

CHRONOLOGICAL PROGRESSION OF CONSUMERISM AS A MOVEMENT

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ABSTRACT

Before exploring into the tangible and material pillars of consumer protection legal regime, it is imperative that certain principles underlie numerous aspects of consumer protection by virtue of India's legal system having its historical basis in the "common law". Few to mention are principle of caveat emptor, and principle of *Justice, equity and good conscience*. This paper endeavours and envisages to portray the sequence of activities that led to emergence of consumer legal culture via enactment of consumer protection legislations, strengthening consumer education programs and dispute redressal mechanism, and stirring and rousing voluntary consumer protection organizations for resolving consumer grievances.

Keywords: consumer legal culture, evolution of consumerism, caveat emptor etc.

INTRODUCTION

"Caveat Emptor" is usually translated into English as "let the buyer beware" This principle of law imposes on a purchaser the risk of defects in title or quality of the thing purchased unless there is an express or implied warranty or some fraud or misrepresentation on the part of the seller. It applied to sales agreements concluded for the acquisition of specific goods (as opposed to generic products) on condition that the seller behaved in good faith. Sale of generic products, which is more common in trade relations, was subject to the will of the parties uniquely and to their exchange of agreements. The principle "caveat emptor" was subsequently softened during the Roman Republic with the introduction of the sellers' liability in case of hidden defaults. This principle was then adopted in Common Law as a result of the judicial reluctance to intervene in contractual disputes. Courts were unwilling to imply terms into contracts where there were no express terms. In any case, the effect of caveat emptor was that buyers were naturally

disadvantaged by lack of knowledge or expertise about what he was buying. The second answer to the initial question should be that all examples given above serve only the purpose of underlining the evolution observed in the protection of consumers in History. The more openly trade was operated the more protection was granted to the consumers. It is only understandable that consumer protection in Roman markets disappeared after the demise of the Roman Empire.

Consumerism is thought to originate in the Western World but many different countries all around the world are linked to it. Consumerism can be traced back to many ancient civilizations like the Greeks, Romans, and Egyptians. Consumerism started to become a problem after the Industrial Revolution. During this revolution due to mass production goods were easily available at low prices. Today Consumerism is used all around the world but mostly in the Western World Countries. Consumer protection has been around since ancient times. Following are the examples found in European law:

- I. Laws laid down by Moses and reported in the Bible prevent the consumption of unclean animals, especially animals that had died from causes other than supervised slaughter.
- II. The oldest known weights date back to around 8000 B.C. and by 3000 BC weighing had begun for different categories of goods.
- III. Assyrian writing tablets provided descriptions of how to determine correct weights and measures for food grain.
- IV. Egyptians prescribed requirements for labeling of certain food items.
- V. In Athens, beer and wines were inspected to ensure their purity and soundness.
- VI. Romans provided a well-organized state-controlled food control system to protect consumers from being defrauded. This system virtually disappeared with the demise of the Roman Empire. However, main legal principle developed in Roman law with respect to consumer protection is referred to as “caveat emptor”. This doctrine heavily influenced trade in the middle Ages and the Anglo-Saxon common law system.
- VII. In the middle Ages, individual European countries passed laws concerning the quality and safety of eggs, sausages, cheese, beer, wine and bread, some of these rules are still applicable today. For instance the “Assize of Bread and Ale” of 1266 in England regulated the weight of the Farthing Loaf and the quantity of a Penny of

Ale, according to the price of the ingredients. Bakers or Brewers who gave short measure could be fined.

- VIII. In the middle Ages, enforcement of weights and measures and food statutes was in the hand of the Monarch's local agents. As early as 1340, the post of the Clerk of the Market was established in London. The post-holder in each town was responsible for ensuring that all false weights and measures were destroyed.
- IX. In 1545, England fixed a legal maximum interest rate. In other Western European countries, the Catholic Church censured usurer and when they died, the Church confiscated their land and properties.
- X. In the colonies, situated far away from the mainland, profiteering and exorbitant profit margins became recurrent infringements of regulations. Furthermore, the creation of monopolies such as the Rum Corps in Australia took full advantage of the lack of any sound competition in a given market.
- XI. Hallmarks on silver, gold and platinum must be hallmarked before sold to the public. Hallmarking is as important now as it was 500 years ago, when the first laws regulating this old form of consumer protection was passed by Parliament in Scotland in 1485.
- XII. In the 1790, metric system was introduced in France for weighing and measuring. This system, based on natural constants, was adopted by 18 countries in 1875. In 1897 it became legal for trade in Great Britain where it still coexists with the Imperial units. Today, Great Britain along with the United States of America are only major trading nations not solely using the metric system.

CONSUMER PROTECTION DURING ANCIENT PERIOD

Dharma Sastra being derived from Vedas laid out social rules and norms and served as a guiding principle for governing human relations. Many writers and commentators of ancient period documented living conditions of people through their innovative and divine writings including Smriti (tradition) and Sruti (revelation) and prescribed codes to guide kings and rulers about method of ruling state and its subjects. Consumer Protection was also a major concern in their writings. Thus among the Dharmas, most authoritative texts were Manu Smriti (800 BC to 600 BC), Kautilya's Arthashastra (400 BC to 300 BC), Yajnavalkya Smriti (300 BC to 100 BC), Narada Smriti (100 AD to 200 AD), Bruhaspati

Smriti (200 AD to 400 AD), and Katyayana Smriti (300 AD to 600 AD). Of these, Manu Smriti was the most influential.

Manu Smriti describes social, political and economic conditions of ancient society. Manu wrote about ethical trade practices and prescribed a code of conduct for traders and specified punishments to those who committed certain crimes against buyers. For example, he referred to the problem of adulteration and said “one commodity mixed with another must not be sold (as pure), nor a bad one (as good) not less (than the property quantity or weight) nor anything that is at hand or that is concealed.” The punishment for adulteration, fraud in selling and for breaking gems was severe. Manu also specified the rules of competency for parties to enter into a contract. During ancient period, the king had the power to confiscate the entire property of a trader in two instances:

- When the king had a monopoly over the exported goods
- When the export of the goods was forbidden

There was also a mechanism to control prices and punish wrong doers. The king fixed rates for purchase and sale of all marketable goods. Manu said “man who behaves dishonestly to honest customers or cheats in his prices shall be fined in the first instance.” There was a process to inspect all weights and measures every six months and results of these inspections were duly noted. All these measures show how effective ancient society was in regulating various ill practices of the market place. These measures also show how developed the system was in identifying the market strategies of traders. Thus, Manu Smriti effectively dealt with various consumer matters, many of which remain of great concern in modern legal systems.

Written subsequent to Manu Smriti, Kautilya's Arthashastra is considered to be a treatise and a prominent source describing various theories of statecraft and rights and duties of subjects in ancient society. Though its primary concern was with matters of practical administration, consumer protection occupies a prominent place in Arthashastra. It describes the role of the State in regulating trade and to prevent crimes against consumers.

Between 400 and 300 B.C., there was a director of trade whose primary responsibility was to monitor the market situations. Additionally, he was made responsible for fair trade practices. He was required to be “conversant with the differences in the prices of commodities of high value and of low value and the popularity or unpopularity of goods of various kinds whether produced on land or in water [and] whether they . . . arrived along

land-routes or water-routes, [and] also [should know about] suitable times for resorting to dispersal or concentration, purchase or sale.” Director of trade had to advise traders to avoid even a big profit that would be injurious to the subjects. During this period, several measures were taken to maintain official standards of weights and measures. Kautilya observed:

“Superintendent of standardization should cause factories to be established for manufacture of standard weights and measures. Superintendent should cause a stamping of weights and measures to be made every four months. The penalty for unstamped weights is twenty seven panas and a quarter. Traders shall pay a stamping fee amounting to one kaka every day to the superintendent of standardization.”

According to Kautilya, trade guilds were prohibited from taking recourse to black marketing and unfair trade practice.” Severe punishments were prescribed for different types of cheating. Rights of the traders were also well protected. On the subject of the return of an article purchased or payment of price thereof, there was fixed rule of time, after which an article could not be returned.

Aggarwal (2012) while discussing the consequences for a person using false balance and indulging in weighing and measuring less quantity than required under the Kautilyasarthshastra remarked that:

"If a trader was at any time found using unstamped weight and measures he was considered to be a cheat and was fined twenty seven and a quarter panas. Kautilya further lays own proportionate fines ranging from three panas and more for pressing and forming false weights and measures. In case of an adhaka for one Karsa less or more, fine was three panas which was to be increased for each successive karsa. In the case of a tuld for two karsas less or more, the fine was six panas and this was to be increased for every successive Two Kersas. In the case of parinami and dona for one pala less or more the fine was twelve panas and this was to be increased for every successive pala. Fine for fraudulent irregularities in other types of weights and measures was to be determined on this very line. In case trader used correct weights and measures, but through the trick of his hand lessened or enhanced the weight and measure of an article for his own benefits, he was a greater offender than one who simply used false weights and measures. In these cases if a weightier or measurer brought about a difference to the extent of

one eighth part of an article priced at one pana, fine was two hundred panas and was increased by two hundred panas successively.”

Existence of these penal provisions in the ancient Indian period showed on one hand the legal consciousness of the Hindu society while on the other hand, reference of these crime and punishment itself showed that traders and businessmen were indulged in such malpractices even in the early period. Using false or defective balance and under weighing was also common at that time. According to Arthur Jay Silversteen:

“Two specific Biblical references warned against misuse of weights and measures. The gravity of such misconduct was emphatically expressed in the Talmud: "The punishment (i.e., divine) for (false) measures is more rigorous than that for (marrying) forbidden relations." Regarding false impression and cheating he further said that "The doctrine of Caveat Emptor" was almost totally rejected in Talmudic Law; the seller was obliged to inform the buyer of all defects. It was specially forbidden to deceive people by creating a false impression, i.e. an intentional misrepresentation. Examples of such unfair trade practice by putting a layer of oil on the top of a keg of wine, old produce mixed with new one and wine diluted with water. Moreover, certain representations would simply imply a warranty which did not exist and were thus fraudulent, e.g. meat soaked in water to make it look fatter, entrails of an animal displayed in the store inflated to make them appear larger. Similarly utensils could not be painted to make them look newer although an owner could improve the new ones by polishing, ironing or beautifying them as he desired."

It can be said that the laws protecting consumer's interest found in ancient Indian Hindu Shastras are not only older than Talmudic laws but also a developed form in comparison to Talmudic law.

During Chandragupta's period, in which Kautilya lived, good trade practices were prevalent. Goods could not be sold at the place of their origin, field or factory. They were to be carried to the appointed markets where the dealer had to declare particulars as to the quantity, quality and prices of the goods which were examined and registered in the books. Every trader was required to take a license to sell. A trader from outside had to obtain permission. Superintendent of Commerce fixed the whole-sale prices of goods as they entered the Customs House. He allowed a margin of profit to fix retail prices. Speculation and cornering to influence prices were prohibited. Thus, the State bore a heavy

responsibility for protecting the public against unfair prices and fraudulent transactions. There were severe punishments for smuggling and adulteration of goods.

Also, during Chandragupta's period easy access to justice for all including consumers was considered of great importance. According to Kautilya, the king should look to the complaints of the people in the second part of the day. Everyone could approach the king's court for justice, but the king will entertain cases if the aggrieved presented a valid complaint. The king was directed not to foster litigation by starting an action without a complainant and moreover no complaint should be taken notice of when it proceeded from a person altogether unconnected with the person aggrieved. In addition to this, different set of courts were prevalent in ancient India. There were two different benches comprising judges and magistrates to solve civil and criminal cases. In civil matters, the judges themselves were empowered to take cognizance of the cases of disadvantaged persons who could not approach the court. Thus, rendering justice was regarded as one of the essential duties of the rulers and care was taken to ensure that justice was accessible to all. Such emphasis on justice for all remains a cornerstone of India's legal system.

CONSUMER PROTECTION IN MEDIEVAL PERIOD

Mughals were primarily concerned with expansion of their empire therefore no remarkable work relating to consumers protection could be attempted during this period. During medieval period, consumer protection continued to be of prime concern of the rulers. During Muslim rule, a large number of units of weights were used in India and prices were determined by local conditions. During the rule of Alau-din - Khalji, strict price control measures based on production cost were established in the market place. During those days, there was unending supply of grain to the city and grain-carriers sold at prices fixed by the Sultan. There was a mechanism for price-enforcement in the market. Similarly, shop-keepers were punished for under weighing their goods. It was for the first time that hoarding of grain was forbidden and even a minor violation of these rules was not tolerated. Traders found violating the rules or indulging in unscrupulous business were deprived of their trading rights. Prices of chattels were also fixed during the regime. A special place was occupied by brokers in the market system. They played the role of middlemen between customers and small-scale producers and earned commission

from both buyers and sellers and became the main profiteers, ultimately it resulted in increasing the prices of essential commodities which persuaded the Sultan to stop their profit-earning.

CONSUMER PROTECTION IN MODERN PERIOD – PRE-INDEPENDENCE ERA

During modern period, the British system replaced the age old traditional legal system of India. However, one of the outstanding achievements of British rule in India was formation of a unified nationwide modern legal system. During the British period, Indian legal system was totally revolutionized and the English legal system was introduced to administer justice. However, it is important to note that traditions and customs of the Indian legal system were not ignored. To administer justice, they were confronted with the problem of the value suitable to attach in practice to the Indian traditions and customs. Despite the challenges of combining the British and Indian legal systems, the fabric of modern Indian Law is unmistakably Indian in its outlook and operation and consumer protection is not an exception to this perception. Some of the laws which were passed during the British regime concerning consumer interests includes Indian Penal Code of 1860, Indian Contract Act of 1872, Usurious Loans Act of 1918, Sale of Goods Act of 1930, Agriculture Procedure (Grading and Marketing Act) of 1937, Drugs and Cosmetics Act of 1940 etc.

For fifty-five years, the Sale of Goods Act of 1930 was the exclusive source of consumer protection in India. Main protection for the buyer against the seller for defective goods is found in Section 16 of the Act. It provides exceptions to the principle of *Caveat emptor* (“let the buyer beware”) and the interests of the buyer were sufficiently safeguarded. Phrases such as “skill and judgment of the seller”, “reliance on sellers’ skill” and test of “merchantable quality” provide effective remedies to buyers. Courts interpreted these rules in the consumer’s favor. Sale of Goods Act 1930 was the exclusive consumer legislation until the passage of the Consumer Protection Act of 1986 which was designed to supplement the remedies already provided under the Act.

CONSUMER PROTECTION IN MODERN PERIOD – POST INDEPENDENCE ERA

Criminal law in the field of consumer protection has acquired much significance as consumers are less inclined to go to civil court for small claims. There has been an attempt to look at consumer protection as a public interest issue rather than as a private issue. Consumer protection was also provided within India's criminal justice system. Indian Penal Code of 1860 has a number of provisions to deal with crimes against consumers. It deals with offenses related to the use of false weights and measures, sale of adulterated food or drinks, sale of noxious food or drink and sale of adulterated drugs. In addition to the remedies under contract and criminal law, consumers have rights under tort law also. Based on its numerous legal intricacies, tort law is not the ideal remedy for injured consumers in India. For example, traditional doctrine of negligence imposes heavy responsibility on the plaintiff to prove each of its required elements. These traditional legal requirements naturally encourage injured consumers to pursue legal remedies under different laws. Not surprisingly, it is estimated that for about half a century from 1914 to 1965, only 613 tort cases came before the appellate courts. The orthodox legal requirements under the law of torts and contracts forced the policy makers to craft specific legislation to protect consumers. As a result, the Consumer Protection Act of 1986 was enacted with the objective of providing "cheap, simple and quick" justice to Indian consumers. Key consumer protection legislation enacted after India's independence from Britain includes:

- Prevention of Food Adulteration Act of 1954
- Essential Commodities Act of 1955
- Standard of Weights and Measures Act of 1976

CONSUMER PROTECTION ACT 1986 - EVOLUTION OF NOVEL LEGAL CULTURE

The Indian legal system experienced a revolution with the enactment of the Consumer Protection Act of 1986 which was specifically deigned to protect consumer interests. It is intended to provide justice which is less formal, involves less paper work, less delay and not expensive. The CPA has received wide recognition in India as poor man's legislation, ensuring easy access to justice. However, the CPA simply gives a new dimension to rights that have been recognized and protected since the ancient period. Two decades of experience with the operation of the CPA shows its popular acceptance and the

legal preference of injured consumers to enforce their rights under it. The CPA commands the consumer's support because of its cost-effectiveness and user-friendliness. In fact, the CPA creates a sense of legal awareness among the public and brings disinterested ones to approach traditional courts especially on consumer matters. It has changed the legal mindset of the public and made them think first of their remedies under the CPA regardless of the nature of their case. In short, the CPA has instilled confidence among the "teeming millions" of impoverished litigants. The way in which the consumer forum are flooded with cases and the mode in which these cases are being disposed off creates an impression of "judicial populism" in India in the arena of consumer justice.

The CPA also liberalized rigid procedural requirements and introduced simple and easy methods of access to justice. To proceed under the CPA, consumer needs to pay a nominal fee and need not send any notices to the opposite party. A simple letter addressed to the consumer forum draws enough attention to initiate legal action. The CPA initiated a legal revolution by ushering in the era of consumers and developing a new legal culture among the masses to take recourse under the CPA regardless of their grievance. Consumer Disputes Redressal Agencies that is the National Commission, the State Commission and the District Forum are working together in a way that is revolutionizing the present Indian legal system and challenging the traditional system of delivering justice. In 2003, the Planning Commission of India identified "Consumer Awareness, Redressal, and Enforcement of the Consumer Protection Act of 1986" as a priority and as a result, a national action plan was prepared. Consumer forum created by the CPA have proven to be effective, disposing of thousands of cases with few legal formalities and leading the way toward well-founded consumer jurisprudence in India.

Some interesting developments which are helping the consumer movement include developments taking place in the field of consumer education. Full-fledged courses have been introduced in management and law courses. A number of large organisations have set up Consumer Grievance Cells as an in-house redressal mechanism. Government of India has set up a separate Directorate called Directorate of Public Grievances. Consumers get full opportunity to participate in policy making aspects. It appears that the time has come when consumers in India can hope to be 'The King' in the market place very soon. The labour of dedicated individuals and groups who have fought relentlessly for consumers rights through the decades has not been in vain after all. Consumer movement should seek

a new vision which embodies 3 new cultures, i.e., the culture of balance and harmony, the culture of trusteeship and stewardship and culture of accountability to the future.

Following table shows some Important Consumer Organizations established in India:

Sr. No.	Name	Year of Establishment
1	Passengers and Traffic Relief Association	1915
2	Women Graduate Union (WGU)	1915
3	Women's India Association (WIA)	1917
4	Triplicane Urban Cooperative Stores (TUCS)	1949
5	Indian Association of Consumer (IAC)	1956
6	Gayatri Charitable Trust (GCT)	1960
7	International Organisation of Consumer Union	1960
8	Jyoti SaughGrahakSmakshaVibhag	1962
9	Bombay Civil Trust (BCT)	1963
10	Consumer Guidance Society of India (CGSI)	1966
11	Baroda Citizen Council (BCC)	1966
12	All India Bank Depositors Association	1968
13	Surat Consumer Association (SCA)	1969
14	Karnataka Consumer Service Society (KCSS)	1970
15	Visaka Consumer Council (VCC)	1973
16	Akhil Bhartiya Grahak Panchayat (AGBP)	1974
17	Consumer Education and Research Centre	1978
18	Consumer Forum (CF)	1980
19	Consumer Education Centre (CEC)	1982
20	Voluntary Organization in the Interest of Consumer Education (VOICE)	1984
21	Consumer Unity and Trust Society (CUTS)	1984
22	Consumer Guidance Society of Jamshedpur	1984
23	Confederation of Indian Consumer Organizations	1992
24	Consumer Co-ordination Council	1992

With the advent of consumerism, the people who are constitutionally known as citizens are described as consumers. The legislations passed for the welfare of the consumer-citizens are considered as laws showing spirit of consumerism. Passengers and Traffic Relief Association (PATRA) in Bombay was first body of consumers set up in India in 1915. Women Graduate Union (WGU) Bombay was another organization started in 1915. One of the earliest consumer co-operatives was the Triplicane Urban Co-operative Stores' started in late 40's in Madras. It has about 150 branches all over the city. Indian Association of Consumer (IAC) was set up in Delhi in 1956. This was an All India Association for protection of consumer interests with the government's support.

First organization to make an impact was the Consumer Guidance Society of India (CGSI), Bombay started by nine housewives in 1966 with Mrs. Leela Jog as its founder secretary. Instead of just holding conferences, meetings and asking questions like earlier consumer associations, it started testing and reporting the quality of foodstuffs and handling consumer complaints. It has 8 branches at various places carrying on publicity, exhibitions, and education. It publishes a magazine called Keemat in English for consumer information.

Second consumer organization which made an impact in making the cause of consumers known throughout the country is the Karnataka Consumer Services Society (KCSS) formed in 1970. Main strength of the KCSS was Mrs. Mandana who spread the word of the movement throughout the country, especially among government circles at a time when the word 'consumer' was not familiar to many. It highlighted the importance of consumer education.

Visaka Consumers Council (VCC) started in 1973 in Vishakhapatnam represented the plight of the poor ration card holders and LPG gas users, who had to stand in long queue because of the irresponsible attitude of the concerned authorities. VCC succeeded in achieving necessary changes in the fair price shops and the public distribution system.

Akhil Bhartiya Grahak Panchayat (ABGP) started in 1974 in Pune, Mumbai Grahak Panchayat (MGP) started in 1979 in Mumbai and Grahak Panchayat in 1979 in Jamshedpur, Consumer Education and Research Centre (CERC) which started in Ahmedabad in 1978 added a new dimension to the Consumer movement Such organizations constantly used legal machinery to bring about changes and protect consumer rights. CERC has also launched a project on comparative testing in Ahmedabad

where comparative testing, ranking and evaluation of consumer products are being undertaken with the aim of publication of such findings for consumer education. CERC also undertakes internship training for any consumer organization, besides routine exhibitions, seminars and publications of the magazine Consumer Confrontation.

The Eighties saw the dawn of a new era in consumer movement in India. There was mushrooming of consumer organizations, many floated by politicians to earn additional income and capture a gullible vote bank. VOICE, the voluntary organization in the interest of consumer education, was founded by energetic young students and teachers of the Delhi University in 1983 in Delhi to fight against unfair trade practices. It gives consumers information about the benefits and shortcomings of various products and brands and enables them to make informed choices.

Consumer Unity and Trust Society (CUTS) started in Jaipur in 1984 made its impact by effectively making use of media and publicity. Consumer Action Group (CAG) founded in 1985 in Madras concerns itself with the issues of civic amenities, health and environments. A new impetus was given to the consumer movement with the enactment of the Consumer Protection Act, 1986. It applies to the whole of India except the state of Jammu and Kashmir. It is suffice to mention that this act is unique since it provides for setting up of quasi-judicial bodies vested with jurisdiction concurrently with the established courts for redressal of consumer disputes at the district, state and national levels. The basic objective is to provide inexpensive justice to consumers.

The Nineties saw the fulfillment of efforts towards a unified approach. In March 1990 the Federation of Consumer Organizations (FEDCOT) was established in Tamilnadu to bring together as many consumer groups as possible in the state under one umbrella. At apex level, there was Confederation of Indian Consumer Organization (CICO) and Consumer Coordination Council (CCC) for better networking of consumer groups.

Conclusion

Consumer protection is always a matter of great concern. In ancient India, effective measures were initiated to protect consumers from crimes in the market place. Ancient law givers described various kinds of unfair trade practices and also prescribed severe punishments for wrong doers. Acts of adulteration and false weights and measures were seriously dealt with. In ancient India, the king was the supreme authority to render justice

but his authority was circumscribed by the rules of *Dharma*. In the medieval period, some Muslim rulers developed well organized market mechanisms to monitor prices and supply of goods to the markets. During British period, modern legal system was introduced in India and many laws were enacted to protect the interests of consumers generally. Today civil justice system is tainted with deficiencies that discourage consumer from seeking legal recourse. However, the Consumer Protection Act 1986 which provides easy access to justice has brought a legal revolution to India as a result of its cost-effective mechanism and popular support. At the same time, these mechanisms pose a great legal challenge to the traditional courts which conduct litigation in orthodox ways. In this age of consumers, the regime of Indian consumer law will undoubtedly rule Indian markets and bestow a new phase on the existing Indian legal structure with its strong ancient legal foundations.