



Consumer Protection Laws in India

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Abstract:

An appeal to the Supreme Court can lie only against the order made by the National Commission in exercise of its original jurisdiction. It means the provisions exist only for single appeal. The appeal from the orders of the State Commission shall lie to the National Commission under sub clause (ii) of clause (a) of section 21 of the Act and there cannot be second appeal to the Supreme Court. The reason to have the provisions for single appeal seems to be to save the consumer from unnecessary harassment by the opposite party. There has not been any specific ground provided for appeal to the Supreme Courts. Another proviso has been inserted that no appeal by a person, who is required to pay any amount in terms of an order of the national Commission, shall be entertained by the Supreme Court unless the appellant has deposited in the prescribed manner 50% of the amount or Rs. Fifty thousand, whichever is less.

Key words: harassment, Constitution, seller beware'

Introduction

To protect the interest of consumers The Consumer Protection Act, 1986 was passed. Various services are covered under the Act. In a welfare state, education plays a very important role. It is the duty of the state also to provide necessary educational facilities to the common man. We have been guaranteed a very important right i.e. Right to life and personal liberty under Article 21 of the Constitution. The scope of Article 21 has been considerably expanded through judicial decisions and it has been held by our Supreme Court that right to education is also included within the scope of Article 21.

India being a late starter has just reached the take off-stage in consumerism though there has been significant development before this stage. The consumers in India have not yet organized like in many other countries in the West. Consequently the exploitation to which the consumer is

subjected to by the organized class continues unchecked.

The consumer organisations play a vital role in the developed countries like United States, United Kingdom, Sweden, Japan, Germany, France and Belgium etc. for protection of consumers. In developed nations, due to strong consumerism, the consumers are organized and aware of fluctuations of market price and quality of commodity. The slogan of 'seller beware' is prevalent there and emphasis is given to strong consumer movement. The development of consumer protection laws in the developed countries is described under this caption.

The basic concepts and definitions have been examined in general terms in the context of established legal principles and also their applied version. The book deals with different kinds of consumer goods and services and analyses them subject wise on the basis of decisions delivered by



the National Commission and State Commissions. Some practical notes have also been provided for guidance: how different District Forums are to be approached for the purpose of filing complaints and appeals and for getting the orders executed.¹

CONCEPT AND LEGAL FRAME WORK

The basic principles of law provided the foundation of the modern laws of consumer protection in India during the period of British rule and, thereafter, in the post-independence period. In the modern times also, similar to ancient period, a consumer is virtually equated with the term citizen.

Since the advent of British rule in India along with the application of English Common Law, various legislative measures were also taken, from time to time, since 1600, with a view to protect the interest of public at large (which indirectly covered consumers interests) but most of them were by and large and overshadowed by Common Law Principles in their contents, however inspite of these enactments, principles of Common Law also continued to be applied through the judgments of the Privy Council and the High Courts as and when necessity arose for either interpreting or clarifying these statutes or for dealing with those subjects which were not covered by these statutes.

In India various Acts intended to protect the consumers against different forms of exploitation were enacted, such as, the Indian Penal Code, 1860; Indian Contract Act, 1872; Drugs Control Act, 1950; Industries (Development and Regulation) Act, 1951; Indian Standards Institution (certification marks) Act, 1952; Drug and Magic Remedies (Objectional Advertisement) Acts, 1954; Prevention of

Food Adulteration Act, 1954; Essential commodities Act, 1955; Trade and Merchandise Marks Act, 1958; Hire purchase Act, 1972; Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975; Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980; Essential commodities (Special Provisions) Act, 1981; Multi-State-Co-operative Societies Act, 1984; Standard of Weights and Measures (Enforcement) Act, 1985; and Narcotic Drugs and Psychotropic Substances Act, 1985. Some significant consumer protection enactments of pre-independence time are the Sale of Goods Act, 1930; Agriculture Produce (Grading and Marketing) Act, 1837 and Drugs and Cosmetics Act, 1940.

Except for the Monopolies and Restrictive Trade Practices (MRTP) Act (now repealed) all the other Acts were mainly punitive and preventive in nature. The consumer could not seek remedy or redressal against the offending trader or manufacturer and negligent, careless providers of services. However the MRTP Commission enabled the consumer to approach it in case of complaints. Inspite of these Acts the consumers did not have any effective mechanism or institutional arrangement for the speedy redressal of their grievances and also the lack of effective popular movement isolated the consumer and his plight only increased. Seeing the pressure mounting from various consumer protection groups and the consumer themselves the Parliament enacted the Consumer Protection Act in 1986.

The scientific steps are required to be taken by suitable legislation for the protection of general masses of consumers. Although in the year 1986 the "Consumer Protection Act, 1986" was



enacted with a view to provide better protection to consumers. The Consumer Protection Act, 1986 deals only with the problems of an individual consumer. It does not deal with the issue and problems related to "maintaining or increasing supplies of any essential commodity or for securing their equitable distribution, and availability at fair prices or dealing with persons indulging in hoarding and black-marketing of, and profiteering in, essential commodities and with the evil of vicious inflationary prices" for which the essential commodities Act 1955. The Essential Commodities (Special Provisions) Act 1981, and "Prevention of Black-Marketing and Maintenance of Supply of Essential Commodities Act, 1980" were enacted and are still in operation.

Consumer Protection Act, 1986 was passed for the better protection of the consumers. The Consumer Protection Act, 1986 provides an extremely good opportunity to the consumers for the quick redressal of their grievances and it is rightly considered to be a milestone in the history of socio-economic legislation in India. For this purpose a three tier quasi judicial machinery was set up at the National, State and District level to deal with the consumer disputes in the fields of defective goods, deficient services, unfair trade practices, restrictive trade practices, over charging and hazardous goods, etc. The basic objective of the Act is to provide speedy and inexpensive justice to the consumers. However, consumer protection as a specialized field has emerged only recently in India; when the consumers in order to save themselves from the clutches of traders, started protecting their interests by organizing their activities to enhance their rights. This in turn has led to the

emergence of consumer protection as a powerful socio-economic movement.²

The Consumer Protection Act, 1986 was welcomed from all quarters of society as a welcome. The Act seems to be having full and extensive intensity to deal with matters of every kind efficiently. The aims and objectives are well settled and reflect the intent and decision of legislature. The sheer voice of consumers and their organisations has become a 'roar' with the coming of this Act. Their problems and troubles have taken a special consideration at every important place. There were teething troubles at the initial stages but the Act, with the passage of time will surely act as an abstergent against the unfair trade practices, for the Act is not a mere logomachy, but is eclectic. The Consumer Protect Act is regarded as "Magna Carta" in the field of consumer protection for checking the unfair trade practices and deficiency in goods and services.

The Act seeks to protect the consumers in the following respects:-

(1) It seeks, inter-alia, to promote and protect the rights of consumers such as The consumer protection

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, as the case may be, so as to protect the consumers against unfair trade practices;

c) The right to be assured, wherever possible, of access to a 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) The right to consumer education.

CENTRAL OR STATE GOVERNMENT

Sub clause (iii) of clause (b) of section 2(1) of the Act provides that the Central Government and State Government can be a complainant under the Act. According to clause (d) of section 12, a complaint in relation to any goods sold or delivered or any service provided, may be filed with the consumer Redressal Forum by the Central Government or the State Government. In this way, the Central Government or any State Government can file the complaint as consumer of goods or services under section 12(d).

Clause (c) of section 2(1) of the Consumer Protection Act lays down as to against what a complaint can be made under the Act. According to this provision a complaint can be made in writing by a complainant in regard to one or more of the following:

(i) an unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider;

(ii) the goods bought by him or agreed to be bought by him suffer from one or more defects;

(iii) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;

(iv) a trader or service provider, as the case may be, has charged for the goods or the services mentioned in the complaint a price in excess of the price (a) fixed by or under any law for the time being in force;

(b) displayed on the goods or any package containing such goods;

CONSUMER DISPUTES ADJUDICATORY BODIES AND REDRESSAL AGENCIES

There are different adjudicatory bodies and consumer disputes redressal agencies under the consumer protection Act, 1986.

a. Advisory Bodies

The Consumer Protection Councils are the advisory bodies under the Consumer Protection Act and they have been charged with promotion and protection of the rights of the consumers. They play an important role in giving publicity to the matters of consumer concern, furthering consumer education and protecting consumers from unscrupulous exploitation. Consumer Protection Councils comprising of official and nonofficial members have been established at the district, state and centre levels. The councils meet periodically to deal with consumer problems and take corrective measures for protecting the rights of the consumers.

The following are the three types of Consumer Protection Councils:

(a) The Central Consumer Protection Council, (b) The State Consumer Protection Council (c) The District Consumer Protection Council

(a) The Central Consumer Protection Council

Central Government has established a council known as Central Council by notification, headed by Minister, Incharge of consumer affairs in the Central Government as Chairman of the Central Council. The Central Council is to meet at least once every year.³

(b) The State Consumer Protection Councils



The State Governments have established councils known as State Councils by notification, headed by Minister incharge of consumer affairs in the State Government as Chairman of the State Council. The State Council is to meet atleast twice every year.⁴

(c) The District Consumer Protection Councils

The State Governments have established for every district a council known as District Consumer Protection Council by notification, headed by Collector of the district as Chairman of the District Council. The District Council has to meet twice every year.⁵

ORIGINAL JURISDICTION

(i) Pecuniary :- Section 17(a)(i) of the Act provides that the State Commission can entertain complaints where the value of the goods or services and compensation, if any, claimed exceeds twenty lacs of rupees but does not exceed one crore.

(ii) Territorial :- According to section 17(2) a complaint shall be instituted in a state commission within the limits of whose jurisdiction, (a) 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; (b) 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 has a branch office or personally work for

gain as the case may be, acquiesce in such institution. (c) the cause action, wholly or in part, arises.

APPELLATE JURISDICTION

According to section 17(a)(ii) of the Act, the State Commission shall have jurisdiction to entertain appeals against the order of any District Forum within the State. Under section 15 of the Act, any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the state commission within a period of thirty days from the date of orders. However, the state commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period. However, no appeal by a person, who is required to pay any amount in terms of an order of the District forum, shall be entertained by the State Commission unless the appellant has deposited fifty percent of that amount or 25 thousands whichever is less.

REVISIONAL JURISDICTION

The State Commission under Section 17(b) of the Act can exercise its revisional jurisdiction in any consumer dispute which is pending before or has been decided by any District Forum within the State where it appears that such district form:

- (i) has exercised a jurisdiction not vested in it by law, or
- (ii) has failed to exercise a jurisdiction so vested, or
- (iii) has acted in exercise of its jurisdiction illegally or with material irregularity.



NATIONAL COMMISSION

The Consumer Protection Act, 1986 provides for the establishment of the National Commission by the Central Government by notification to be published in Official Gazette.⁶ The National Commission is the apex body at the centre to settle the consumer disputes under the Act.

The President of the National Commission shall be appointed by the Central

Government only after consultation with the Chief Justice of India. The members of the National Commission shall be appointed by the Central Government on the recommendation of a Selection Committee consisting of the following, namely

(i) a person who is a judge of the Supreme Court

to be nominated by the Chief Justice of India

(ii) Secretary in the Department of Legal

Affairs in the Government of India
(iii) Secretary of the Department dealing with Consumer affairs in the Government of India

ADMINISTRATIVE CONTROL

Section 24B of the Act provides that the National Commission shall have administrative control over all the State Commissions in the following matters namely:

(i) calling for periodical returns regarding the institution, disposal and pendency of cases;

(ii) issuance of instructions regarding uniform procedure in the hearing of the matters, prior service of copies of documents produced by one party to the opposite parties, furnishing of English

translation of judgments written in any language, speedy grant of documents;

(iii) generally overseeing the functioning of State Commissions or district for a to ensure that the objects and purposes of the Act are best served without in any way of interfering with their quasi judicial freedom.

(iv) The state commission shall have administrative control over all the district fora within its jurisdiction in all matters referred to in sub-section (1).

SUPREME COURT

Under Section 23 of the Act, it is provided that if any person aggrieved by the order of the National Commission may prefer and appeal against such order to the Supreme Court, within a period of thirty days, from the date of order in such form and manner as may be prescribed. The appeal can be preferred only against such order of National Commission which has been made by it in exercise of its power conferred under sub clause (i) of clause (a) of section 21 of the Act. This sub clause deals with the original jurisdiction of the National Commission to entertain complaints where the value of the goods or services and compensation if any, claimed exceeds one crore of rupees.

Thus, an appeal to the Supreme Court can lie only against the order made by the National Commission in exercise of its original jurisdiction. It means the provisions exist only for single appeal. The appeal from the orders of the State Commission shall lie to the National Commission under sub clause (ii) of clause (a) of section 21 of the Act and there cannot be second appeal to the Supreme Court. The reason to have the provisions for single appeal seems to be to save the consumer from unnecessary harassment by the opposite



party. There has not been any specific ground provided for appeal to the Supreme Courts. Another proviso has been inserted that no appeal by a person, who is required to pay any amount in terms of an order of the national Commission, shall be entertained by the Supreme Court unless the appellant has deposited in the prescribed manner 50% of the amount or Rs. Fifty thousand, whichever is less.⁷

INTERNATIONAL SCENARIO

One could be forgiven for thinking that consumerism was largely invented by Mr. Ralph Nader, the well-known American Advocate. History of protection of Consumer's rights by law has long been recognised dating back to 1824. Every year the 15th of March is observed as the World Consumer Rights Day. On that day in 1962 President John F. Kennedy of U.S. called upon the U.S. Congress to accord its approval to the Consumer Bill of Rights. They are (i) right to choice; (ii) right to information, (iii) right to safety and (iv) right to be heard. President Gerald R. Ford added one more right i.e. right to consumer education. Further other rights such as right to healthy environment and right to basic needs (Food, Clothing and Shelter) were added. In India we have recently started celebrating 24th December every year as the National Consumer Rights Day.⁸

In the history of the development of consumer policy, April 9, 1985 is a very significant date for it was on that day that the General Assembly of the United Nations adopted a set of general guidelines⁹ for consumer protection and the Secretary General of the United Nations was authorised to persuade member countries to adopt these

guidelines through policy changes or law. These guidelines constitute a comprehensive policy framework outlining what governments need to do to promote consumer protection in following seven areas: i. Physical safety; ii. Protection and Promotion of the consumer economic interest; iii. Standards for the safety and quality of consumer goods and services; iv. Distribution facilities for consumer goods and services; v. Measures enabling consumers to obtain redress; vi. Measures relating to specific areas (food, water and pharmaceuticals) and vii. Consumer education and information programme.

CONCLUSION

The efficient and effective programme of Consumer Protection is of special significance to all of us because we all are consumers. Even a manufacturer or provider of a service is a consumer of some other goods or services. If both the producers/ providers and consumers realize the need for co-existence, adulterated products, spurious goods and other deficiencies in services would become a thing of the past. The active involvement and participation from all quarters i.e. the central and state governments, the educational Institutions, the NGO's, the print and electronic media and the adoption and observance of a voluntary code of conduct by the trade and industry and the citizen's charter by the service providers is necessary to see that the consumers get their due. The need of the hour is for total commitment to the consumer cause and social responsiveness to consumer needs.¹⁰

Importance of the consumer protection is to safeguard the consumer from



exploitation. In the absence of consumer protection, consumers were exploited in many ways e.g. sale of unsafe products, adulteration and hoarding of goods, using wrong weights and measures, charging excessive prices and sale of inferior quality goods, etc. Through various Consumer Protection Acts; business organizations are under pressure to keep away from exploiting consumers.¹¹

To conclude, the importance of Consumer Protection is to safeguard consumers from any kind of exploitation from business organizations and ensuring the position of 'King of Market' to consumer.



REFERENCES

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² Consumer Protection Act 1986 (No. 68 of 1986), assent of the President of India was accorded on 24-12-1986.

³ Consumer Protection Act, 1986 as amended in 2002, Section 4.

⁴ Ibid, Section 7.

⁵ Ibid, Section 8A.

⁶ The Consumer Protection Act. 1986, Sec. 9(c).

⁷ Inserted vide Consumer Protection (Amendment), 2002

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⁹ General Assembly Resolution 39/ 85

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