifying policies with regard to the technical and commercial aspects of interconnection between service providers . To help telecom consumers access information on tariff plans and choose tariff plans that best meet their needs TRAI guidelines require that service providers to publish all pre-paid and post-paid tariff plans in

¹⁶¹ *Insurance Regulatory and Development Authority (Protection of Policyholders' Interests) Regulations, 2002, Notitication, the 16th October 2002*

¹⁶² Clause 3 (1) of Insurance Regulatory and Development Authority (Protection of Policyholders' Interests) Regulations, 2002, Notitication, the 16th October 2002

separate prescribed formats allowing easy comparison across tariff plans. Also details of all tariff plans on offer have to be made available to subscribers in the prescribed formats at the customer care centres, points of sale/retail outlets as well as on the website of the service provider.¹⁶³ TRAI has undertaken specific measures to ensuring transparency on access to information on usage and activation of services by consumers. It requires that service providers at the end of each call made as well as each session of data usage, the consumer be informed regarding the duration of the call, the quantum of data usage, the charges deducted and the balance available in the customer's account.¹⁶⁴

The Government of India has adopted a National Consumer Policy¹⁶⁵ 2009, and the policy endorses the need to ensure that goods, services and technology are accessible to the consumers at realistic and affordable prices and at acceptable standards of quality. It states that India has a wide diversity of consumers, ranging from the highly well-informed and wealthy whose spending is focused at the lifestyle enrichment consumables, to totally illiterate and impoverished; who are accessing the market to obtain basic needs. So it is determined that consumer policy should work towards classification of trade practices that are anti-consumer interest need and control them to prevent exploitation of susceptible consumers and enable them to reach a superior state of well-being. Laws and codes need to be re-engineered to make them well-suited with the consumer empowerment.

The policy aims at empowering the consumers which is at the heart of an effective consumer administration. An empowered consumer is also in the interest of Industry, as he can force the producers to provide superior choices, which will encourage business to innovate and become competitive. The policy draft admits that to have an empowered consumer it is necessary to take measures to secure that consumer are sufficiently informed and mindful at the time of making a purchase. It emphasizes that Departments/Ministries should synergies their hard work and optimize their resources by pooling them together and taking up joint publicity campaigns.

¹⁶³ TRAI Direction on Publication of Tariff Plans – 16th January, 2012 (available at <http://www.trai.gov.in/WriteReadData/userfiles/file/ReportonActivitiesJAN2013FINAL.pdf>)

¹⁶⁴ Telecom Consumer Protection Regulations, 2012 mandating inter alia access to information on usage and activation of services by consumers - 6th Jan 2012(available at <http://www.trai.gov.in/WriteReadData/userfiles/file/ReportonActivitiesJAN2013FINAL.pdf>)

¹⁶⁵ NATIONAL CONSUMER POLICY, Government of India, Draft of - 6th November, 2009 (available at <http://consumeraffairs.nic.in/consumer/?q=node/287>)

Special plunge would be needed to reach out to far-flung and isolated areas. Since the nature of our consumers is variegated due to attainments, geography, education, age, language etc. There are “underprivileged and vulnerable groups. Empowering and educating this group should be given particular focus; methodology and preparation to connect with these groups should be prepared accordingly. To achieve the desired level of consumer information and education the policy states that

- a. A Media Policy needs to be in place in Ministries / Department/ Organization.
- b. Mass multi-media awareness campaign taken up by the Department/ Ministries individually or jointly with Department engaged in similar activities is an effective medium for consumer awareness.
- c. Consumer education pertaining to the products and services which are new and complex can be effectively conducted by publication of printed material and publicizing the gist in the mass awareness campaigns through news papers. Web is another effective medium for dissemination such information widely.¹⁶⁶

The policy also stressed upon the role of Voluntary Consumer Organizations (VCO). It mentioned that VCOs work in close involvement with consumers and have an objective perception of the issues a consumer confronts vis a vis producers or service providers. Therefore Consumer Organizations have to take part in this very important role in generating awareness, educating consumers, dissemination important information and providing consumer advise.

1.4 Chapter findings

The major findings of this chapter are as follows:

1. The law relating to consumer protection developed within the purview of law of contract and tort and the remedies were mainly granted by common law courts.
2. But with the advent of industrialization the classical doctrine of ‘caveat emptor’ was replaced by ‘caveat vendor’, where State adopted a more proactive role in consumer

¹⁶⁶ NATIONAL CONSUMER POLICY, Government of India, Draft of - 6th November, 2009 (available at <http://consumeraffairs.nic.in/consumer/?q=node/287>) at pg 7

welfare. This was also the time for germination of the conceptual foundation of consumer's rights.

3. From the middle of twentieth century consumer's rights as separate category of rights within the framework of public law emerged in western states. The UN Guidelines on Consumer protection recognized consumer rights in the domain of international law.
4. It is now a well established proposition that these consumer rights recognized in the guidelines is an expression of the international commitment to empower citizens as consumers through a number of entitlements and a set of principles for their implementation.
5. Recognition of consumer rights under the Consumer Protection Act 1986 in explicit grants to the individual consumer minimum rights that cannot be waived or bargained away through an agreement between the parties. It has now achieved the status of a right guaranteed under a public law and is considered integral to the enjoyment of several constitutional rights guaranteed to citizens under Part-III & Part-IV of the Constitution of India.
6. *Draft National Policy for Consumer in 1998* endorsed by the government of India recognizes that protection consumer rights are a primary priority of the State and to effectively comply with this objective the policy.
7. *Consumers 'right to be informed'* involves a right of every consumer to have factually accurate and reliable information that provided knowledge about products, services, laws or anything that relates to the things consumer buy and use in everyday life.
8. This right aims to empower consumers to make informed choice by providing them with information that should be correct, comprehensible and appropriate at the very least in order to meet the specific consumer's situation and demands.