

An Overview of Consumer Protection Act, 1986

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ABSTRACT:

With changing times the economic and business environment of India also went through a change. In the 1980s and 1990s, we opened our economy and truly became a global trading partner with the world. This exposed customers to new products but also new problems. And we finally this can be argued on the basis of fast enactment of consumer protection laws in almost all part of the world. Apart from the consumer protection laws in developed world, India is not an exception to this rule. The Consumer Protection Act, 1986, is one of the examples that are to be treated as a milestone in the history of socio-economic legislation to protect the interests of the consumers in India. The main objective of the Consumer Protection Act is to ensure the better protection of consumers. Unlike existing laws which are punitive or preventive in nature, the provisions of this Act are compensatory in nature. The Act is also intended to provide simple, speedy and inexpensive redressal to the consumers' grievances, and relief of a specific nature and award of compensation wherever appropriate to the consumer. The act has been amended in 1993 both to extend its coverage and scope and to enhance the powers of the redressal machinery.

Keywords: consumer protection, Consumer Grievances, Redressal machinery

INTRODUCTION

The Consumer Protection Act, 1986 is one of the milestone in the history of socioeconomic legislation to protect the interests of the consumers in India. The legislation to protect and advance the interest of consumers in India was finally materialized after in-depth study of consumer protection laws operating in other countries and in consultation with representatives of consumers, trade and industrial segments of India and abroad. In order to better serve the interests of the consumer and to settle their disputes, Consumer Council and other authoritative mechanism are also being established. It is to be argued that much talked about concept of 'consumer protection' centres around the problems of buyers in a world of sellers. The technological developments have multiplied the need of consumers and have changed the tradition that guided our living in the past. The rapid industrial development has not only brought new innovations and products into common use but has also affected the mode and outlook of our living. The simple goods which were catering our needs have been replaced by complex and complicated goods. In view of the socio – economic changes which have taken place in the lives of the people it is imperative to build up a strong and broad based consumer movement which may give impetus and bring about socio- legal measures necessary for consumer protection. This study aims to project and suggest not only the ways and means to manufacturers, distributors, traders and all those engaged in serving the consumer but also evolve balanced viewpoint between the buyers and sellers within socio- economic and legal framework of the society.

HISTORICAL PERSPECTIVES OF CONSUMER PROTECTION IN INDIA

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. Manu Smriti describes the social, political and economic conditions of ancient society. Manu, the ancient law giver, also wrote about ethical trade practices. He prescribed a code of conduct to traders and specified punishments to those who committed certain crimes against buyers. Written subsequent to Manu Smriti, Kautilya's Arthashastra 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. Though its primary concern is with matters of practical administration, 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. 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. During the Sultanate period, the prices used were determined by local conditions. During the rule of Alauddin Khalji, strict controls were established in the market place. In 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. 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."

During the British period, 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. 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. 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." 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." 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.⁸ 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.

REMEDIES AVAILABLE TO AGGRIEVED CONSUMER

The Consumer Protection Act seeks to provide a speedy and simple redressal to consumer grievances. The Consumer Protection Act has specified consumer rights given above. It provides for the setting up of a three tier quasi-judicial machinery. This machinery has been authorised to provide time bound relief to consumers. Remedies available to an aggrieved consumer are: 1. Removal of defects in goods. 2. Payment of compensation by seller for any loss borne by the consumer. 3. Return of price by the seller. 4. Replacement of defective goods with new goods of similar description. The Consumer Protection Act makes provision for the setting up of the following authorities:

District Forum

The State Governments are required to establish District Forum in each district. The important features of District Forum are as under:

Each District Forum consists of a chairman and two members appointed by the State Government. It has the powers of a civil court for enquiring into any complaint.

2. A District Forum can receive consumer complaints where the value of goods or services and the compensation claimed is less than Rs. Five lakh.
3. The consumer can file complaint against the manufacturer for the malpractices.
4. On receiving the complaint, the District Forum shall refer the complaint to the opposite party concerned (i.e. seller, manufacturer or the organization who is responsible for malpractice), and send the sample of goods for testing in a laboratory.

5. If the other party is responsible for the default or some unfair trade practices, the

District Forum can issue an order to them directing them to either resolve the defect or replace the goods, or return the price, or pay compensation to the consumer for loss or injury etc. An appeal against the order of the District Forum can be filed to the State Commission within 30 days.

State commission

It is set up by the State Government and its jurisdiction is restricted to the boundaries of the state concerned. The Consumer Protection Act lays down the working of a State Commission as under: 1. The State Commission shall consist of a President who either has been a Judge of a High Court and two other members. All the three shall be appointed by the State Government.

Only those complaints can be filed where the value of goods or services and compensation claims comes in between Rs. 5 lakh and Rs. 20 lakh. The appeal against the order of any District Forum can also be filed before the State Commission.

3. The State Commission is required to refer the complaint to the opposite party concerned and send the sample of goods for retesting in a laboratory, if necessary.

4. The State Commission after being satisfied that the goods were defective can issue the same order as can be issued by the District Forum. Any person who is aggrieved by the order of the State Commission can appeal against such order to the National Commission within 30 days.

National commission

It is set up by the Central Government. The salient features and provisions of the Act pertaining to the National Commission are as under:

It shall include a President who is or has been a Judge of the Supreme Court and four other members appointed by the Central Government.

The identical complaints as can be filed in the District Forum and State Commission can be filed in the National Commission too. Appeal against the order of State Commission can also be filed before the National Commission.

The National Commission shall have the same powers as that of a Civil Court in dealing with cases and follow the procedure prescribed by the Central Government.

It has the authority to issue orders for safety provisions and pay compensation for loss or injury cause. An appeal against the order of the National Commission can be filled to the Supreme Court within 30 days.

Table No.-1

Total Numbers of Cases Disposed by Consumer Forums Since Inception(upto 2018)

Sr. No.	Name of the Agency	Case filed since Inception	Case Disposed since Inception	Case Pending	% of total Disposal
1.	National Commission	122040	103520	18520	85%
2.	State Commission	788460	678124	110340	86.02%
3.	District Forum	3904502	3605673	298033	92.30%
	Total	4815002	438317	426893	91%

Source: www.ncdrc.nic.in

ANALYSIS OF THE CASES DISPOSED BY CONSUMER COURTS

According to the data available from the Department of Consumer Affairs (Table 1), more than 4.3 lakh cases are pending in the various consumer courts, which is an alarming figure. When the consumer courts were formed, the main purpose was to provide inexpensive and speedy redressal to consumers, where a consumer could itself plea his/her case in the consumer courts. Since the law was complex in nature, many consumers started hiring lawyers and there were frequent adjournments by delaying the entire adjudicatory process.

Analysis of data regarding number of cases disposed by consumer courts shows that the performance of District Consumer Forums was better as 92.30% cases were disposed off.

THE CONSTITUTIONAL PERSPECTIVE

The Constitution of India in Articles 38, 39, 42, 43, 46 and 47 provides that the state shall strive to secure a social order for the promotion of welfare of the people; it shall direct its policies in such a way that operation of economic system does not result in the concentration of wealth and means of production to the common detriment, it shall make provision for securing just and humane conditions of work and for maternity relief; it should endeavor to build an economic organization or to make suitable legislation to ensure a decent standard of life to all the workers who constitute the bulk of the consumers; it should promote educational and economic interests of schedule castes, scheduled tribes and other weaker sections and it shall also raise the level of nutrition and standard of living and to improve public health.

Article 46 of the Indian constitution provides that state shall endeavor to protect the economic interest of the weaker section of its population and also protect them from social injustice and all forms of exploitation which means all kinds of harassments and frauds in the market place. This also includes people should be entitled to unadulterated stuff injurious to public health and safety. This principle amply reflects the inclusion of the philosophy of the concept of consumerism in article 47 of the Indian Constitution.

THE INDIAN PENAL CODE, 1860

It is the foremost penal law of the country which contains the substantive law of crime. It caters to the needs of the consumer in some manner. However, sections 264 to 267 of the Indian penal code relate to fraudulent use of false instrument for weighing, fraudulent use of false weight and measures, anyone in possession of false weight or measure respectively. The penal code further provides sections 269 to 271 on spreading of infections and in sections 272 to 276 on adulteration of food or drink, adulteration of drugs, sale of adulterated drugs and sale of drugs as a different drug or preparation are punishable with imprisonment or with both.

PRESENT SITUATION

We all are consumers in one form or another. But in the present socio economic scenario we find that the consumer is a victim of many unfair and unethical tactics adopted in the market place. The untrained consumer is no match for the businessman marketing goods and services on an organized basis and by trained professionals. He is very often cheated in the quality, quantity and price of the goods or services. The consumer who was once the „king of the market“ has become the victim of it. The modern economic industrial and social developments have made the notion of freedom of contract largely a matter of fiction and an empty slogan so far as many consumers are concerned. With globalization and development in the International Trade and Commerce there has been substantial increase of business and trade, which resulted in a variety of consumer goods and services to cater to the needs of the consumers. In recent years, there has been a greater public concern over the consumer protection issues all over the world. Taking into account the interest and needs of the consumers in all countries, particularly those in developing

countries, the consumer protection measures should essentially be concerned with – (i) the protection from hazards to health and safety; (ii) the promotion and protection of economic interests; (iii) access to adequate information; (iv) control on misleading advertisements and deceptive representation; (v) consumer education and (vi) effective consumer redress.

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