

Law of Consumer Protection

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Abstract: Consumer Protection Act, 1986, is a benevolent social legislation that lays down the rights of the consumers and provides their promotion and protection of the rights of the consumers. Consumer justice aims at consumer protection which is coextensive with the growth of consumerism and consumer movement. Consumerism is the social movement seeking to promote, preserve and protect the rights and powers of the consumers in relation to the sellers in the market place. The act has provided two tier protections Council to motivate the executive to implement the provisions of the Act and to make consumers aware of their rights. The number of councils- national and state is grossly inadequate to promote and protect the interest of the millions of consumers. In addition to the existing Central Consumer Protection Council, State Consumer Protection Council, Village Consumer Protection Councils, Mandal/Tahsil Consumer Protection Councils, must first be established to ensure that the spirit of consumerism percolates from the urban to the rural level. Special programmes for generating awareness and for dissemination of information need to be prepared for utilization through the electronic media like Radio, Tele-Vision which have a high reach in the rural areas and small towns. Steps should also be taken to see that these programmes catch the imagination of the audience and carry the message of consumerism convincingly.

Keywords: Consumer Protection Act, Consumer Protection, consumerism, Laws, rural areas

INTRODUCTION

The most important milestone in consumer movement in the country has been the enactment of Consumer Protection Act, 1986. The Act received the assent of President of India on 24.12.1986 and was published in the gazette of India and came in to force with effect from 15th April, 1987 in the whole country except the state of Jammu and Kashmir [1-3].

Consumer Protection Act, 1986, is a benevolent social legislation that lays down the rights of the consumers and provides their promotion and protection of the rights of the consumers. The first and only Act of its kind in India, it has enabled ordinary consumers to secure to secure less expensive and often speedy redressal of their grievances, by spelling out the rights and remedies of the consumers in a market so far dominated by organized manufacturers and traders of goods and providers of various types of services [1-3].

In the present day market driven economy, the consumer is the pivot around which the whole of the marketing system revolves. From the practical perspective, modern day consumers are subject to innumerable forms and varieties of exploitation. In fact, consumers all round the world are victims of poor quality, unsafe goods, under- measurement, adulteration

and false promises. In the contemporary marketing environment, the consumer ultimately becomes a 'slave' though in marketing parlances consumer is considered a 'king'. Modern day marketers, armed with advanced processing techniques coupled with the persuasive powers of promotion and advertising, are in a better and superior position to exploit the consumers, even the highly educated urban consumers. Deceptive advertising, misleading promotion, offering gifts, reduction sales, false assurances, poor quality are some of the unfair trade practices to which consumers are often subjected. In other words, in the present world consumers more or less live in a sellers' market depending upon the sellers' mercy. Thus, the consumer in real sense has become a silent spectator and hapless buyer in the market. Therefore, there was a felt need for consumer protection in the market place.

The Consumer Protection Act is next to Monopolies and Restrictive Trade Practices Act, 1969. This Act provides better protection to the interest of consumers. This Act is against everybody who sells faulty goods or provides any service, which is deficient. It was enacted after in depth study of consumer protection laws in a number of countries of countries and in consultation with representative of consumers,

trade and industry and extensive discussion within the government [4].

The concern for consumer protection, both in India and abroad, is not only new, it is centuries old and consumer's right like the right to have safe unadulterated and deficiency free commodities at appropriate prices have been recognized since ancient times. History of protection of consumers' Rights by law has long been recognized during back to 1824. Every year 15th of March is observed as 'Consumer Rights Day' [5]. On this day in 1962, President John F. Kennedy of United States of America called upon the US Congress to accord its approval to the Consumer Bill of Rights [5]. In India, we have started celebrating 24th December every year as the National Consumer Rights Day [6].

CONSUMER PROTECTION LEGISLATION IN INDIA

Like many other countries, a number of legislative enactments have been made from time to time to protect the interest of the consumers at the marketplace. Consumer Protection Act, 1986 is a landmark in the history of consumer protection in India which provides for a system for the protection of consumer rights and the redressal of consumer disputes. The Act in fact is regarded as Magna Carta in the field of consumer protection and intended to provide for protection of the interest of the consumers and for that purpose to make provisions for the establishment of consumer disputes and for matters connected therewith. Implementation of this legislation has raised number of issues of wide legal and social implications necessitating a systematic study to analyses their cause and effect.

As a consequence of long felt need of protecting interest of consumers, through various legislative enactments in India safeguards to buyers have been continually put forward. Such legislations are [1-3]:

1. Constitution of India, under Articles 38, 39, 42, 43, 46 and 47 provide certain safeguards to the people of the country.
 - a. Article 38: State to secure a social order for the promotion of the welfare of the people.
 - b. Article 39: Certain principles of policy to be followed by the State.
 - c. Article 42: Provisions for just and human conditions of work and maternity relief.
 - d. Article 43: Living wages etc for workers.
 - e. Article 46: Promotion of educational and economic interest of scheduled caste and scheduled tribe and other weaker sections of society.

- f. Article 47: Duty of the state to raise the levels of nutrition and the standard of living and to improve public health.

2. Indian Penal Code, 1860: Some provisions like chapter XIII, i.e., offences affecting to weight and measures from section 264 to 267 and also chapter XIV of offences relating to public health, safety, convenience, decency and morals from section 208 to 294 A
3. Indian Contract Act, 1872.
4. The Sale of Goods Act, 1930.
5. The Law of Torts
6. The Agricultural Products (grading and marketing) Act, 1937.
7. The Drugs and Cosmetics Act, 1940.
8. The Drugs Control Act, 1950.
9. The Industries Development and Regulation Act, 1951.
10. The Drugs and Magic Remedies (Objectionable and Advertisement) Act, 1954.
11. The Prevention of Food Adulteration Act, 1954.
12. The Essential Commodities Act, 1955.
13. The Indian Council Act, 1956
14. The Trade and Merchandise Marks Act, 1958.
15. Display of Price Order, 1963.
16. The export Quality Control and Inspection Act, 1963
17. The Hire Purchase Act, 1972
18. The Code of Civil Procedure, 1908
19. The Code of Criminal Procedure, 1973
20. Household Electrical Appliances (Quality Control) Order 1976.
21. The Monopolies and Restrictive Trade Practices Act, 1969.
22. The Cigarettes' (Regulation of Production, Distribution and Supply) Act, 1975.
23. The Standard of Weight and Measures Act, 1976.
24. The Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.
25. The Standard of Weight and Measure (Enforcement) Act, 1985.
26. The Bureau of Indian Standards Act, 1986.

FEATURES OF THE ACT:

In 1986, Indian Parliament by enacting Consumer Protection Act, (hereinafter referred to as Act), 1986 opened a new era by conferring certain rights on consumers. This Act is exclusively for consumer interest and protection of their right and to provide justice.

- It applies to the whole of India except the state of Jammu and Kashmir.

- The Act applies to all goods and services unless specifically exempted by the Central Government.
- It provides speedy, simple and inexpensive redress of consumer grievances.
- Statutory mandate to dispose of cases within a stipulated time.
- Complaint can be written in English, Hindi or even in the local languages.
- No need to serve notice to opposite party before filing complaint.
- No cost is required for conducting cases.
- Consumer is empowered to plead his own case before the Forum
- The provisions of the Act are compensatory in nature.
- The Act envisaged to setting up three-tier quasi-judicial machinery at the District, State and National Levels.
- The Act enshrines the establishment of Consumer Protection Council at the Central and State levels whose main object will be to promote and protect the rights and interest of consumer.

THE MAIN OBJECT OF THE CONSUMER PROTECTION ACT

The main object of the Act is to provide for better protection of interests of consumers. Consumer Councils and other authorities are provided for settling the consumer disputes.

The Act is intended to protect the following rights of the consumers (Section 6)

1. Right of protection from marketing of goods and services which are hazardous to life and property.
2. Right to be informed about the quality, quantity, quality, purity, standard and price of the goods or services, so that consumers are protected from the unfair trade practices.
3. Right to have access to variety of the goods and services at competitive prices.
4. Right to be heard and to be assured that consumer's interests receives its due consideration.
5. Right to stop unfair trade practices, restrictive trade practices and exploitation of consumers.
6. Right to consumer education.
7. Right to speedy and simple redressal of consumer disputes.

CONSUMER UNDER THE ACT

Section 2(1) (d) defines the word "Consumer" as follows- Consumer means any person who, -(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred

payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purposes; or (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose.

SERVICE UNDER THE ACT

Complaint can be lodged against service provider if there is deficiency in service or if he charges higher prices or provides services which are hazardous or where service provider follows unfair or restrictive trade practice. Hence, it is necessary to understand the meaning of 'service' and 'deficiency'. Section 2(1) (o) defines that 'service' means service of any description, which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying a news or one who has not bought the goods. Thus an individual cannot complain unless he has actually bought the goods or availed the services.

PROCEDURE FOR FILING COMPLAINT:

Consumer Protection Act can be described as common man's Civil Court. The Act is designed to make available inexpensive and speedy remedy to the consumers. Basically, Sale of Goods Act is driven by the principle of '*Caveat emptor*', i.e. 'buyer be aware'. Accordingly, buyer is supposed to take care before buying any goods. He is supposed to be knowledgeable and well informed. This was true about a century ago, when both buyer and seller were on equal footing. In many cases, tracing seller after the sale could be difficult. However, as organized manufacturing activity increased, sellers became larger and better organized, while buyers despite their numerical growth continued to be organized, while buyers despite their numerical growth continued to be organized and weak. In the modern marketing scene, an average buyer can be easily misled and duped. It is now realized that a common consumer is neither knowledgeable nor well informed and also is not in a position to approach civil court. He needs support and protection from unscrupulous sellers. There was a growing realization that quick, inexpensive and speedy justice to the genuine complaints of the consumer is essential.

There is no fee for filling a complaint before the District Forum, the State Commission and the National Commission. The complainant or his authorized agent can present the complaint in person.

The complaint can be sent by post (even a post card is enough) to the appropriate forum/commission.

1. Simple procedure
2. No fee
3. No advocate
4. Written complaint
5. Complainant himself or by his authorized agent
6. To be presented either in person or by post

WHO CAN FILE A COMPLAINT?

As per Section 12(1), a complaint in relation to any goods sold or delivered or agreed to be sold or any service provided may be filed with a District Forum by-

- a) The consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided;
- b) Any recognized consumer association whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided is a member of such association or not;
- c) One or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum, on behalf of, or for benefit of, all consumers so interested; or
- d) The Central Government or the State Government, as the case may be, either in its individual capacity or as a representative of interests of consumers in general

Thus 'class action' is permissible. Voluntary consumer Association can also file a complaint. This provision is particularly useful in case of complaint against unfair trade and or sale of hazardous goods. When there are numerous consumers, one or more consumers can file complaint on behalf of or for benefit of, all interested consumers. Such class action can be filed only with permission of consumer forum. In case of class action persons making a complaint on behalf of numerous consumers, an order passed by the court is binding on all persons.

GROUND OF COMPLAINT:

Under this Act, a complaint means any allegation made in writing by a complainant about a loss or damage he/she has suffered due to unfair trade practices adopted by any trader or the goods suffer from one or more defects, or the services suffer from deficiencies in any respect or when a trader has charged excess price than that displayed on goods or fixed or under any law.

1. Defect in goods
2. Deficiency in service.
3. Excess price charged.
4. Unfair trade practice.
5. Restrictive trade practice.

6. Offering of hazardous goods.

A complaint should contain the following information:

1. The name, description and address of the complainant.
2. The name, description and address of the opposite party or parties as the case may be.
3. The facts relating to complaint and when and where it arose.
4. Documents, if any, in a support for the allegations contained in complaint.
5. The relief, which the complainant is seeking.
6. The complaint should be signed by the complainant should be signed by the complainant or his authorized agent.

WHERE TO FILE COMPLAINT? (JURISDICTION):

The procedure for securing redress under the Act is simple. If the compensation demanded is less than rupees 20 lakh, the complaint has to be submitted before the District Forum, where the cause of action arises or where the opposite party resides. If it is between rupees five lakh and rupees one crore it has to be filed before the State Commission in the respective State Commission in the respective state capital; and where the amount is more than one crore, the complaint has to be lodged before the National Commission in New Delhi.

PROCEDURE FOR HEARING: TIME LIMIT FOR DISPOSING OF COMPLAINT:

The National Commission, State Commission and District Forums are required to decide complaints as far as possible within a period of three months from the date of notice received by the opposite party where complaint does not require analysis or testing of the commodities. The National Commission and State Commission are required to decide the appeal within ninety days from the first date of hearing.

Non-availability of judges and adjournments due to non-appearance of plaintiffs and respondents often delay the disposal of complaints before these courts. The Central Government has provided necessary financial assistance to state governments and union territories to strengthen the infrastructure of the consumer courts.

1. Simple procedure for expeditious disposal.
2. Notice to the opposite party.
3. His version to be given within 30 days.
4. Reference to appropriate laboratory, in case of defective goods.
5. Copy to report to the complainant.
6. Reasonable opportunity of hearing to both parties.
7. No technical rules of evidence.
8. Proceedings not to be questioned by any court.

CENTRAL CONSUMER PROTECTION COUNCIL:

Section 6 of the Consumer Protection Act, provides for the establishment of a central consumer protection council to promote and protect the rights of the consumers. This council may consist of 150 members drawn from relevant areas with the minister in charge of Department of Civil Supplies who shall be the chairman of this council. The term of the council shall be three years and may meet as and when necessary with at least three meeting every year. The first Central Consumer Protection Council was constituted on 1st June, 1987. The Central Council is headed by Minister; In-charge of the Department of Consumers Affairs in the Central Government.

State Consumer Protection Council:

The State Governments are also empowered to establish Consumer Protection Councils for respective states consisting of such members as may be specified by the state government. The objective of every state council like the central council shall be to promote and protect the rights of consumers within the state. The State Councils are headed by the Minister In-charge of the Consumer Affairs in the State Governments.

Establishment of consumer Disputes Redressal Agencies

The most important provision is for the establishing of three-tier quasi – judicial machinery for redressing consumer grievances. This judicial machinery provides relief to the aggrieved consumers. The following agencies shall be established for the purpose of this Act.

- a) A consumer Disputes Redressal forum to be known as the ‘District Forum’ established by the State Government in each district of the State by notification. The state Government may, if it deems fit, established more than one District Forum in District.
- b) A Consumer Disputes Redressal Commission to be known as the ‘State Commission’ established by the State Government in the state by notification; and
- c) A National Consumer Disputes Redressal Commission established by the Central Government by notification.

District Forum: (Section 10 to 15)

Every District Consumer Dispute Redressal Forum shall consist of:

1. A person who is or has been or is qualified to be a district judge appointed by the state government; He acts as the president of the forum.
2. Two other members, one of whom shall be a woman, who shall have the following qualifications namely:
 - a) be not less than 35 years of age,

- b) possess a bachelor’s degree from a recognized university,
- c) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least 10 years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.

Powers of District Forum:

- Powers same as vested in civil courts under C.P.C.
- Summoning defendant or witness.
- Examining witness on oath.
- Discovery of evidence.
- Requisite of test report from laboratory.

Orders and Penalties: Relief Available:

Section 14 of the Act, provides for the various kinds of relief. The relief may be one or more of the following things:

1. Removal of defect in goods or deficiency of service.
2. Replacement of the goods with new goods of similar description, which shall be free from any defect.
3. Return to the complainant the price paid by the complainant.
4. Compensation for loss or damage.
5. Withdrawal of hazardous goods from sale.
6. Cost to either party.
7. Cease and resist order.

If a trader or person, facing complaint fails or omits to comply with the orders made by District Consumer Redressal Forum or the State Consumer Disputes Redressal Commission or the National Commission, he shall be punishable with imprisonment for a term which shall not be less than one month or more than three years or with fine which shall not be less than Rs.2000/- or more than Rs.10,000/- or with both.

CONSUMER DISPUTES REDRESSAL COMMISSION (THE STATE COMMISSION- SEC.16 TO 19)

State Commission:

Each State Commission shall consist of-

- a) a person who is or has been a judge of a High Court appointed by the state government, who shall be its President. However, no appointment under this clause shall be made except after consultation with Chief Justice of the High Court.
- b) two other members who are persons of ability, integrity and standing and have adequate knowledge or experience of problems relating to economic, law, commerce, accountancy, industry, public affairs or administration. One of the

members must be a woman and who shall have the following qualifications, namely:-

- I. be not less than 35 years of age,
- II. possess a bachelor's degree from a recognized university.

National Consumer Disputes Redressal Commission (National Commission-Sections. 20-23)

The National Commission shall Consists of:

- a) A person who is or has been judge of the Supreme Court, appointed by the central government, who shall be the president of the commission.
- b) Four other members who are persons of ability, integrity and standing and have adequate knowledge or experience of problems relating to economics, law, commerce, accountancy, industry, public affairs or administration. One of the members must be a woman and who shall have the following qualifications, namely:-
 - I. be not less than 35 years of age,
 - II. possess a bachelor's degree from a recognized university.

Jurisdiction:-

The National Commission shall have the following jurisdiction under section 21 of the Act-

- a) To entertain complaints where the value of the goods or services and compensation, if any, claimed exceeds one crore and appeals against the orders of any state Commission and
- b) To call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any state Commission where it appears to the National commission has exercised a jurisdiction not vested in it by law, or has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

Procedure for filing appeal:

Appeal against the District Forum can be filed before the State Commission within a period of thirty days. Appeal against the decree of a State Commission can be filed before the National Commission within thirty days. Appeal against the order of the National Commission can be filed before the Supreme Court within a period of thirty days. There is no fee for filing appeal before the State Commission or the National Commission. The consumer can file a complaint within two years of incident of happening.

Further no appeal by a person who is required to pay amount in terms of an order of the National Commission shall be entertained by the Supreme Court unless that person has deposited in the prescribed

manner 50 per cent of that amount or rupees Rs. 50,000/- whichever is less.

Finality of Orders (Sec.24):

Every order of a District forum, the State Commission or the National Commission shall, if no appeal has been preferred against such order under the provisions of the Act, be final.

CONCLUSION

Consumer justice aims at consumer protection which is coextensive with the growth of consumerism and consumer movement. Consumerism is the social movement seeking to promote, preserve and protect the rights and powers of the consumers in relation to the sellers in the market place. Even today there is a lack of complete awareness of the rights of the consumers. Advancement of civilization, industrialization and establishment of big business houses are responsible for the metamorphosis of buyers market into the seller's market rendering the consumer sovereignty a myth. Consumer who was once sovereign has now become a pathetic victim of exploitation by big business houses-national and multinational. Consumer movement started in all the civilized countries to combat the evils of exploitation of the masses. In India most of the consumers are innocent, ignorant and illiterate. The movement spearheaded by a few voluntary organizations was not enough to combat the evil of massive exploitation. Even today most of the consumers are ignorant about their rights as a result of which business houses big and small continue exploiting them. Voluntary organizations are active more in urban areas than in rural areas and even in those places such organizations barring a few have little concern for the consumers. A majority of such organizations are taken more as pass time avocation trying to gain recognition for themselves than to genuinely serve the consumer community. In this scenario Consumer Protection Act was passed and no doubt marked a good beginning but it has its fair share of shortcomings as in the case of most social welfare legislations. The objects of the Act are no doubt laudable but the execution and implementation is left entirely to the mercy of people with humanitarian outlook.

The act has provided two tier protections Council to motivate the executive to implement the provisions of the Act and to make consumers aware of their rights. The number of councils- national and state is grossly inadequate to promote and protect the interest of the millions of consumers. In addition to the existing Central Consumer Protection Council, State Consumer Protection Council, Village Consumer Protection Councils, Mandal/Tahsil Consumer Protection Councils, must first be established to ensure that the spirit of consumerism percolates from the urban to the rural level.

Special programmes for generating awareness and for dissemination of information need to be prepared for utilization through the electronic media like Radio, Tele-Vision which have a high reach in the rural areas and small towns. Steps should also be taken to see that these programmes catch the imagination of the audience and carry the message of consumerism convincingly. Materials in the shape of leaflets and pamphlets explaining in simple local languages, the concept of consumer rights and measures available for their protection and redressal need to be prepared and widely circulated at regular intervals. Information about the types of cases taken to Consumer Courts and decisions thereon have also to be conveyed to the public for creating awareness. Symposiums and Seminars may be organized by the Government and educational institutions with the participation of Voluntary Consumer Associations in every district at frequent intervals. Training Programmes should be organized through which the important provisions of the

Consumer Protection Act and the essentials of consumer movement are passed on to the activists, operatives and volunteers of the organizations of consumers in various parts of the country.

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