

## Consumer Justice in Educational Service: Fair or Unfair?

**Vivek V. Jawale**

Asst. Professor, B.Y.K. College, Nashik, Maharashtra, India

### Abstract

‘Consumer is sovereign’ and ‘customer is the king’ are nothing more than myths in the present scenario particularly in the developing societies. In present situation, consumer protection, though as old as consumer exploitation, has assumed greater importance and relevance. Consumerism is a recent and universal phenomenon. The consumer knows little or nothing about these highly sophisticated goods. In real life, products are complex and of great variety and retailers have imperfect knowledge. The customer is the most important visitor in our premises. He is not dependent on us; we are dependent on him. He is not an interruption of our work; he is the purpose of it. Children in the age group of 6-14 years will be provided free elementary education. In the present socio-economic scenario, we find that the consumer is victim of many unfair and unethical methods used or adopted the market-place. The Consumer Protection Act, 1986 is enacted to grant certain rights and protect from exploitation. “The Consumer Protection Act, 1986 is regarded as “Magna Carta” in the field of consumer protection for checking the unfair trade practices and deficiency in goods and services. But unfortunately, it is beyond the reach of education service in India. It failed to do justice with the consumers of education fairly.”

**KEYWORDS:** Consumer protection, Justice, deficiency in goods and services, consumer right, Human Rights, Consumer Protection Act, Right to education etc,

### Introduction:

The growing interdependence of the world economy and international character of many business practices have contributed to the development of universal emphasis on consumer rights protection and promotion. Consumers, clients and customers’ world over, are demanding value for money in the form of quality goods and better services. Modern technological developments have no doubt made a great impact on the quality, availability and safety of goods and services. But the fact of life is that the consumers are still victims of unscrupulous and exploitative practices. Exploitation of consumers assumes numerous forms such as adulteration of food, spurious drugs, dubious hire purchase plans, high prices, poor quality, deficient services, deceptive advertisements, hazardous products, black marketing and many more.

‘Consumer is sovereign’ and ‘customer is the king’ are nothing more than myths in the present scenario particularly in the developing societies. However, it has been realized and rightly so that the Consumer protection is a socio-economic programme to be persuade by the government as well as the business as the satisfaction of the consumers is in the interest of both. In this context, the government, however, has a primary responsibility to protect the consumers’ interests and rights through appropriate policy measures, legal structure and administrative framework.

A well-known jurist and economist Adam Smith in his classic work “The Wealth of Nations” has described market-place as a pillar of strength of consumer.<sup>1</sup> According to him, market-place is the place where buyer and seller have personal

encounters. But by the passage of time, the scenario has changed. In the present socio-economic scenario, we find that the consumer is victim of many unfair and unethical methods used or adopted the market-place. The Consumer Protection Act, 1986 is enacted to grant certain rights and protect from exploitation.

**Concept of Consumerism:**

In present situation, consumer protection, though as old as consumer exploitation, has assumed greater importance and relevance. Consumerism is a recent and universal phenomenon. It is a social movement. Consumerism is all about protection of the interests of the consumers<sup>2</sup>. According to McMillan Dictionary (1985) “Consumerism is concerned with protecting consumers from all organisations with which there is exchanged relationship. It encompasses the set of activities of government, business, independent organisations and concerned consumers that are designed to protect the rights of consumers”.

The Chamber’s Dictionary (1993) defines Consumerism as the protection of the interests of the buyers of goods and services against defective or dangerous goods etc. “Consumerism is a movement or policies aimed at regulating the products or services, methods or standards of manufacturers, sellers and advertisers in the interest of buyers, such regulation may be institutional, statutory or embodied in a voluntary code occupied by a particular industry or it may result more indirectly from the influence of consumer organizations”<sup>3</sup>

**The Need of Study:**

The need of study is to observe the effective working of the consumer protection Act, 1986, in the light of drawbacks noticed present functioning of the said Act, from the point view of consumers of educational service. If there is defect in the service or goods then whether the consumers have the right to enforce their right without any hesitation? This Study focused over the judicial contribution rather the judicial interpretation of those rights.

**Objectives of study:**

1. To study the rights of Consumer under Protection Act, 1986.
2. To study the rights of the consumers in educational service.
3. To study the remedies for the consumers of educational service.
4. To study the Consumer Cases on defective services in education.
5. To give suggestions to cure the lacunas of the Consumer Protection Act, 1986.

**Hypothesis:**

1. The Consumer of educational service is weaker in society.
2. The Consumer of educational service is victim in society.
3. The Consumer of educational service needs protection in society.
4. The Consumer Protection Act, 1986 failed to protect the Consumer of educational service.
5. The judiciary failed to provide justice to the Consumer of educational service.

**Research methodology:**

In preparation of this Research, information collected from the Secondary data like books, case laws, opinions etc. This is an arm chair research therefore primary data collection is not concentrated. The Consumer Protection Act, 1986, the

Constitution of India, various research papers, and the case laws are the focused sources in the preparation of this research paper.

**Nature and scope of the research area:**

The Consumer Protection Act, 1986, and the consumer welfare provisions of the said Act in the light of the Indian legal framework is the scope of the study. It also includes the study of important case laws on the said topic. Basically drawbacks of the Consumer Protection Act, 1986, are described rather analyzed in critical manner. Researcher tried to show the effective interpretation of those rights so as to protect the consumers of education. Judicial approach is analyzed to conclude the unfair treatment given to the Consumer of educational service.

**Failure of the principle of caveat emptor:**

It is said that Consumer Protection now is a serious concern of countries in every continent, in every stage of development, and even in every kind of ideology.<sup>4</sup> In early times, the consumer may have been able to protect himself since product were less sophisticated and could be inspected before purchase. But now the conditions have changed drastically. Many modern goods are technological mysteries. The consumer knows little or nothing about these highly sophisticated goods and services. In real life, products are complex and of great variety and retailers have imperfect knowledge. The principle of 'caveat emptor' i. e. buyer be aware fails in these conditions.

It is therefore, necessary that the consumer should have some means of redress when goods fail to live up to their promise or indeed cause injury.<sup>5</sup> Getting to this stage has been a struggle. It has been a struggle against bad business which put profits before fairness and it was a struggle against inefficient, ignorant and sometimes we got the worst of business and public enterprises locked in an arrogant and unresponsive entity, pretending to serve the public interest.<sup>6</sup>

**Mahatma Gandhi's view on Consumer:**

Mahatma Gandhi, as far back as 1934, held the customer in high esteem when he said: "The customer is the most important visitor in our premises. He is not dependent on us; we are dependent on him. He is not an interruption of our work; he is the purpose of it. He is not an outsider on our business; he is part of it. We are not doing him a favour by serving him; he is doing us a favour by giving us an opportunity to do so."<sup>7</sup>

**The Consumers are more important than voters:**

James Turner, a leading consumer activist, once remarked, "customers are to economists, what voters are to politicians. No doubt, voters are the life fluid of a democratic set up, without them democracy cannot survive. Truly speaking, consumers occupy a more important position in comparison to voters. A human being as soon as he comes into existence becomes consumer and remains so till he breathes his last, while for a voter there are certain conditions imposed by law"<sup>8</sup>. "Barter System" came into existence, but it faced many difficulties with the increase in the volume of trade and production, it gave place to the commonly accepted commodity, known as money or currency as a medium of exchange and payment.<sup>9</sup> The consumer

---

who was once the 'king of the market' has become the victim of it. He is not supplied adequate information as to the characteristics and performance of consumer goods and services.<sup>10</sup>

### **Features of the Consumer Protection Act, 1986:**

This may be summed up as under:

- ❖ The Act applies to all goods and services unless specifically exempted by the Central Government.
- ❖ It covers all the sectors like private, public and cooperative.
- ❖ The provisions of the Act are compulsory and compensatory in nature.
- ❖ It provides adjudicatory authorities, which are simple, speedy and less expensive.
- ❖ It also provides for Consumer Protection Councils at the National, State and District levels.

### **Consumer Rights under the said Act:**

The Act enshrines the following rights:

- ❖ The right to be protected against the marketing of goods which are hazardous to life and property;
- ❖ The right to be informed about the quality, quantity, potency, purity, standard and price of goods so as to protect the consumer against unfair trade practices;
- ❖ The right to be assured, wherever possible access to variety of goods at competitive prices;
- ❖ The right to be heard;
- ❖ The right to seek redressal against unfair trade practices or unscrupulous exploitation of consumer; and
- ❖ The right to consumer education.

### **Consumer of educational service:**

According to **Pestalozzi** "education is a constant process of development of innate powers of man which are natural, harmonious and progressive." It is said that in the Twenty First Century, 'a nation's ability to convert knowledge into wealth and social good through the process of innovation is going to determine its future.'" Accordingly twenty first century is termed as century of knowledge. The consumers of educational service are the students taking education at different levels like elementary education, secondary education, higher education, technical education, professional education etc. There are various suffering Consumers of educational service needs to be protected completely rather than partially.

### **Education is the basic human right as well as fundamental right:**

It must be granted to all for the proper development of the nation because it increases the productivity of the citizens of that country and thus is directly proportional to the welfare of the people. Education in India falls under the control of both the Union Government and the states, with some responsibilities lying with the Union and the states having autonomy for others. The various articles of the Indian Constitution provide for education as a fundamental right. Most universities in India are Union or State Government controlled.

There was also the provision in the Constitution of India right from its commencement that is Article 45 which stated that it is the duty of state to provide free and compulsory education to children within the age group of six to fourteen years of age. The series of cases raised which established the right to education as a very important human right and thus judicial activism has a very strong role in the formation of right to education as it stands today.

### **Mohini Jain v State of Karnataka<sup>11</sup>**

It was also known as “capitation fees” case. In this case the admission was denied to the student as she was unable to submit the high capitation fees. The Supreme Court for the first time said that right to education flows from right to life and personal liberty; that is from Article 21 of the constitution and held that it is thus the fundamental right of all.

### **UnniKrishnan V State of Andhra Pradesh<sup>12</sup>**

The universities asked the Supreme Court to review its decision in Mohini Jain V State of Andhra Pradesh. Thus the Supreme Court in this case partly overruled the Mohini Jain case and held that although the right to education is fundamental but it limited the age-group of six to fourteen years of age as it also took consideration of the state’s financial capacity.

### **TMA PAI foundation v State of Karnataka<sup>13</sup>**

An eleven judge constitutional bench of the Supreme Court held that the decision in Unnikrishnan’s scheme relating to the grant of admission and fixing of fees was not correct and was thus to that extent overruled. According to court such institutions may charge high fees for their development, but there should not be the element of profiteering.

### **Fundamental Duty of parents to provide educational opportunities to their children:**

The 86th amendment in the constitution added clause (k) was in the article 51A. It imposed the fundamental duty on the parent or guardian to provide educational opportunities to his child or ward between the ages of six to fourteen years of age. It also added article 21-A was in the constitution. It made the right to education as the fundamental right for all the children of the age group of six to fourteen years.

### **The right to free and Compulsory Education act, 2009:**

According to the act all the children in the age group of the age-group of six to fourteen years of age will be provided eight years of elementary education in an appropriate classroom in the vicinity of his neighborhood and the cost of facilitating

education to a child will be borne by the State. Thus, specific enactment was made for the implementation of the fundamental right to education free and compulsorily.

### **The National Commission for Protection of Child Rights (NCPCR):**

It was created to be the nodal authority to monitor the proper implementation of the historic amendment in the constitution. The norms and standards about teacher qualification and training are also being explained by the said authority. It is advocated that these norms to be complied strictly. Thus, the government has taken these important steps to realize its goal of achieving maximum literacy in the state. But these rules and regulation should be properly executed and followed by all in order to make India a wholly literate and developed nation.

### **Major findings of this Research:**

The functions of universities or boards or institutions have been divided into two categories. 1. Administrative and 2. Educative or Statutory'

As for as deficiency in administrative function is concerned the students have been treated as a consumer and has been given reliefs in case of late declaration of result, wrong dispatch of roll number, error in mark-sheet etc. in some cases.

But as the case of case of educative functions or statutory functions are concerned, educative part is not treated as 'service' availed by student for considerations. Hence there is no right to claim remedy in such cases. This is not a good trend to help the development of law. Thus, the judiciary as well as legislature failed to do justice fairly with the consumers of education.

### **Recommendations:**

Right to education becomes meaningless if it goes beyond the preview of the Consumer Protection Act, 1986. There is urgent need to make changes in this regard. We know that various types of services availed or hired for consideration have been included within the scope of the Consumer Protection Act, 1986. But is the lacuna of the legal system that education is not totally included in the preview of the said Act. The judiciary is the guardian of the interest of the people but it not given fair treatment to the consumers of education as it failed to do justice with them. There should be given fair treatment to the consumers of education so as to develop the law in respect to the consumer protection. Education should be brought completely within the preview of the Consumer Protection Act, 1986, so as to give the fair treatment to the consumers of education.

### **Sum-up:**

**The Supreme Court widened** the scope of the Fundamental right to life by allowing the right to education in the right to life and personal liberty. Therefore the judicial role is pro active rather it is more visionary than legislature in India. No doubt, judiciary gave unfair treatment by granting the partial protection to the consumers of educational service.

The consumer who was once the '**king of the market**' has become the victim of it. He is not supplied adequate information as to the characteristics and performance of consumer goods and services.<sup>14</sup> It is the nicety of Indian consumer law that it failed to do justice with education fairly. Therefore, it is right to conclude that neither legislature nor judiciary given fair treatment to the consumers of

educational service rather they are under the mercy of god, waiting eagerly for introduction of new consumer welfare provisions in the interest of the society at large.

### References:

1. Adam Smith, The Wealth of Nations, The Modern Library (1937).
  2. The new Shorter Oxford Dictionary, 1993, p.490. The word “Consumerism” is also used in pejorative sense meaning ‘preoccupation with consumer goods and their acquisition.’ However, its use in the present work is in a positive sense.
  3. Encyclopedia Britannica, Micropaedia), Vol. III, p.108.
  4. Anwar Fazal, Forword to D.N. Saraf’s Law of Consumer Protection in India.
  5. Ibid.
  6. Ibid.
  7. Deepa Sharma, Consumer Grievance Redressal, under the Consumer Protection Act, Delhi: New Century Publications, 2002 p. 1 (qtd. In).
  8. S. Mustafa Alam Naqvi, “Expanding Horizons of Customerism in India and abroad with special reference to Professional Deficiency”, Consumer Protection and Trade Practices Journal, vol. 10, (No. IV), April 2002, p. 54, (qtd. In). Consumer Protection and Trade Practices Journal, vol. 10, (No. IV), April 2002, p. 54, (qtd. In).
  9. J.N. Barowalia, Commentary on the Consumer Protection Act, 1985, Delhi: Universal Law Publishing Co., 1996, p. 2.
  10. V.K. Aggarwal, Consumer Protection Law and Practice, New Delhi : B.L.H. Publishers Distributors, 2003, p. 3.
  11. (1992)3 SCC 666.
  12. (1993)1 SCC 645.
  13. AIR 2003 SC 355.
  14. V.K. Aggarwal, Consumer Protection Law and Practice, New Delhi: B.L.H. Publishers Distributors, 2003, p. 3.
- Dr. J. N. Pandey, the Constitutional Law of India.
  - Shashi Prabha Sharma, ,Basic Principles of Education-
  - W. Friedmann, Law in Changing Society.
  - The Right to Education Act, 2009.
  - Kevin Watkins, Education Now: Break the Cycle of Poverty.
  - V.K. Agrawal, Consumer Protection law and Practice-
  - J.N. Barowalia, Commentary on the Consumer Protection Act..
  - Deepa Sharma, Consumer Grievance Redressal, under the Consumer Protection Act.
  - Adam Smith, The Wealth of Nations.