

Review

A socio-economic legislation directed towards public welfare and consumer protection in India: Consumers' protection Act

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Prior to 1986 consumers were unaware of their rights. The business community was exploiting the innocent consumers as per their own choice. The new economic policy and the policy of liberalization adopted in India since 1991 have completely altered the face of business ethics by generating larger flows without the attendant accountability. The problems of consumers have become more acute during the last two decades. The Consumer Protection Act, 1986 is a milestone in the history of socio-economic legislation directed towards public welfare and consumer protection. Therefore, the importance of consumer protection in India has increased significantly during the policy of Economic Liberalization. It has been found that due to demonstration effect and increase in money power under new economic policy the demand for consumer products has been increasing by leaps and bounds and traders have been making a full use of increased demands for consumer products. They have been adopting fair and foul means to attract consumers and earn more and more incomes by hook or crook. Paradoxically, while the population has been increasing, the purchasing capacity of consumers in most of the cases has gone up after ushering in an era of new economic policy. The people have no time to make judicial judgments while purchasing goods; as a result of this most of the traders have been making full use of advertisements to attract consumers to purchase their products. They have been giving false specifications of their products and fleecing the consumers. No doubt, Director General of Investigation and Research (DGIR) has been established for investigating these cases but it has proved to be a white elephant. It has been found that in most of the cases investigations do not take place because these traders influence the officers of DGIR by gifts and offering jobs to their children to stop the investigations. A consumer of Nokia product asked DGIR to start investigations against NOKIA Company for unfair trade practices and deficiency in service. The DGIR did start the inquiry against the company but stopped in between because their officers were influenced by the Company not on merit but by other considerations. Moreover, there is urgent need to bring medical profession under Consumer Protection Act because they have been large number of complaints against doctors for negligence, resulting in serious disability and death of their patients. Doctors have made this profession a money making profession by hook or crook rather than making it a noble profession. In a nutshell, there is need to improve the functioning of DGIR, Consumer Forums and MRTC. A time limit of one year should be fixed if the consumer movement has to succeed in India. This paper indicates the problems of the consumers of India, failure of institutions which protect consumer rights and also suggests policy implications.

Key words: Consumer protection, economic policy, purchasing power.

INTRODUCTION

According to Shreemad Bhagwat Gita, anger, sex and greed are three demons spoiling the soul of human beings and are the three gates leading to hell. Therefore, they, should be denounced and renounced. According to traditional economics 'The Consumer is King'. However, under the changing economic and social scenario, the consumer is king only till he parts with his purchasing power. In the changing economic scenario, these three demons anger, sex and greed have overpowered mankind in general. Greed has gradually removed the fear of God by the impelling forces of materialism where money makes the mare go. Moral values have been thrown to the winds. Fraud, misappropriation, misrepresentation, corruption, adulteration, unfair and restricted trade practices are being considered as techniques of trade, commerce and profession. Greed encourages manufacturers, traders, sellers and also professionals to supply defective goods or providing deficient services which are neither permissible by law or by ethics. The objective of acquisition of wealth by hook or crook has overpowered all human values. The local, national and even multinational traders and their associates are indulging in restricted and unfair trade practices and professionals and social services sector are no exceptions. The New Economic Policy and the policy of liberalization adopted in India since 1991 has completely altered the face of business ethics by generating larger flows without the attendant accountability. A few cases provided here illustrate what has been argued above: A man purchased exhaust fans and a power motor worth Rs.2,200/- and paid the amount in cash to M/s Dhimon Enterprises. He asked the Dhiman Enterprises, West Patel Nagar, New Delhi to issue a cash memo and supply the product. The traders showed the product and promised to deliver the cash memo with the motor and exhaust fans to residence of the consumer. After a few days a defective fan and motor without a proper cash memo arrived with a cash receipt on paper. The seller said that he could not give cash receipt because his transactions are without proper cash memos. The product supplied was also defective and of no use to the consumer. The consumer reported this case of unfair trade practices to the DGIR Shahjahan Road, New Delhi and has been waiting for action for the last five years. Another consumer gave a new VCR for repair of a minor defect to TRIX Electronics, Patel Nagar, New Delhi TRIX Electronics charged Rs.2,000/- for the service but also removed all the original parts of the VCR. Mobile set 3310 on 19.3.2003 for Rs.4,550/- from a Nokia authorized dealer with a cash memo and a

one year guarantee. However, this set stopped functioning in July, 2003. The dealer advised the consumer to approach Nokia Care Centre, K-25, Alankar Road, Lajpat Nagar, New Delhi. The engineer at Nokia Care Centre assured the consumer that as the set was still under warranty up to 18.3.2004 and the defects would be rectified free of cost. The engineer advised him to leave the set for repair and noted his telephone number promising to intimate the consumer when the set The consumer sent a registered notice to the TRIX Electronics for this unfair and restricted trade practice. In return, the owner of TRIX Electronics threatened the consumer on telephone openly saying that he will kill him if the matter was reported to any consumer forum as he had enough money and muscle power. Other consumers have already been cheated by the TRIX Electronics, New Delhi without any punishable action on their behalf for replacement of original components and evasion of tax. In another case, a teacher of Delhi University purchased a GSM Nokia was ready for delivery. However, after a long time, the Nokia Care Centre returned the set without removing the defects and charged money for it. The teacher then called Ms. Anupama (9810767112), and the Consumer Services Manager of Nokia who promised to do the needful and also said he would intimate the consumer on telephone. The consumer, after approaching the Nokia Care Centers at Lajpat Nagar and West Patel Nagar several times within the guarantee period, sent a Regd. A.D. Notice on 7.2.2004 to Nokia (HK) Ltd. 10/F ATL LOGISTICS Centre, Hongking and to Nokia India Pvt. Ltd., Commercial Plaza, Redisson Hotel, NH-8, Mahipalpur, New Delhi – 110037.

He received verbal assurance from Shri Vikas Pant, Lawyer of Nokia (Mobile Number 9899125016) and K.N. Misra, (95124-5012431- 33) that a new set would be supplied shortly. However, the defective set has not been replaced till 24.8.2004 by a new one. He again telephoned Ms Anupama, the All India Consumer Manager of HCL, Nokia India Pvt. Ltd. She assured the consumer that she would do the needful the next day. The innocent consumer is still waiting for a replacement of the defective set which stopped working within three months of the purchase. In another case against MTNL, a person had to go to the Consumer Court located in Qutab Extension Area and spent 2 years to get a compensation of Rs.2,000/-; only after paying several visits to the District Consumer Forum and remaining for about 2 years with a dysfunctional telephone. Similarly, in another case a person had to spend 7 years in a MRTPC Court to get

compensation in respect of a defective washing machine. Though he got a compensation of Rs.48,880/- he was still unhappy because he had to wait for 7 years to get justice.

Similarly, an ex-faculty member of Administrative Staff College of India, Hyderabad and Delhi University was cheated by Suman Dev Dahiya, a contractor of Bahadurgarh. The professor wanted to get a two room set constructed on his plot at Bahadurgarh by September 2007. Sunil Trehan, a bank employee of Punjab National Bank, Parliament Street, New Delhi introduced the Professor to Suman Dev Dahiya who offered to construct it in three lacs rupees by September 2007; but even after getting seven lacs rupees from him he has not completed it till July 2008 despite repeated reminders. Sunil Trehan thereby exploited a customer of Punjab National Bank just for the sake of commission from Suman Dev Dahiya. Sunil Trehan and Suman Dev Dahiya behaved like autocrats and criminals without caring for the future goodwill. Both these cheats refused to give any account of the Rs.7.00 lacs taken from the professor while also not completing the construction work as promised.

In another case, due to negligence in medical services, a professor of Delhi University has lost one vision in one eye after a simple cataract operation at AIIMS (New Delhi) in August 1997 because of the carelessness of the eye surgeon. Similarly, a person died in January 1995 due to the negligence of Agarsen Hospital and its staff. The person who died was the only bread earner and left behind an innocent widow, son and a marriage-able daughter. It was alleged by their relatives that his kidneys were removed by the doctors of the Agarsen Hospital in January 1995 and that he was kept in a solitary place deliberately. The poor man lost his life because the hospital had no arrangement for cases of head injury or even CAT scan facilities. And yet the hospital charged a very hefty bill from the bereaved family.

There is another case where an errant motor driver injured a motor cyclist in 1991. The errant driver had neither any registration papers nor driving license and was also driving the vehicle without any proper insurance. He ran away from the place of accident but was caught by the people and handed over to the police. The police did not pursue the case properly and hence with the help of a clever advocate, the culprit was set free by the court. The injured person spent Rs.1 lakh on his treatment and got nothing as compensation, thanks to our corrupt police and judicial system.

Thus, medical profession is considered to be sacred profession and the oath taken by the Medical Students at the time of admission to serve the society honestly has been forgotten in the Changing Economic and Social Scenario. In today's hectic life, their victims have neither time nor energy to legally fight against these unscrupulous people. Hence, there is urgent need for protecting the rights of consumers against these unscrupulous doctors through district, state and national forums.

The Consumer Protection Act, 1986 is a milestone in the history of socio-economic legislation directed towards public welfare and consumer protection. The Act was framed to provide better protection and for the promotion of consumer rights through the establishment of consumer councils and judicial machinery under the Consumer Protection Act, 1986. Consumer Disputes Redressal Forums have been set up through out the country with the district forums at the national level to provide simple –inexpensive and speedy justice to the consumer against complaints of defective goods, deficient services and unfair and restrictive trade practices. This Act has been amended several times to make it more effective and purposeful. The last amendment was made in Consumer Protection Act (Amendment) 2002 and the Amendment has been made applicable from 15 March, 2003.

JURISDICTION OF DISTRICT FORUMS

Subject to the other provisions of the Act, the District Forum will have the jurisdiction to entertain complaints where the value of goods and services and the compensation, if any, claimed does not exceed Twenty Lakh Rupees.

1. Jurisdiction of State Commission, subject to other provisions of the Act, the State Commission, shall have jurisdiction:

- (a). to entertain complaints where the value of the goods or services and compensation, if any, claimed exceeds Rs. 20 Lakhs but does not exceed Rs. One Crore.
- (b). Appeal against the orders of any District Forum within the State.

JURISDICTION OF NATIONAL COMMISSION

Act No. 62 of 2002 seeks to amend section 21 to provide that complaints may be filed before the national commission where the value of goods and services and compensation, if any, claimed exceeds Rupees One Crore. This is consequential to changes sought in the Jurisdiction of District Forum and State Commission.

It will be useful to give information about Consumer Forums in Delhi with their official address.

NATIONAL COMMISSION

I.O.C. Building, Janpath, New Delhi – 110001

STATE COMMISSION

A-Block, Vikas Bhawan, I.P. Estate, New Delhi – 110002

DISTRICT FORUM (North)

Room No.2 and 3, Old Civil Supplies Building, Tis Hazari Court, Delhi.

I. DISTRICT FORUM (South)

C 22-23, Qutab Institutional Area, Mehrauli, New Delhi.

II. DISTRICT FORUM (West)

C-Block, Community Centre, Pankha Road, Janakpuri, New Delhi

III. DISTRICT FORUM (North-East)

Weavers Complex, Nand Nagri, Delhi.

IV. DISTRICT FORUM (North-West)

C.S.C. Block C, Pochket C, Shali Marg, Delhi.

V. DISTRICT FORUM (New Delhi)

Barracks, K.G. Marg, New Delhi – 110001.

VI. DISTRICT FORUM (South West)

Local Shopping Centre, Phase-III, Sheikh Sarai, New Delhi.

VII. DISTRICT FORUM (East)

C.S.C. Saini Enclave, Delhi.

VII. DISTRICT FORUM (Central)

MEZANINE Floor, ISBT, Keshmere Gate, Delhi

Though there are Nine District Consumer Forums in Delhi, about one lakh cases are pending waiting for justice. It has been discovered that fifty percent of the consumers even after being exploited by unscrupulous traders, public sector and private sector agencies do not utilize the services of either Consumer Forum or DGIR or MRTP Commission after learning the bitter experience of those who have gone to these Consumer Protection Forum or DGIR or MRTPC for redressal of their grievances. The consumers have to face corrupt administrative staff who sometimes in league with unscrupulous traders due to their bribing capacity by money, gifts and offers of jobs. In some cases justice has been actually delivered after a number of visits and a number of years. Justice delayed is justice denied. Unless steps are taken to deliver justice in time period of maximum one year and the judgments of these forums are implemented in practice, the consumer Forum will not be able to fully serve its purpose. Since the consumers are afraid of contempt orders, they do not complain against injustice and corrupt practices adopted in these forums as justice system is still considered a sacred cow against no one dares to speak against injustice due to fear of contempt of court.

The importance of consumer protection in India in changing economic scenario has become very significant due to new economic policy since 1991 and policy of liberalization. This problem has become more acute during last two decades. Earlier there has been serious misgiving about judicial system of the country because of delayed justice. The misgiving is not imaginary because there is a case to quote; one out of thousands of such cases is a widow and a handicapped boy and innocent girl who could not get justice after 25 years of death of

their bread earner and after spending more than Rs.2 lakhs in courts towards advocate fees. This makes people indifferent about going to the judicial courts for justice. People have lost confidence. On the other hand, criminals become more bold because they know with the help of clever advocate and corrupt judicial staff they can delay justice for decades.

Most of the people lost confidence after wastage of their precious time, money and energy in courts for 2 and a half decades and the cases are dismissed without any justice done to them.

Perhaps, that was the reason the widow whose person died due to negligence of doctors did not go to court to get justice. It is, therefore, necessary that Consumer Protection in India is strengthened by improving the functioning of the Director General of Investigation and Research and Consumer Forums and also bringing medical profession under Consumer Protection Act to bring unscrupulous doctors under discipline. There should be time limit of one year for deciding cases handed over to DGIR, Consumer Forums and MRTPC.

No doubt, India has made considerable progress under New Economic Policy and policy of liberalization. The rate of growth during the year 2008 is much greater than the 1.2% before independence but the greatest casualty of this New Economic Policy and policy of liberalization is an exploitation of consumers. The traders want to become rich over night and everybody wants to earn money by hook or crook. The waive of materialism unleashed by liberalization where traders and producers can go to any level to earn more income even at the cost of exploitation of consumers with the help of demonstration and false advertisements. Most consumers are being exploited. The Consumer Protection Act, 1986 and MRTP Act, 1969 with amendments in the light of social needs are right steps in the direction but in spite of enactments of these and the institutions to implement them, these Acts have failed to meet growing needs of consumers or to protect their rights. On the basis of this research investigation, the following are the reasons for the failure of these institutions to protect consumers rights:

1. Illiteracy and blind faith of consumers. Fifty per cent consumers in India are illiterate and they blindly trust the producers and traders.
2. Producers and traders make false claims through advertisements and give false specifications of their product.
3. Most of the traders do not give a receipt on the plea they have to pay heavy taxes, if they give a cash memo.
4. By not giving the receipt, they use a triple edged weapon to exploit the consumer: (a) on the one hand they do not give product as per specification, (b) they charge heavy price (c) no action can be taken against them without a receipt/cash memo.
5. Most of the companies have consumer help lines. But

in practice, these are 'No help lines' because they do not help the buyers in practice. They just waste the time of the consumers without actually helping them. A consumer of NOKIA makes even a hundred calls to their help line about their defective product, no help is actually provided.

6. Similarly, the Complaint Redressal Sections also does not serve the purpose of protection of consumer rights and redressal of their problems. They are just white elephants in practice.

7. Similarly, complaints made to senior officers also do not result in a solution to the consumer's problems because most of the officers are silent spectators of the wrong or right of what their juniors do. They protect their juniors rather than protecting the consumers.

8. A few consumers exploited by Batli-Boi, National, Samsung, Godrej, Indana, Indo-Dan, Foremost, and HP Printers could not get justice. They could not even get justice or a solution to their problems even by writing to the senior officers.

9. Most of the companies spend a lot of money on their advertisement and they do not care if the annoyance of few consumers cannot be rectified.

10. Most of the consumers have no time, money and energy to go the consumer forums/courts for justice and redressal of defects in their products and service. Though there is lot of advertisement of consumer forums in practice, the consumer has to face a lot of problems in the form of purchasing files for the record, submitting an affidavit and paying a fee even though nominal for getting their complaint registered.

11. The case is filed or dismissed if the consumer fails to attend any date due to any casualty or emergency. However, if the respondent is absent, normally no action is taken against him.

12. Most of the Consumer Forums take more than 90 days; some times it takes years to give justice to the consumer.

13. The consumers do not get a copy of the order even if it is in their favour without bribing the lower staff.

14. Dates are fixed by the respondents or defendants on payment of a bribe.

15. The consumer has to waste a lot of time and energy. Therefore, most of the consumers who are cheated by unscrupulous traders do not go to the consumer courts.

16. Most of the members of the consumer forum are not competent as proved in case of DGIR.

17. The orders of the consumer forum are vague in most of the cases without giving any time schedule for paying compensation or any time schedule for payment. This was found to be the case in the orders of the District Consumer Forum against MTNL, Indana, Indo-Dan and Foremost.

18. Most of the traders do not care for the Consumer Forum or their orders and the President of these Consumer Forums and Director of DGIR do not have sufficient dent to protect the consumer rights.

19. Unfortunately, the medical profession has lost its

sanctity. There have been cases of deliberate medical negligence both in private and government hospitals. On 22 January, 1995, a person with a head injury was admitted in the Maharaja Agrasen Hospital. The Maharaja Agrasen Hospital has no infrastructure for dealing with such cases. Yet they admitted him just to make money and the person died because of medical negligence on the part of Maharaja Agrasen Hospital. Similarly, a very learned person lost vision of his eye sight in a simple operation of cataract due to the negligence on the part of the doctor who asked his junior to perform the operation. This in a way shows that cases of medical negligence should be covered under the Consumer Protection Act and the person responsible for this negligence should be penalized and debarred from the medical profession.

Summing up, it can be said that though consumer forums at the district, state and national level are doing very useful service in protecting the consumer rights, there are a large number of malpractices used to divert consumer rights and the consumers on their part should be very vigilant about their consumer rights. While purchasing products and services, they should get a cash memo for each payment of goods and services to enable them to protect their consumer rights through the District Consumer Forums, State Consumer Forum, National Consumer Forum and Monopolies and Restrictive Trade Practices. At the same time, it is suggested that the functioning of these forums should be taped and video-graphed for transparent functioning of these forums to redress grievances and protect consumer rights.

The judicial system of the country should be strengthened to protect consumers' rights and provide justice to all without any discrimination as per the constitution of the country.

POLICY IMPLICATIONS

This paper was primarily intended to focus attention on the Performance of National Forum in Protecting Consumer Protection Rights in India. It has been examined that all the main institutions responsible for protecting legal as well as consumer rights in India should have a comparative bird's eye view of all the systems. Though there has been lot of effort made to enlighten consumers so that they get value for money, in the competition for sales targets consumer's exploitation continues unabated. Paradoxically, consumers in India so far used to shortages of goods and no after sales services are by force of circumstance not righteous or aggressive. Most of the consumers simply give telephonic or written reminders to the traders and even when they do not get redressal of their grievances they do not go to the Consumer Forum for justice and the traders by their experience know this fact. When they go to the Consumer Forums, they are pitted against manufacturers

manufacturers who try to bribe the administrative staff of the Consumer Forum or even the Members of the Consumer Forum to stop justice. A study made by (Dr. M.M. Batra 2003) shows that most of the public sector and private sector companies give wrong specifications for their product and services to exploit the unwary consumers. (Dr. Batra 2002). points out that these wrong specifications of product and services have been given by well known companies such as National, Samsung, LG, Kelvinator and Godrej, HP Printers, Nokia, and Batli Boi. Similarly, public sector institutions like Huda, MTNL, DDA and GDA are guilty of exploiting consumers in various ways. The Consumer Forums were established to give justice to the consumers within 90 days. But most of the Consumer Forums have not been able to give justice to the consumers even after 90 weeks. If a social cost benefit analysis is done by the government, the social benefit will be 1.00 per cent compared to the cost of the Government. The implication is that the success of the Government effort is only 1.00 per cent. Therefore, some suggestions have been given below for policy to make the Consumer Forums full proof, i.e., the social cost benefit is 100 per cent:

1. A chapter on Consumer Rights should be included in the syllabus of Senior Secondary Examination, Graduate and Post-Graduate Level for consumers to become aware of their rights and responsibilities.
2. Common man should be made aware about these Consumer Protection Forums through demonstrations, dramas, media and seminars in villages and cities.
3. The staff appointed in the Consumer Forums should be honest, intelligent, and sincere and well trained and well versed in Consumer Rights and Consumer Protection Laws.
4. The staff chosen in the Consumer Forums should be very carefully selected, looking into their past service record.
5. The staff of the Consumer Forums should be well paid, but if they are found indulging in any type of corruption, they should immediately be dismissed.
6. The functioning of the Consumer Forums should be video-graphed, computerized and tape recorded.
7. There should be a maximum time limit of one year to finally give justice to the exploited consumers. Though, efforts should be to minimize the period as far as possible.
8. The order issued by the Consumer Forums should be clear, time bound, and interest bound. The Investigator has seen some orders of the Consumer Forums relating to MTNL and the Indiana Group of companies in which no time limit was given for implementing the order while the cost and rate of interest was also not indicated.
9. The Consumer Forums should not give a date for the asking by respondents on flimsy grounds. The investigator found that in most of the cases dates were given just on any demand made by the respondent on flimsy grounds and the consumer has to suffer a lot in visiting

the Consumer Courts time and again.

10. The Chairman and Members of the Consumer Forums should be sincere, honest, intelligent and courageous enough to honestly face political and economic pressures from politicians and rich traders.

11. There should be a website with the case histories of each case in detail from the date of filing the complaint with a record of progress on each date till the final redressal of the consumer complaint.

12. The orders of the Consumer Forums are made available to the Consumer immediately after the announcement of the judgment on the same day. The investigator has found that in most of the cases, the judgment of the Consumer Forums is not given to the consumer for several months and some times these orders are misplaced to impede the path of justice.

13. Finally, it is important that orders issued by the Consumer Forums are implemented within a reasonable time with a maximum period of one month. However, it has found that in some cases, the orders of the Consumer Forums are not implemented for years together. If the final orders of the Consumer Forums are not implemented due to the faulty working of the Consumer Forums, then people will have no faith in the Consumer Forums meant for protecting consumer rights.

14. If the Consumer Forums are to be made successful, it is necessary that the infrastructural facilities provided to the Consumer Forums, with all basic amenities and sufficient staff are also provided to the Consumer Forums.

15. It is necessary that legal services should be brought under the purview of Consumer Protection Act, in practice. Most of the advocates are not sincere in commitment to their profession. They just take more and more dates to earn more and more at the cost of poor litigants. Most of the people do not go against their advocates in spite of exploitation by them. That is why cases in the courts remain pending. Consumers should be enlightened about their rights against the advocates.

16. Similarly, there is negligence on the part of the doctors both in government and private hospitals. Hence, there is a need to strictly enforce consumer protection laws against the unscrupulous doctors both in government and private hospitals.

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