



## Intellectual Property – A pre-condition for protecting Consumer Rights

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**Abstract:** Consumer rights and welfare are now an integral part of the life of an individual and we all have made use of them at some or the other point in our daily routine. Consumers have traditionally called for government intervention, when the marketers fail to produce a socially desirable outcome. Governance is that broad field of economics, which concern the design of regulatory system through which exchange is smoothly conducted. The role of government in regulating the marketing activities must be to contribute to the development of an efficient system, for creation of products or services; communication and delivery to the consumers. It should establish an efficient structure for governance of marketing activities, which involves the standardization and refinement of marketing tools and techniques for consumer benefits. Trademarks work a little differently—they are supposed to protect consumers by encouraging sellers of goods and services to stand by their brand, so consumers will know what they are buying. The areas of intellectual property that are most relevant for consumer protection are Trade Marks, Geographical Indications and Protection against unfair competition.

**Key words:** Trademarks, Consumer protection act, consumerism, intellectual property

*"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." - Adam Smith*

### Introduction

Intellectual property (IP) contributes enormously to our national and state economies. Dozens of industries across our economy rely on the adequate enforcement of their patents, trademarks, and copyrights, while consumers use IP to ensure they are purchasing safe, guaranteed products. We believe IP rights are worth protecting, both domestically. In turn, this process leads to new innovations and improvements on existing ones. IP-driven discoveries in alternative energy and green technologies will help improve energy security and address climate

change. Intellectual Property Creates and Supports High-Paying Jobs, drives Economic Growth and Competitiveness, it Protects Consumers and Families, helps Generate Breakthrough Solutions to Global Challenges and Intellectual Property Rights Encourage Innovation and Reward Entrepreneurs. These rights are embraced by all sectors of industry—small, medium and large companies alike—and by labor organizations, consumer groups, and other trade associations we bring together. India has been observing 15 March since 1989 as the National Consumers' Day. This day has a historic importance as it was on



this day in 1962, when the Bill for Consumer Rights was moved in the US Congress.

The broad salient features of Consumer Protection Act are:

- The Act is exclusively passed for the interest of the consumers
- It seeks to promote the rights of the consumers
- It covers private, public and co-operative sector
- The provisions of Act are compensatory in nature

**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 purpose.

(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, and includes any beneficiary of such services other than the person who hires or avails of the services for consideration 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.

The provisions of this Act cover 'Products' as well as 'Services'. The products are those which are

manufactured or produced and sold to consumers through wholesalers and retailers. The services are of the nature of transport, telephones, electricity, constructions, banking, insurance, medical treatment, etc. The services by and large include those provided by professionals such as Doctors, Engineers, Architects, Lawyers, etc. The objects of the Act are:

- Protection of Interests of Consumers
- Protection of Rights of Consumers
- Establishment of Consumer Protection Councils
- Establishment of Consumer Dispute Redressal Agencies.

**Consumer Rights in India**

The definition of Consumer right is 'the right to have information about the quality, potency, quantity, purity, price and standard of goods or services', as it may be the case, but the consumer is to be protected against any unfair practices of trade. It is very essential for the consumers to know these rights. However there are strong and clear laws in India to defend consumer rights, the actual plight of consumers of India can be declared as completely dismal. Out of the various laws that have been enforced to protect the consumer rights in India, the most important is the Consumer Protection Act, 1986. According to this law, everybody, including individuals, a firm, a Hindu undivided family and a company, have the right to exercise their consumer rights for the purchase of goods and services made by them. It is significant that, as consumer, one knows the basic rights as well as about the courts and procedures that follow with the infringement of one's rights.



**The consumer rights in India are:**

- The right to be protected from all kind of hazardous goods and services
- The right to be fully informed about the performance and quality of all goods and services
- The right to free choice of goods and services
- The right to be heard in all decision-making processes related to consumer interests
- The right to seek redressal, whenever consumer rights have been infringed
- The right to complete consumer education

If there is infringement of rights of consumer then a complaint can be made under the following circumstances and reported to the close by designated consumer court:

- The goods or services purchased by a person or agreed to be purchased by a person has one or more defects or deficiencies in any respect.
- A trader or a service provider resorts to unfair or restrictive practices of trade.
- A trader or a service provider if charges a price more than the price displayed on the goods or the price that was agreed upon between the parties or the price that was stipulated under any law that exist.

**The basic need of consumer rights is:**

Goods or services that bring a hazard to the safety or life of a person offered for sale, unknowingly or knowingly, that cause injury to health, safety or life.

1. **Safety:** According to the Consumer Protection Act 1986, the consumer right is referred to as 'right to be protected against marketing of goods and services which are hazardous to life and property'. It is applicable to specific

areas like healthcare, pharmaceuticals. The right to information is defined as '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' in the Consumer Protection Act of 1986.

2. **Consumerism:** Consumerism is a social as well as economic order which encourages the buying of goods and services in ever-greater amounts. This term is sometimes associated with critics of consumption beginning with Thorstein Veblen. Veblen's topic of examination, the newly emerging middle class coming up at the threshold of the twentieth century, is coming to full fruition by twentieth century end through the globalization process.

3. **Consumerists' movement:** At some places, the term "consumerism" refers to the consumerists' movement, consumer activism or consumer protection which seeks to defend and inform consumers by having required these practices as honest advertising and packaging, product guarantees, and enhanced standards of safety. In this regard it is a movement or an array of policies having a mission of regulating the products, methods, services, and standards of sellers, manufacturers and advertisers in the buyers' interests.

4. **Economies of consumerism:** As per economics, consumerism means economic policies laying emphasis on consumption. In a sense, it is believed that the consumers are free to make choice and should dictate the society's economic structure.

The term "consumerism" had been first used in the year 1915 and referred to "advocacy of the rights and interests of consumers" defined in Oxford English



Dictionary but here in this article the term "consumerism" means the sense which was first used in 1960, "emphasis on or preoccupation with the acquisition of consumer goods'.

According to John F. Kennedy had equated the rights of the ordinary American consumer with national interest. He gave the American consumer four basic rights:

1. The Right to Safety - to be protected against the marketing of goods which are hazardous to health or life.
2. The Right to Choose - to be assured, wherever possible, access to a variety of products and services at competitive prices: and in those industries where competition is not workable and Government regulation is substituted, an assurance of satisfactory quality and service at fair prices.
3. The Right to Information - to be protected against fraudulent, deceitful or grossly misleading information, advertising, labeling, or other practices, and to be given the facts that needs to make an informed choice.
4. The Right to be Heard - to be assured that consumer interests will receive full and sympathetic consideration in the formulation of Government policy, and fair and expeditious treatment in its administrative tribunals.

India is a country, which never fell behind in introducing progressive legislation - we were among the first in the world to introduce universal adult franchise for women. *Mahatma Gandhi had rightly said: "A customer is the most important visitor on our premises. He is not dependent on us. We are*

*dependent on him. He is not an interruption in our work - he is the purpose of it".*

### **Application of Consumer rights**

The main application of this right is in the healthcare, pharmaceuticals and food processing sector as these have direct impact on health. It aims to protect consumers against immoral practices by doctors, hospitals, pharmacies and the automobile industry. But in the absence of world-class product testing facilities in our country the right can, well, be termed as toothless. This right is meant to protect consumers against unfair trade practices. But there are many consumer goods in India that do not follow the standardized labelling convention. Although consumer courts are there to hear and resolve the complaints of a consumer, we still lack a substantial outlet where consumers can voice out their opinion. Having said that, there are many websites which aim to make sure that the voice of customers reach the corporate world. These websites let customers upload their grievances and file complaints. Every grievance filed gradually lessens the overall score of the product being criticized.

### **Trademark and Consumers**

According to the Trade Marks Act, the 'trade mark' means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colors.

### **Patents protection Act:**

The patent system has protected inventors by giving them an opportunity



to profit from their labours, and it has benefited society by systematically recording new inventions and releasing them to the Public after the inventors' limited rights have expired. India made its patent laws compatible with the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement under WTO by 2005 and has incorporated all changes in the Patent Act, 1970 through various amendments. These changes caused paradigm shift in the thinking of the intellectual property managers and inventors.

#### **Design Protection:**

As per Design Act 2000, design refers to the features of shape, configuration, pattern or Ornamentation, which can be judged by the eye in finished products. Design registration is used to protect the visual appearance of manufactured products. A registered design gives you a legally enforceable right to use your product's design to gain marketing edge. It also prevents others from using the design without your agreement. The design registration in India is intended to:

- Protect only for the appearance of the article and not how it works.
- Protect features of shape, configuration, pattern or ornamentation.
- Protect designs, which have an industrial or commercial use.
- Exclude the designs, which are essentially 'Artistic Works' which are covered by copyright legislation and are not eligible for design registration.
- Protect the features which appeals to and is judged by the eye.

#### **Copyright Protection Act:**

Copyright vests in original work involving skill, labour and judgment in respect of literary (such as books, publication including computer software); dramatic and musical works, artistic Works; Engineering drawings; Sound recording; Musical work; Cinematography film, etc. Computer programs are entitled to protection under the present laws. Computer software comprises program manuals, punched cards, magnetic tapes, disks, and papers etc. which are needed for the operation of computers. Manuals, papers and computer printouts can be classified as literary but the concept of algorithms, normally used in programming are not covered under copyright protection. Software containing certain special information in a particular notation, mainly punched cards is considered as a literary work.

#### **Conclusion:**

A consumer has the right to be informed about the quality, quantity, potency, purity standard and price of goods or service. Every consumer has a right to be heard and to be assured that their interests will receive due consideration. Consumers have the right to redressal against unfair trade practices. So the government has to taking necessary actions for safeguarding the consumer as in our marketing concepts only the consumer acts as an independent instrument for mobilizing profits. The concept of intellectual property is based on the assumption that certain individuals have the capacity to present unique innovative ideas and/or inventions that either benefit some aspect of the social world or becomes a necessity to certain members of society regardless of its effect on the social whole. Enforcing intellectual property



laws as they stand now is morally problematic. A dialogue should begin regarding what sort of laws we need to promote the public good, citizens' moral character, what the rights and duties we have towards each other, etc. There are alternatives to the way we currently handle intellectual property (for example, not acknowledging its existence), and they would be part of a comprehensive pursuit towards a more ethical legal and/or social system. Anything short of discussing the ethical implications of intellectual property in the context of evaluating its worth would be short-sighted.

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