

TOWARDS CONSUMERISM

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A decade after the economic reforms process, today the Indian market is profoundly dominated by "consumerism"; a social movement seeking to augment the rights and powers of buyers in relation to sellers¹. From a predominantly sellers' market it is being circumspectly transformed into buyers' market where the exercised choice by the consumers depends upon their awareness echelons. Every citizen of the country is a consumer in one way or the other and thus ensuring consumer welfare is the paramount responsibility of the government. In a competitive economy the consumer rights could be protected only when the right standards for goods and services are secured by evolving a network of legal protection systems and institutions. The forthcoming article attempts an analytical, synthetic and critical examination of the 'evolving trends in the consumer protection law' by reflecting upon the major developments in the field of consumer protection in India since 1984, when for the first time the statutory provisions for regulating unfair trade practices were consolidated in the statute book. It highlights the strengthening of provisions for consumer protection through amendments to the Act which have regulated the restrictive and monopolistic trade practices (the MRTP Act) and also surveys the major developments during the recent years which shall be considered as milestones in the history of consumer protection in India.

In the 19th century consumer emerged as a counterpoint to the term producer and this view has survived in most capitalist democracies. Since the consumers are forced to live with and through the goods and services which they themselves did not create, they have a "secondary relationship" with such goods and services. Thus in today's dominant market economy of the world the consumer still remains as a marginal group. Although Mahatma Gandhi believed that the 'Consumer Is the King'² of the market yet the consumers are being dethroned every day. The owner of a departmental store in America is said to have remarked that "God created the masses of mankind to be exploited. I exploit them. I do His will"³. In India exploitation of the people by the people is everyday experience. Unscrupulous market practices made their way into consumer homes thus violating consumer rights and jeopardizing their safety.

Every person who buys goods for private, though not necessarily personal, use or consumption or hires any service for a price, is a 'consumer'. We all are consumers, irrespective of what we buy; be it food or clothes, by what means we travel, consume electricity or air, avail the services of a lawyer or a doctor; the only possible exception being Robinson Crusoe. The phrase 'consumer' goes with every person from cradle to grave.

¹ Philip Kotler, "A Generic Concept of Marketing" Journal Of Marketing, Vol.36, No.2 (1972) pp46-54. Available at: <http://links.jstor.org/sici?sici=0022-2429%28197204%2936%3A2%3C46%3AAGCOM%3E2.0.CO%3B2-Q>

² Dr.Rifat Jan, "Consumerism and Legal Protection of Consumers"(2007)

³ P.K Majumdar, "Law of Consumer Protection in India",6th edition

The Thalidomide (Expectant mothers who used this drug gave birth to deformed children) tragedy of Britain and payment of compensation to victims, even though on extra-legal grounds is a proof of the fact that we all are consumers even at the pre natal stage. The position of consumers in the market place is completely unenviable.

The need for the empowerment of consumers is well recognized all over the world. The level of awareness of the consumers is a key indicator of progress of a country. From electronic goods to medicines, fast moving consumer goods or services rendered, all demand that the consumers become aware of their rights. If one knows about his or her rights before they are infringed upon then he or she shall be in a better position to avoid problems or obtain redress. Forewarned is forearmed⁴ when it comes to protection of one's rights. Six consumer rights were initially envisioned by the consumer rights activists of the West in order to safeguard consumer interest, namely: Right to Safety, Right to Choice, Right to Information, Right to be Heard, Right to Redress and Right to Consumer Education. Later on two more important rights were added viz: Right to a Healthy and Sustained Environment and Right to Basic Needs⁵. Various issues concerning the consumers included high prices, high cost of distribution, shoddy or unsafe products, product safety, harmful and low benefit products, poor service to the disadvantaged and much more. Thus need was felt to provide legal protection to the consumers from excessive consumerism. It has been rightly said that the "Consumer is the sole end and purpose of all production; and the interest of the producer ought to be attended to only so far as it may be necessary for promoting that of the consumer".

Prior to the last half of the 20th century the ethic was 'Caveat Emptor'-buyer beware. This worked well in the old days where the sale transactions took place in the markets where the consumer would see the goods before purchasing. The buyer had the opportunity to exercise his discretion and there was no question of any question to be asked later. Thus the maxim "Caveat Emptor" reflected the actual practice in the market place. Yet the buyer had a remedy if he were deceived or was a victim of fraud. But the law does not give him any further protection as the Judge has said in a 19th century case:⁶

"The relation of buyer and seller, unlike that of *cestui que trust*, attorney and client, or guardian or ward, is not a confidential one, and if the buyer, instead of executing an explicit warranty, chooses to rely on the bare opinion of one who knows no more about the matter than he does himself, he is himself to blame for it. If he will buy on the seller's responsibility, let him have it by demanding proper security, else let him to be taken to

⁴ '*praemonitus praemunitus*'

⁵ U.Vellammal, "*A Study on the Awareness of Consumer Rights and Legal Provision*"(1989)

⁶ 31 L.J.Exch.301;(1862)7.H&N (1954)

have brought his own. He who is so simple as to contract without specific action of the terms is not fit subject of judicial guardianship"

Due to the growing complexities and variety of goods and services being introduced in the marketplace by the modern technology, conditions have undergone a sea-change.

One of the Directive Principles of State Policy as enshrined under Article 47 of the Constitution of India lays down as under:⁷ "The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavor to bring about prohibition of the consumption, except for medicinal purposes, of intoxicating drinks and of drugs which are injurious to health".

Well being of the society is the correlative of "social welfare". A consumer gets satisfaction or welfare from the goods and services he consumes but the idea of welfare may differ from consumer to consumer. A resident of South India would get more satisfaction or welfare from consumption of coffee than tea while on the contrary; a person belonging to North India may get more utility or welfare from consumption of tea than coffee. Money or wealth is the means through which people may buy goods and services and the utility or the welfare derived from its enjoyment is the end. Yet there may even be such goods and services which may be injurious to public health or may be deficient and not yield welfare to the consumers.

In order to protect the consumers from being exploited at the hands of the traders and using adulterated and sub standard articles and for the better protection of the interests of consumers the government took up the responsibility of consumer welfare and enacted The Consumer Protection Act, 1986. A separate Department of Consumer Affairs was also created under the Central and State Governments which focused exclusively on ensuring the rights of consumers as enshrined in the Consumer Protection Act, 1986.⁸ The enactment of the Consumer Protection Act, 1986 has been regarded as the 'Magna Carta' in the field of consumer protection to keep a check on the unfair trade practices and deficiency in goods and services.⁹

Consumer protection is an off shoot of industrial revolution as the growth of trade and commerce generated a profit motive which led to a quest for earning wealth through any means, be it fair or foul. Consumer law in the 21st century gives both rights and remedies which were not found in an earlier era. A society without consumer protection would have to come across a variety of systematic frauds. The present day laws which afford protection to the consumers are an outcome of large social movements by consumer activists,

⁷ The Constitution of India, 1950

⁸ Avtar Singh, *Law of Consumer Protection Principles and Practices*, (1994)

⁹ Dr. J.N Barowalia, "*Commentary on The Consumer Protection Act*" (1986)

muckraking journalists and brave individuals striving to uncover predatory practices which aim at targeting the low-income and middle-income consumers. The overreaching theme of consumer protection is to punish and deter unfair or deceptive acts and practices that cause a substantial harm to the consumers. It lends a signal that the society will not tolerate unfair treatment to the consumers and shall scrutinize those sellers, merchants, or creditors who do not treat the consumers fairly.

The Consumer Protection Act, 1986 has enabled the consumers to participate directly in the market economy in order to promote the welfare of the society. It thrives to remove the helplessness of the consumers which they face against powerful business, often described as the society in which, 'the producers have secured power' to 'rob the rest'. Instead of bothering, complaining or fighting for the malady which is becoming so rampant, widespread and deep in the society, it is being accepted as a part of life.

"The enactment of Consumer Protection Act in these unbelievable yet harsh realities appears to be a silver lining, which may in the course of time succeed in checking the rot"¹⁰. The legislation being directed towards achieving public benefit has thus become a milestone in the history of socio-economic legislation.

The present economic environment and rapid societal and technological changes have led to new trends in consumer habits and evolved new challenges for consumer protection. One of the major outcomes of the last few decades which have had a huge impact on the consumers is the technological and digital development. The lifestyle of the consumers has become increasingly 'digital' with the emergence of new digital products and services coupled with increasing privacy protection. The rapid development of the internet has evolved various new information tools which are being used for making purchasing decisions, which provide consumers with a wider choice in consumer goods however requiring them to manage the vastness of the information. Ensuring the reliability, independence and transparency of the digital comparison tools such as comparison websites is of key importance. Various other new types of commercial practices linked to the internet like behaviour profiling, personalized pricing etc, are raising questions of data transparency and protection. Thus the most significant and outstanding trends have emerged from the digital environment also raising issues with regards to consumer protection.

The increasing complexities of some products and services(e.g. in the financial sector), also concern the increasing non-digital trends associated with the consumers' willingness to look out for the products having specific characteristics such as the green products and also the need for better information related to such products .

¹⁰ Lucknow Development Authority v. M.K Gupta 1994 SCC(1) 243

The new digital consumer trends and challenges are closely linked with the development of the internet and new technologies leading to the emergence of new online services like the multichannel distribution of the TV programmes and videos through the Over-The-Top Technology (OTT)¹¹ where the public internet is used to deliver television or other audio/video services at the doorstep. What is debatable is their liability and capacity to manage the content which the consumers can access. Emergence of cloud computing and big data is also a part of the big revolution in the development of internet, though not deprived of challenges. Taking an example of internet of things (IoT), consumers are largely facing security and privacy issues which include unauthorized access to personal data, infection by malware, data losses, unlawful surveillance and intrusive use of wearable devices. Through IoT, various objects of everyday use such as clothes, medical devices etc are connected and made identifiable by other devices. However it requires increased privacy protection as it involves the collection and control of data by the private sector. Approximately 30 million devices are expected to be connected to the IoT by 2020. According to a 2011 Eurobarometer,¹² the consumers are held back from taking part in e-commerce and accepting new online services due to lack of trust with regard to the safety of personal data. Therefore in order to avoid abuses it is necessary to tackle with the vulnerability and lack of sufficient security of these devices, because as the technology is developing, more and more fraudulent practices are emerging, affecting the consumer trust. Emergence of the new services using OTT, and the use which the consumers make of it also raises the question of appropriate application of regime to the user-generated content with regard to copyright.

The copyright related (e.g. reusing a song for a video created by a user /consumer and uploading it on the computer) issues are coming forth in the context of copyright reform. Other new consumer trends also have implications with regard to intellectual property rights along with certain security concerns¹³. Though the concerns may not be directly linked with consumer protection yet they have a huge impact on citizens, businesses and society in general. The Intellectual Property Rights have become corner stones of modern economic policy at the national level, as it is an important tool for sustainable development in the knowledge based society. Thus, understanding and appreciating the main foundations of the Intellectual Property Rights regime is an important pre-requisite for comprehending its immense importance and role in national strategies for enhancing competitiveness and accelerating the socio economic development. It not only protects the innovative and creative capacity of the competitors and owners of Intellectual Property Rights who supply goods and services, but also concerns itself with the interests of the consumers who purchase such goods or services, directly or indirectly. The Intellectual Property Rights help the consumers in buying quality products and protect them from the use of substandard products which are likely to cause health and safety hazards. It is also the core of the IP regime that the people must be protected from unfair competition.

¹¹ OTT is a system of audio and video distribution using open internet.

¹² <http://www.europarl.europa.eu/studies>

¹³ e.g. the possibility of producing 3D firearms may raise obvious security problems

Existence of such rights is necessary for the overall development of society. The IPR's protection policy is meant to foster innovation and it not only protects the innovators but also the consumers and helps to spur the economic growth.

Besides the digital reformation, several non-digital consumer concerns (e.g. safety of goods) are also increasing rapidly but are to be seen through the prism of common characteristics which involve lack of consumer information and knowledge. The consumers demand accurate information to decide and purchase correctly as per their needs and also to be sufficiently confident about their purchases. To face new complex products and services, the consumers need minimum skills and literacy especially in the financial and insurance sectors. The need for special information arises from the new requirements of the consumers e.g. demand for green products. A New type of consumer has emerged who lay greater emphasis on environmental, social and ethical aspects. However, this has also led to the emergence of a new category of vulnerable consumers. Therefore, it is necessary to have transparency and trust in the information so that the consumers are able to identify their sustainable, environmental and ethical choices through clear, reliable, relevant, transparent and comparable information. By ensuring better transparency and also developing meaningful logos and labels in a coherent and rational way the consumers get the information they need and it also increases consumers' skill and ability in making informed choices. The rapid growth in the rural markets is marked by an alarming increase of the exploitation of the rural consumers due to poor knowledge about their rights and lack of skills for taking rational decisions that are based upon information related to the goods and services. The rural consumers being a part of the vulnerable category are exposed more to the sub- standard products and services, adulterated foods, exorbitant prices, short weights and measures, endemic shortages leading to black marketing and profiteering, hazardous drugs and host of other ills. They are usually dependent on the weekly markets for the purchase of essential things and are often cheated due to lack of choice. Ignorance of the rural consumers is one of the root cause for their exploitation at the hands of sellers, traders and the service providers. In an industry where there is extreme rivalry, there is an inclination that the business would turn out to be better and efficient. This happens in the light of that competition disposes of poor people performing items or administrations and leaves just great and remarkable items for general masses to consume. This advantage of competition is more likely to give advantage to the all- inclusive community since they would have better quality products for less expensive prices. As there is competition in business sector, the business players attempt their best to give consumers what they require. Buyers require good quality items at lower costs. If there is competition in the business sector, the players in order to survive will be compelled to bow down to the demands of the consumer i.e. good quality products at lesser prices. It is believed that competition law is concerned with the interests of the consumers, consumer welfare being one of the prime goals. There is a strong inter-relationship between Consumer Protection and Competition law, as both are complimentary and mutually reinforcing. Competition policy and

Consumer policy both pursue similar objectives, though from different perspectives and rely on different instruments to achieve those goals.

Liberalization and globalization have increased vast opportunities for rural marketing as the rural markets in India are the largest potential markets in the world. The traders and manufacturers take advantage of the deplorable conditions of the rural consumers as they are largely exploited due to lack of competition among the sellers and also face problems like short weighing and measuring, adulteration, lack of safety and quality control in appliances, unfair warranties and guarantees, imitation and unreasonable pricing.

In the emerging scenario, educating the rural consumers about their rights and empowering them to make decisions based on information about the goods and services have also become the need of the hour. It has become very important to spread awareness among the rural consumers. The consumer movements which are confined to the urban areas need to shift their focus towards the expanding rural markets to protect the rural consumers. As the largest consumer base is in the rural areas, protection of the rural consumers must be the prime focus of all consumer oriented strategies.¹⁴

The growing trends in the consumer protection regime are indicative of the fact that financial consumer protection, supervision and regulation is on the rise in the developing countries. The focus of the regulators has shifted towards measures that enable the consumers to protect themselves through disclosure rules and complaints mechanisms. The past few years have seen a rise in the enactment of ambitious sets of consumer protection laws and provisions, although its implementation has remained a task to be. The consumer-focused researches show that the consumers need trust and confidence so that they are willing to try out formal providers and products and only if they have some basis for believing that they will not be mistreated. Better informed and more confident consumers signal the growth of a healthier marketplace. Development in the international trade and commerce as an outcome of industrial revolution has led to vast expansion of business and trade as a result of which a variety of consumer goods appear in the market catering to the requirements of the consumers and also a host of services such as housing, electricity, transport, insurance, finance and banking. For the welfare of the people, the glut of substandard articles and adulterated goods in the markets must be checked. Protection of consumers from nefarious designs of unscrupulous manufacturers and traders can be achieved only through the participation of the people or else the exploitation of the consumers would remain inevitable.

Future consumers have to be aware of the varied phenomena like the social networks, advertisements, free economy and scientific as well as technological advances. The "haves" of the future shall strongly be controlled by the digital economies and those who stay offline

¹⁴ M.B Shah, 'Need for Training Education and creation of Awareness Amongst the Consumers', Paper Presented at the National Conference on Consumer Protection, Organized by Ministry of Civil Supplies Consumer Affairs and Public Distribution, New Delhi (Dec.1990)

shall be the ones in the category of "have-nots".¹⁵ A radically different world awaits the future consumers where they will utilize different tools and techniques to work, enjoy leisure time and find success and content. It is the today's consumers, policy makers and markets who can provide safe and healthy lifestyle to the future consumers. Strengthening the existing redressal mechanisms and supplementing them with Alternate Dispute Resolution (ADR) Mechanism is the core for strengthening the consumer fora.

It may be concluded that despite of the several laws and provisions that protect the consumers from unfair trade practices, their exploitation remains to lie at the root. A healthy and meaningful life for India's 'tomorrow' customers can only be assured when the nature, women, youth and the rural populations are accommodated in every consumer protection-oriented planning. Implementation of the Consumer Protection Act, 1986 reveals that the interests of the consumers are better protected than ever before. In order to make consumer protection movement a success in the country, consumer awareness through consumer education and actions by the government, consumer activists and associations are most needed.

¹⁵ ASSOCHAM, *Consumer Awareness: Initiative from Government, Industry and Consumer Organizations* (1990)