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A STUDY ON CONSUMER PROTECTION ACT (1986) : ISSUES AND CHALLENGES

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ABSTRACT

The Consumer Protection Act, 1986 (COPRA) is an Act of the Parliament of India enacted in 1986 to protect the interests of consumers in India. It is replaced by The consumer protection act 2019 It is made for the establishment of consumer councils and other authorities for the settlement of consumer's grievances and for matters connected there with it. The act was passed in Assembly in October 1986 and came into force on December 25, 1986. The statute on the right was made before this act.

Keywords: Consumer Protection, Consumer Protection Act 1986, UN guidelines, Consumer Movement.

INTRODUCTION

A consumer is a user of goods and services, therefore, every producer is also a consumer. However, conflicting interests have categorized them, inevitably, into two different groups. The industrial revolution brought in the concept of standardization and mass production and over the years, the type of goods and the nature of services available grew manifold. The doctrine of ‘Caveat Emptor’ or ‘let the buyer beware’ which came into existence in the middle ages had been replaced by the principle of ‘Consumer Sovereignty or ‘Consumer is the King’. But, with tremendous increase in the world population, the growing markets were unable to meet the rising demand which created a gap between the general ‘demand’ and ‘supply’ levels in the markets. This to some extent watered down the concept of ‘Consumer Sovereignty’, what with consumers being forced to accept whatever was offered to them.

On the other hand, the expanding markets necessitated the introduction of various intermediaries between the producer and the ultimate consumer. ‘Advertising’, though ostensibly directed at informing potential consumers about the availability and uses of a product began to be resorted to as a medium for exaggerating the uses of ones products or disparaging others products so as to have an edge over competitors. Unfair and deceptive practices such as selling of defective or sub-standard goods, charging exorbitant prices, misrepresenting the efficacy or usefulness of goods, negligence as to safety standards, etc. became rampant. It, therefore, became necessary to evolve statutory measures, even in developed countries, to make producers/traders more accountable to consumers. It also became inevitable for consumers to unite on a common platform to deal with issues of common concern and having their grievances redressed satisfactorily.

SIGNIFICANCE OF THE STATUS

This statute is regarded as the 'Magna Carta' in the field of consumer protection for checking unfair trade practices, ‘defects in goods’ and ‘deficiencies in services’ as far as India is concerned. It has led to the establishment of a widespread network of consumer forums and appellate courts all over India. It has significantly impacted how businesses approach consumer complaints and has empowered consumers to a greater extent.

CONSUMER PROTECTION COUNCIL

Consumer Protection Councils are established at the national, state and district level to increase consumer awareness

VARIOUS CONSUMER ORGANIZATIONS

To increase the awareness of consumers, there are many consumer organisations and NGOs that have been established. Consumer guidance society of India(CGSI) was the first consumer organization established in India 1966

It was followed by many others such as

- Consumer Education And Research Centre (Gujarat)
- Bureau Of Indian Standards
- Federation Of Consumer Organisation In Tamil Nadu
- Mumbai Grahak Panchayat
- Consumer Voice (New Delhi)
- Legal Aid Society (Kolkata)
- Akhil Bhartiya Grahak Panchayat
- The Consumers Eye India.
- United India Consumer's Association.

GENESIS OF CONSUMER PROTECTION LAWS

The need to ensure the basic rights to health, safety, etc. of consumers has long been recognized the world over and various general legislations were enacted in India and abroad in this direction. In India, the general enactments other than the law of torts which ultimately aimed at protection of consumers interests are the Indian Contract Act, 1872, the Sale of Goods Act, 1930, the Dangerous Drugs Act, 1930, the Agricultural Produce (Grading and Marketing) Act, 1937, the Drugs and Cosmetics Act, 1940, the Indian Standards Institution (Certification Marks) Act, 1952, the Prevention of Food Adulteration Act, 1954, the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, the Essential Commodities Act, 1955, the Standards of Weights and Measures Act, 1976 (Now Legal Metrology Act, 2009), the Trade and Merchandise Marks Act, 1958, (Now Trade Marks Act, 1999), the Patents Act, 1970, the Hire Purchases Act, 1972 and the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

These legislations contained regulatory provisions and contravention of these provisions attracted civil liability. This meant that an ordinary consumer had no other remedy but to initiate action by way of a civil suit which involved lengthy legal process proving to be too expensive and time consuming for lay consumers. In fact, at times, the time and cost involved in the legal process was disproportionate to the compensation claimed and granted to an individual consumer. Though the MRTP Commission proved to be far more accessible and less time-consuming than the Civil Courts, its single central location at New Delhi did not make the redressed agency accessible to all consumers, especially those located in the remote towns and villages of the country. Therefore, it became necessary to evolve laws directed at protecting the consumers and at the same time, providing for remedies which are simpler, more accessible, quicker and less expensive.

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THE BASIC RIGHTS OF CONSUMERS

The basic rights of consumers that are sought to be promoted and protected are:

a) The right to be protected against marketing of goods and services which are hazardous to life and property;

b) The right to be informed about the quality, quantity, potency, purity, standard and price of goods, or services so as to protect the consumer against unfair trade practices;

c) The right to be assured, wherever possible, access to variety of goods and services at competitive prices;

d) The right to be heard and to be assured that consumers interests will receive due consideration at appropriate forums;

e) The right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and

f) Right to consumer education.

OBJECTIVES

Objectives of Central Council

The objectives of the Central Council is to promote and to protect the rights of the consumers such as:-

- The right to be protected against the marketing of goods and services which are hazardous to life and property.
- The right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be so as to protect the consumer against unfair trade practices;
- The right to be assured, wherever possible, access to a variety of goods and services at competitive prices ;
- The right to be heard and to be assured that consumer's interest will receive due consideration at appropriate forums;
- The right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers
- The right to consumer education.
- that was made for give rights to consumer.

CONSUMER RIGHTS UNDER THE CONSUMER PROTECTION ACT, INDIA!

Although businessman is aware of his social responsibilities even then we come across many cases of consumer exploitation. That is why government of India provided following rights to all the consumers under the Consumer Protection Act:

(a). Right to Safety:

According to this right the consumers have the right to be protected against the marketing of goods and services which are hazardous to life and property, this right is important for safe and secure life. This right includes concern for consumer’s long term interest as well as for their present requirement.

Sometimes the manufacturing defects in pressure cookers, gas cylinders and other electrical appliances may cause loss to life, health and property of customers. This right to safety protects the consumer from sale of such hazardous goods or services.

(b). Right to Information:

According to this right the consumer has the right to get information about the quality, quantity, purity, standard and price of goods or service so as to protect himself against the abusive and unfair practices. The producer must supply all the relevant information at a suitable place.

(c). Right to Choice:

According to this right every consumer has the right to choose the goods or services of his or her likings. The right to choose means an assurance of availability, ability and access to a variety of products and services at competitive price and competitive price means just or fair price.

The producer or supplier or retailer should not force the customer to buy a particular brand only. Consumer should be free to choose the most suitable product from his point of view.

(d). Right to be Heard or Right to Representation:

According to this right the consumer has the right to represent him or to be heard or right to advocate his interest. In case a consumer has been exploited or has any complaint against the product or service then he has the right to be heard and be assured that his/her interest would receive due consideration.

(e). Right to Seek Redressed:

The right to redressal includes compensation in the form of money or replacement of goods or repair of defect in the goods as per the satisfaction of consumer. The government at national level and state level sets up various redressal forums.

(f). Right to Consumer Education:

The government of India has included consumer education in the school curriculum and in various university courses. Government is also making use of media to make the consumers aware of their rights and make wise use of their money.

Apart from the above six rights two additional rights are recommended by the UNO.

GOODS AND SERVICES COVERED UNDER CONSUMER PROTECTION ACT 1986

The term 'goods' under this Act has the same meaning as under the sale of goods Act. Accordingly it covers all types of movable property other than money and includes stocks and shares, growing crops, etc. The term 'service' means service of any description made available to potential users and includes banking, financing, housing construction, insurance, entertainment, transport, supply of electrical and other energy, boarding and lodging, amusement, etc. The services of doctors, engineers, architects, lawyers etc. are included under the provisions of Consumer Protection Act.

FILLING OF COMPLAINTS

For redressal of consumer grievances a complaint must be filed with the appropriate forum. In this section let us know, who can file a complaint, what complaints can be filed, where to file the complaint, how to file the complaints etc.

(i). **Who can file a complaint?**

The following persons can file a complaint under Consumer Protection Act 1986:

- a consumer;
- any recognised voluntary consumer association whether the consumer is a member of that association or not;
- the Central or any State Government; and
- one or more consumers where these are numerous consumers having same interest.
- Legal heir or representative in case of death of a consumer.

(ii). What complaints can be filed?

A consumer can file a complaint relating to any one or more of the following:

- an unfair trade practice or a restrictive trade practice adopted by any trader or service provider;
- goods bought by him or agreed to be bought by him suffer from one or more defect;
- services hired or availed of, or agreed to be hired or availed of, suffer from deficiency in any respect;

(iii). Where to file a complaint?

If the value of goods and services and the compensation claimed does not exceed Rs. 20 lakh, the complaint can be filed in the District Forum; if it exceeds Rs. 20 lakh but does not exceed Rs. One crore, the complaint can be filed before the State Commission; and if it exceeds Rs. One crore, the complaint can be filed before the National Commission.

(iv). **How to file a complaint?**

A complaint can be made in person or by any authorised agent or by post. The complaint can be written on a plain paper duly supported by documentary evidence in support of the allegation contained in the complaint. The complaint should clearly specify the relief sought. It should also contain the nature, description and address of the complainant as well as the opposite party, and so also the facts relating to the complaint and when and where it arose.

(v). What are the reliefs available to consumers?

Depending on the nature of complaint the and relief sought by the consumer, and the facts of the case, the Redressal Forum/Commission may order one or more of the following reliefs:

a. Removal of defects from the goods or deficiencies in services in question.
b. Replacement of the defective goods.
c. Refund of the price paid.
d. Award of compensation for loss or injury suffered.
e. Discontinuance of unfair trade practices or restrictive trade practice or not to repeat them.

(vi). Time limit for filing the case

The consumer can file the complaint within two years from the date on which the cause of action had arisen. However, it may be admitted even after the lapse of two years if sufficient cause is shown for the delay.

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(vii). Time limit for deciding the case Every complaint must be disposed off as speedily as possible within a period of three months from the date of notice received by the opposite party. Where the complaint requires laboratory testing of goods this period is extended to five months.

SOME MAJOR CONSUMER PROTECTION ACTS

The first Bill to protect the consumers, passed after Independence, was Drug Control Act 1950. It was followed by Industries (Development and Regulation) Act, 1951, The Indian Standards Institution (Certificate Marks) Act 1952 and Drugs and Magic Remedies (Objectionable Advertisements) Act 1954. Though these Acts were intended to protect consumers, these Acts did not achieve the desired results.

a. Prevention of Food and Adulteration Act, 1954: The central government and state governments framed rules with regard to Central Food Laboratory, Standard of quality, public analysts and inspectors, ceiling, fattening and dispatch of samples, coloring matter, packing and labeling of foods, prohibition and regulating sales, conditions for sale and license, preservative, poisonous metals, and solvent-extracted oils and edible flour etc. After implementation of this Act, Essential Commodities Act was enabled to extend to control the production, supply, and distribution of certain essential commodities.

b. MRTP Act, 1969: It was passed by Parliament on the recommendations of Mahalanobis Committee Report, 1954, Justice K C Gupta Commission Report, 1965. It came into enforcement on 1st June 1970. The Act was enacted so that there would not be any concentration of economic power as a result of economic system operations, and prohibition of Monopoly and restrictive trade practices. To accomplish the aims and objectives, there were provisions for the establishment of MRTP commission to enquire into monopolistic and restrictive trade practices and to grant a temporary injunction and compensation. The Act was amended in 1982, 1984, 1985 and 1986.

c. Other Act: After Independence, there were around 40 legislations were enacted or strengthen to protect the consumers' interests, which included some of the British laws. But due to inadequacy in their implementation and improper coverage of consumer rights and redressal through the existing civil court system was cumbersome, lethargic and accused, none of them could able to protect the consumers against exploitation.

CONSUMER PROTECTION COUNCIL

The interests of consumers are sought to be promoted and protected under the Act inter alia by establishment of Consumer Protection Councils at the Central, State and District Levels.

(i). Central Consumer Protection Council

Section 4 empowers the Central Government to establish a Council to be known as the Central Consumer Protection Council (hereinafter referred to as the Central Council), consisting of the Minister in charge of Consumer Affairs in the Central Government, as its Chairman, and such number of other official or nonofficial members representing such interests as may be prescribed. However, the Consumer Protection Rules, 1987 restrict the number of members of the Central Council to 150 members. Section 5 of the Act requires the Central Council to meet as and when necessary, but atleast once in every year. The procedure in regard to transaction of its business at the meeting is given in Rule 4 of the Rules.

(ii). State Consumer Protection Council

Section 7 provides for the establishment of State Consumer Protection Councils by any State Government (by notification) to be known as Consumer Protection Council for (name of the

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State). The State Council shall consist of a Minister in charge of Consumer Affairs in the State Government as its Chairman and such number of other official or non-official members representing such interests as may be prescribed by the State Government and such number of other official or non-official members, not exceeding ten, as may be nominated by the Central Government. The State Council shall meet as and when necessary but not less than two meetings shall be held every year. The procedure to be observed in regard to the transaction of its business at such meetings shall be prescribed by the State Government.

(iii). District Consumer Protection Council

In order to promote and protect the rights of the consumers within the district, section 8A provides for establishment in every district of a council to be known as the District Consumer Protection Council .It shall consist of the Collector of the district (by whatever name called), who shall be its Chairman and such number of other official and non-official members representing such interests as may be prescribed by the State Government. The District Council shall meet as and when necessary but not less than two meetings shall be held every year. The District Council shall meet at such time and place within the district as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.

JURISDICTION/THREE TIER SYSTEM OF COUNCIL COURTS

a). Jurisdiction of District Forum

Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed does not exceed rupees twenty lakhs. A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction:-

- The opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain, or
- Any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or carry on business or have a branch office, or personally work for gain, as the case may be, acquiesce in such institution; or
- The cause of action, wholly or in part, arises.

Consumer courts do not have jurisdiction over matters where services or goods were bought for a commercial purpose.

b). Jurisdiction of State Commission

Subject to the other provisions of this Act, the State Commission shall have jurisdiction:-

i) To entertain

- complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees twenty lakhs but does not exceed rupees one crore (R10 million); and
- appeals against the orders of any District Forum within the State; and

ii) To call for the records and pass appropriate orders in any consumer dispute.

c). Jurisdiction of National Commission

i) to entertain—

- Complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees one crore; and
- Appeals against the orders of any State mayor; and

ii) 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. However, the Supreme Court of India has held that the jurisdiction of National Commission under Revision Jurisdiction is very limited and can only be exercised when State Commission exceeds its jurisdiction, fails to exercise its jurisdiction or there is material illegality in the order passed by State Commission

CONCLUSION

Consumer protection Act 1986 is treated as one among the best existing Consumer laws in the world, but the Act is not meeting the desired goal of protecting interests of the vast majority of consumers. It may be due to the poor promotion of the Act and its provisions among the rural consumers, by the National and State Commissions. As the government is amending the Act (See the Annexure) further, many issues may be resolved. It is expected that the new amendments may provide a better relief to the consumer in the market place and prove that the 'Consumer is King'. There was a growth in the amount of self-regulation in public and private sectors. But over a period of time consumers were slowly losing their interest in the redressed mechanism as the remedies were insufficient and the legal machinery is ineffective.

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