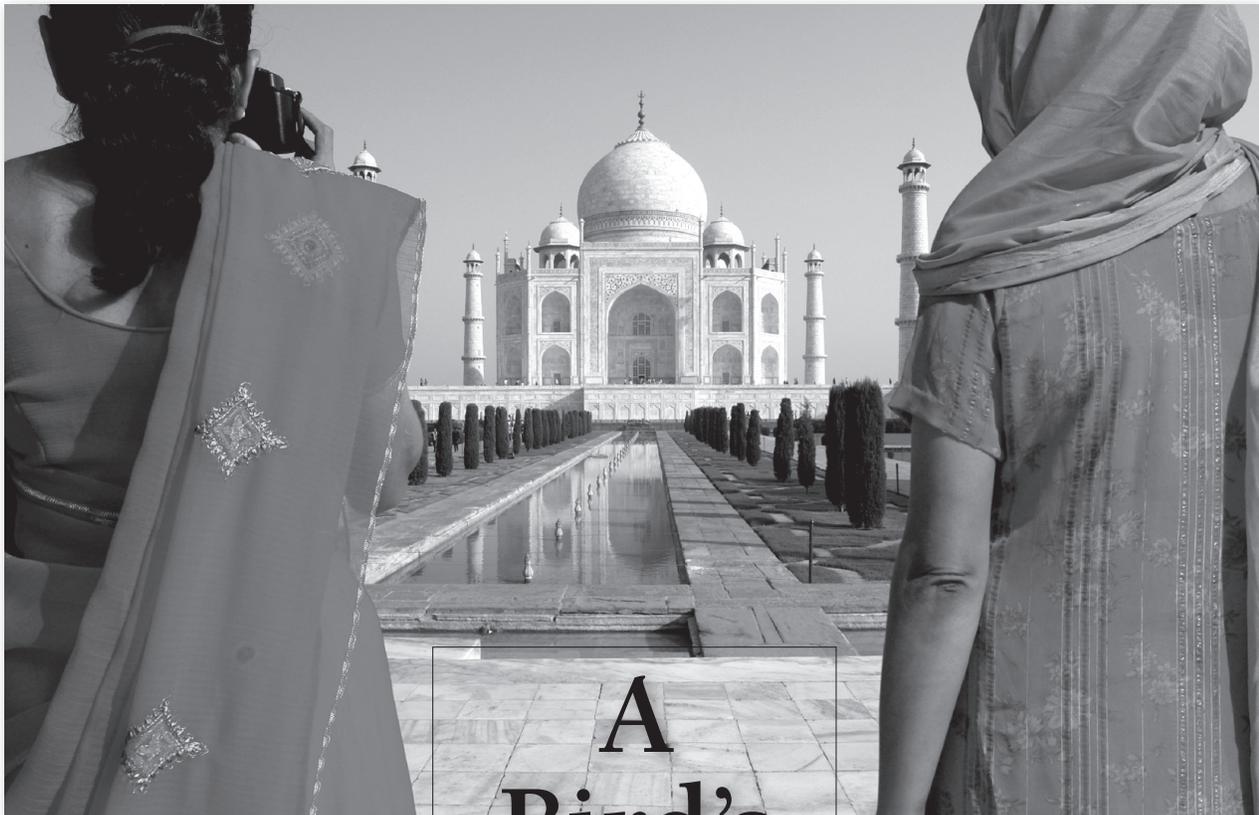


Historical Evolution of Consumer Protection and Law in India



A Bird's Eye View

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Consumer Protection has its deep roots in the rich soil of Indian civilization, which dates back to 3200 B.C. In ancient India, human values were cherished and ethical practices were considered of great importance. However, the rulers felt that the welfare of their subjects was the primary area of concern. They showed keen interest in regulating not only the social conditions but also the economic life of the people, establishing many trade restrictions to protect the interests of buyers. This article examines the historical perspective of consumer protection in India from the Vedic age¹ (ancient period) to the modern period. It also briefly analyzes the development of consumer law in India. Finally, an attempt is made to discuss the legal

framework of the Indian Consumer Protection Act of 1986 which led to the evolution of a new legal culture in India.

Consumer Protection in Ancient India: A Historical Perspective

Introduction

In ancient India, all sections of society followed *Dharma-sastras*² (“*Dharma*”), which laid out social rules and norms, and served as the guiding principle governing human relations. The principles of *Dharma* were derived from *Vedas*.³ *Vedas* were considered the words of God, and law was said to have divine origin which was transmitted to society through sages.⁴ Thus, *Vedas* were the primary sources of law in India.⁵

Many writers and commentators of the ancient period documented the living conditions of the people through their innovative and divine writings, including *Smriti* (tradition)⁶ and *sruti* (revelation),⁷ and also prescribed codes to guide the kings and rulers about the method of ruling the State and its subjects. Consumer protection was also a major concern in their writings.

Among the *Dharmas*, the most authoritative texts are a) the *Manu Smriti* (800 B.C. to 600 B.C.); b) the *Yajnavalkya Smriti* (300 B.C. to 100 B.C.); c) the *Narada Smriti* (100 A.D. to 200 A.D.); d) the *Brubhaspati Smriti* (200A.D. to 400 A.D.); and e) the *Katyayana Smriti* (300 A.D. to 600 A.D.).⁸ Among these, *Manu Smriti*⁹ was the most influential.

Manu Smriti

Manu Smriti describes the social, political and economic conditions of ancient society. Manu, the ancient law giver, also wrote about ethical trade practices.¹⁰ He prescribed a code of conduct to 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.”¹¹ The punishment “for adulterating unadulterated commodities and for breaking gems or for improperly boring (them)” was the least harsh.¹² Severe punishment was prescribed for fraud in selling seed corn: “he who sells (for seed-corn that which is) not seed-corn, he who takes up seed (already sown) and he who destroys a boundary (mark) shall be punished by mutilation.”¹³ Interestingly, Manu also specified the rules of competency for parties to enter into a contract. He said “a contract made by a person intoxicated or insane or grievously disordered (by disease and so forth) or wholly dependent, by an infant or very aged man, or by an unauthorized (party) is invalid.”¹⁴

During the ancient period, the king had the power to confiscate the entire property of a trader in two instances: (1) when the king had a monopoly over the exported goods; and (2) when the export of the goods was forbidden.¹⁵ There was also a mechanism to control prices and punish wrongdoers. The king fixed the rates for the purchase and sale of all marketable goods.¹⁶ Manu said “man who behaves dishonestly to honest customers or cheats in his prices shall be fined in the first or in the middle most amercement.”¹⁷ There was a process to inspect all weights and measures every six months, and the results of these inspections were duly noted.

All these measures show how effective ancient society was in regulating the many wrongs 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.

Kautilya's Arthashastra

Written subsequent to *Manu Smriti*, Kautilya's *Arthashastra*¹⁸ is considered to be a treatise and a prominent source, describing various theories of statecraft and the rights and duties of subjects in ancient society.¹⁹ Though its primary concern is with matters of practical administration,²⁰ consumer protection occupies a prominent place in *Arthashastra*. It describes the role of the State in regulating trade and its duty 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, the director of trade was made responsible for fair trade practices. The director of trade 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.”²¹ The director of trade advised to “Avoid even a big profit that would be injurious to the subjects. . . . He should not create a restriction as to time or the evil of a glut in the market in the case of commodities constantly in demand.”²²

During this period, several measures were taken to maintain official standards of weights and measures. Kautilya observed, “the superintendent of standardization should cause factories to be established for the manufacture of standard weights and measures.”²³ He further said “[the superintendent] should cause a stamping [of the 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 *kakani* every day to the superintendent of standardization.”²⁴

According to Kautilya, ‘the trade guilds were prohibited from taking recourse to black marketing and unfair trade practice.’²⁵ Severe punishments were prescribed for different types of cheating. For example, “for cheating with false cowrie-shells, dice, leather straps, ivory-cubes or by sleight of hand, [the punishment shall be] cutting-off of one hand or a fine.”²⁶ The rights of the traders were also well protected. Kautilya said, “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.”²⁷

During Chandragupta's period,²⁸ in which Kautilya lived, good trade practices were prevalent. For example, “Goods could not be sold at the place of their origin, field or factory. They were to be carried to the appointed markets (*panya sala*) where the dealer had to declare particulars as to the quantity, quality and the prices of his goods which were examined and registered in the books.”²⁹ Every trader was required to take a license to sell. A trader from outside had to obtain permission. The 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. For example, public health was guarded by punishing adulteration of food products of all kinds, including grains, oils, alkalies, salts, scents and medicines.³⁰

Also during Chandragupta's period, easy access to justice for all, including consumers, was considered of great importance. The king was the central power to render justice. According to Kautilya, “The king should look to the complaints of the people [of the town and village] in the second part of the day. The mobile and circuit courts worked at night, when necessity arose. They also must have worked on holidays in urgent matters.”³¹ The king was required to pay full attention to the truth³² and he was primarily responsible for administering justice. Everyone could approach the king's court for justice. However, standing was strictly followed. The king only entertained cases if the aggrieved presented a valid complaint. The king was directed not to

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“foster litigation by starting an action without a complainant, and moreover, [the king was told that] no complaint should be taken notice of when it proceeded from a person altogether unconnected with the person aggrieved.”³³ In addition to this, different set of courts were prevalent in ancient India.

The court system during Kautilya’s time was well organized. There were two different benches comprising judges and magistrates to try 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, for example, the cases concerning ascetics, women, and minors, old, sick and helpless people.³⁴ 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. Indeed, this emphasis on justice for all remains a cornerstone of India’s legal system.

Consumer Protection in Medieval and Modern Periods

In the 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.³⁵ During the Sultanate period, the prices used were determined by local conditions.³⁶ During the rule of Alauddin Khalji,³⁷ strict controls were established in the market place.³⁸ In those days, there was unending supply of grain to the city and grain-carriers sold at prices fixed by the Sultan.³⁹ There was a mechanism for price-enforcement in the market. Similarly, shop-keepers were punished for under weighing their goods.⁴⁰

In the 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 “the formation of a unified nationwide modern legal system.”⁴¹ During the British period,⁴² the Indian legal system was totally revolutionized and the English legal system was introduced to administer justice. However, it is important to note that the traditions and customs of the Indian legal system were not ignored. “The law itself underwent considerable adaptation. The British institutions and rules were combined with structural features [e.g. a system of separate personal laws] and rules [e.g. *Dharma*, and local custom] which accorded with indigenous understanding. The borrowed elements underwent more than a century and a half of pruning in which British localisms and anomalies were discarded and rules [were] elaborated to deal with new kinds of persons, property and transactions.”⁴³ To administer justice, “they were confronted [with] the problem of the value suitable to attach in practice to the [Indian traditions and customs].”⁴⁴ 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”⁴⁵ and consumer protection is not an exception to this perception.

Some of the laws which were passed during the British regime concerning consumer interests are: the Indian Contract Act of 1872, the Sale of Goods Act of 1930, the Indian Penal Code of 1860, the Drugs and Cosmetics Act of 1940, the Usurious Loans Act of 1918, and the Agriculture Procedure (Grading and Marketing Act) of 1937. These laws provided specific legal protection for consumers.

For fifty-five years, the Sale of Goods Act of 1930 [SGA] was the exclusive source of consumer protection in India. The SGA, drafted with precision, is “an admirable piece of legislation.”⁴⁶ It is also praised as a “Consumer’s Charter.” The main protection for the buyer against the seller for defective

goods is found in Section 16 of the Act.⁴⁷ It provides exceptions to the principle of *Caveat emptor* (“let the buyer beware”) and the interests of the buyer are sufficiently safeguarded. Phrases such as “skill and judgment of the seller”, “reliance on sellers’ skill”, and the test of “merchantable quality” provide effective remedies to buyers. Courts interpreted these rules in the consumer’s favor.⁴⁸ The SGA was the exclusive consumer legislation until 1986, with the passage of the Consumer Protection Act of 1986, designed to supplement the remedies already provided under the SGA.

Consumer protection was also provided within India’s criminal justice system. The 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,⁴⁹ the sale of adulterated food or drinks, the sale of noxious food or drink, and the sale of adulterated drugs.⁵⁰

Consumer protection legislation enacted after India’s independence from Britain include: the Essential Commodities Act of 1955, the Prevention of Food Adulteration Act of 1954 and the Standard of Weights and Measures Act of 1976. A benefit of these acts is that they do not require the consumer to prove *mens rea*. Rather, “the offenses are of strict liability, and not dependent on any particular intention or knowledge.”⁵¹ 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. It has been said that “the functional value of criminal law in the field of consumer protection is a high one and it has a respectable pedigree.”⁵² Another view is that there has been an attempt to look at consumer protection as “a public interest issue rather than as a private issue” to be left to individuals for settlement in court.

In addition to the remedies under contract and criminal law, consumers have rights under tort law. Based on its numerous legal intricacies, however, tort law is not the ideal remedy for injured consumers in India. For example, the 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.⁵³ Not surprisingly, it is estimated that for about half a century from 1914 to 1965, only 613 tort cases came before the appellate courts.⁵⁴

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.

The Indian Consumer Protection Act of 1986 and the Evolution of a New Legal Culture

The Indian legal system experienced a revolution with the enactment of the Consumer Protection Act of 1986 [“CPA”], which was specifically designed to protect consumer interests. The CPA was passed with avowed objectives. It is intended to provide

justice which is “less formal, [and involves] less paper work, less delay and less [expense]”. 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. It is rightly said that “the present-day concern for consumer rights . . . is not new and that consumer’s rights like the right to have safe, un-adulterated and defect-free commodities at appropriate prices has been recognized since ancient times.”⁵⁵

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 at the same time, brings disinterest 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 fora 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 greatness of the CPA lies in its flexible legal framework, wider jurisdiction and inexpensive justice. One can find in the CPA a mixture of principles of torts and contracts. Simply speaking, it is "a shorthand term to indicate all the many different aspects of general law."⁵⁶ Basically, the CPA liberalizes the strict traditional rule of standing and empowers consumers to proceed under the CPA.⁵⁷ Consumer groups, the central or any state government are all empowered to lodge complaints under the CPA.⁵⁸ This liberalization shows the care that has been taken to represent and fight for the cause of weak, indifferent and illiterate consumers. The novelty of the CPA is the inclusion of both goods and services within its ambit. The consumer can bring suit for defective products as well as for deficiency of services.⁵⁹ In the event of any deficiency, all services, whether provided by the government or private companies, can be questioned under the CPA.

The CPA also liberalized rigid procedural requirements and introduced simple and easy methods of access to justice. To proceed under the CPA, the consumer need only 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. Another major procedural flexibility is the option the consumer has to engage a lawyer. If the consumer prefers, he can represent himself. The simple measures of action drive consumers to avail themselves of the benefits of the CPA.

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. The Consumer Disputes Redressal agencies, the National Commission, the State Commission, and the District Fora are working together in a way that is revolutionizing the present Indian legal system and challenging the traditional system of delivering justice. With easy access to the courts guaranteed by the CPA, consumers now wage legal battles against unscrupulous traders or service providers without any hesitation. The Indian government is also taking an active interest in protecting consumer rights and promoting effective consumer movements. 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.

The consumer fora 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. The traditional Indian legal system, in addition to a huge backlog of cases, is experiencing a litigation explosion in the area of consumer protection. According to one report, the total number of consumer cases pending in different

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fora was 359,469 cases as of June, 2004.⁶⁰ Around 45,798 cases have been filed before the national commission since its inception. At present, 8,884 cases are pending disposal.⁶¹ The huge backlog of consumer cases before consumer fora is forcing the Indian legal systems to think of "alternatives" for speedy disposal of consumer cases. India, home to the majority of the world's consumers, is committed to working for the welfare of consumers through new legal innovations.

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 gives ably described various kinds of unfair trade practices and also prescribed severe punishments for wrong doers. Mainly, 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 the supply of goods to the markets. During the British period, the modern legal system was introduced in India and many laws were enacted to protect the interests of consumers generally. Today, the civil justice system is tainted with deficiencies that discourage the consumer from seeking legal recourse. However, the Consumer Protection Act of 1986, which provides easy access to justice, has brought a legal revolution to India as a result of its cost-effective mechanisms 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.

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1. 5000B.C. to 2500 B.C. Different versions give different dates for the actual period of the *Vedic* age. However, it is said that "The Vedic age in India which is considered to be the first literary source of civilization, is seen as a glorious period of cultural evolution in the ancient world . . . The Vedas are not books of law but are the repository of culture delineating the feelings and habits of the people of the time which indicate and give vivid ideas of legal concepts in a developed civilization." GURJEET SINGH "*The problem of Consumer Protection in India : A Historical Perspective*" Consumer Protection Reporter 704 at 705, n.6 (1994 III)
2. Codes of morals. They also deal with the rules of conduct, law and customs.
3. SHRADDHAKAR SUPAKAR, LAW OF PROCEDURE AND JUSTICE IN INDIA, 38 (1986). *Veda* means knowledge. There are four *Vedas*: the *Rigveda*, the *Yajurveda*, the *Samaveda* and the *Atharvaveda*.
4. *Id.* at 39.
5. *Id.* at 41.
6. It is also called Vedas.
7. The words of God.
8. The periods mentioned against each *Smriti* are taken from GURJEET, *supra* note 1, at 705-6.
9. Manu, the ancient law giver, is the author.
10. It is interesting to note that Manu was the first to write about the eighteen heads or titles of litigation and matters pertaining to

buyers and consumers, including money lending, deposits and pledges, sale without ownership of property, non-performance of contracts and breach of contract of sale etc.

11. MANU, *THE LAWS OF MANU*, 290 (George Buhler trans., 1990).
12. *Id.* at 393.
13. *Id.* at 394.
14. *Id.* at 283.
15. *Id.* at 323.
16. RAJENDRA NATH SARMA, *ANCIENT INDIA ACCORDING TO MANU* 142 (1980).
17. Buhler, *supra* note 11, at 393.
18. 400 B.C. to 300 B.C.
19. See R.P. KANGLE, *THE KAUTILIYA ARTHASASTRA – PART II* (2nd ed. 1972) [hereinafter Kangle Part II].
20. R.P. KANGLE, *THE KAUTILIYA ARTHASASTRA – PART III – A STUDY* 116 (2000) [hereinafter Kangle Part III].
21. Kangle Part II, *supra* note 19, at 127.
22. *Id.*
23. *Id.* at 134.
24. *Id.* at 137.
25. Supakar, *supra* note 3, at 107.
26. N. DUTTA, *ORIGIN AND DEVELOPMENT OF CRIMINAL JUSTICE IN INDIA* 26 (1990).
27. Supakar, *supra* note 3, at 202.
28. Chandragupta Maurya ranks as one of the India's greatest rules. The period dates back to 323 B.C.
29. RADHA KUMUD MOOKERJI, *CHANDRAGUPTA MAURYA AND HIS TIMES* 204 (4th ed. 1966).
30. *Id.* at 140.
31. Supakar, *supra* note 3, at 114-15.
32. Buhler, *supra* note 11, at 26.
33. Dutta, *supra* note 26, at 52.
34. Kautilya-The Arthashastra 385 (L.N.Rangarajan ed., Penguin books India, 1992)
35. MAULANA HAKIM SYED ABDUL HAI, *INDIA-DURING MUSLIM RULE* 127 (Mohiuddin Ahmad trans., 1977).
36. S.R.BAKSHI, *ADVANCED HISTORY OF MEDIEVAL INDIA VOL. I* 287 (2003).
37. 1296 – 1316.
38. Irfan Habib, *The Price Regulations 'Ala' Uddin Khalji – A Defence of 'Za' Barani*, in *MONEY AND THE MARKET IN INDIA 1100-1700* 85 (Sanjay Subrahmanyam ed., 1998).
39. *Id.* at 88.
40. *Id.* at 89.
41. MARC.GALANTER, *LAW AND SOCIETY IN MODERN INDIA* 15 (1997).
42. From 1600 to 1947. The Regulating Act of 1773 was passed by the British Parliament and one of its objectives was to bring the management of the East India Company under the control of the British Parliament and British Crown.
43. Galanter, *supra* note 41, at 48.
44. ROBERT LINGAT, *THE CLASSICAL LAW OF INDIA* 137 (1998).
45. Galanter, *supra* note 41, at 49.
46. GORDON BORRIE & AUBREY L. DIAMOND, *THE CONSUMER, SOCIETY AND THE LAW* 65 (1964).
47. S.16 of Sale of Goods Act says “ Subject to the provisions of

this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which goods are required, so as to show that the buyer relies on the seller's skill or judgment and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be reasonably fit for such purpose:

Provided that, in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose

(2) Where the goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality:

Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

(3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(4) An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith. Sale of Goods Act, No. 3 of 1930; India Code (1930), ch. 2 § 16.

48. Borrie and Diamond, *supra* note 46, at 66.

49. Indian Penal Code, No. 45 of 1860, ch. 13 §§ 264-67.

50. *Id.* at ch. 14 §§ 272-76.

51. D.N. SARAF, *LAW OF CONSUMER PROTECTION IN INDIA* 169 (1990).

52. GORDON BORRIE, *THE DEVELOPMENT OF CONSUMER LAW AND POLICY: BOLD SPIRITS AND TIMOROUS SOULS* 3 (1984).

53. See *Wormell v. R.H.M. Agriculture (East), Ltd.* [1987] 1 W.L.R. 1901.

54. It is said, due to the congestion of courts with heavy arrears, it may take 5 to 15 years for a claimant to wade through the different levels of courts in tort litigation in India.

55. Singh, *supra* note 1, at 719.

56. BILL THOMAS, *The Legal Framework of Consumer Protection, in MARKETING AND THE CONSUMER MOVEMENT* 49 (Jeremy Mitchell ed., 1978).

57. The Consumer Protection Act, No. 68 of 1986; India Code (1986) ch. 2 § 1(b)(iv).

58. *Id.* at ch. 2 § 1(b)(iii).

59. *Id.* at ch. 2 § 1(c).

60. Dept of Consumer Affairs, Ministry of Consumer Affairs, Food and Pub. Distrib., Gov't of India, Annual Report 2004-5, ch. 5, http://fcamin.nic.in/Events/EventDetails.asp?EventId=1246&Section=Annual%20Report&ParentID=0&child_continue=1&child_check=0 (last visited Mar. 17, 2008).

61. Mahendra Kumar Singh, *Vacancies, Pending Cases Plague Apex Consumer Body*, *TIMES OF INDIA*, Mar. 9, 2007, available at <http://timesofindia.indiatimes.com/articleshow/1738563.cms>, *Times of India*, 9th Aug. 2007 (last visited Mar. 17, 2008).