

Procedural Analysis of Consumer Protection Act 1986

P. K. Srivastava,

Associate Professor Faculty of Commerce & Business Administration S. D. (PG)

College, Muzaffarnagar, U.P, India

Abstract

The consumer movement in India is as old as trade and commerce. In Kautilya's Arthashastra, there are references of the concept of consumer protection against exploitation by the trade and industry. In the history of consumerism the year 1986 was a 'Magna Carta' as it witnessed the enactment of the Consumer Protection Act, which was the first ever, legislation in India of its kind. It has been amended time-to-time. It applies to all goods and services unless specially exempted by the Central Government and covers all the sectors whether private, public or cooperative. To protect the consumer interest, one of the most important features of this act is the provision for setting up three-tier quasi-judicial machinery known as Consumer Courts at National, State and District level. This paper is an attempt to analyze the procedure of consumer protection act and provide some concrete suggestion so that consumers may realise this act is a boon for them.

KEYWORDS: Consumerism, District Forum, State Forum, National Forum, Redress, hazardous goods, Frivolous Complaints, Enforcement.

Introduction

Every person wants to get maximum satisfaction with their minimum resources especially in the country like India where maximum population belongs to lower middle class and the marginal utility of the money for them is relatively higher. Everyone is consumer in one way or other. It is generally experienced that due to the malpractices availed in the market such as — charging excessive price, low weight, defective goods etc, consumers were not getting their full value of money. Average Indian consumer is well known for his patience and tolerance. He considers the receipt of defective goods and services as an act of fate or unfavorable planetary position in his horoscope. When a new thing is purchased by him, turns out to be defective from very first day he takes it reticently, blaming it on his fate or as the consequence of the wrongs committed by him in his previous birth. Very often he is exploited, put to avoidable inconveniences and suffers financial loss. Is it not a paradox that the seller and service provider advertise Indian consumers as king; but in actual practice they are treated as a slave or servant. He purchases goods along with the label 'items once sold will never be received back under any circumstances'. If we compare this act in the light of the practice pertain in developed countries where the seller declares 'in case you are not fully satisfy with our product, you can bring the same to us within a month for either replacement or return of your money' which clearly indicate the level of consumer consciousness in developed countries. As a consumer, best protection to enable you against fraud, predatory practices or just plain bad service is to educate yourself. But a country likes India where about 25% people are still illiterate; and those who are literate are also unaware about their consumer right. It is

hypothetical approach to protect the consumers from unfair dealings without any strong protection. Under these circumstances there was an urgent need of such act, which can protect the rights of the consumers and provide them full satisfaction or value of their hard money.

Background of Consumer Movement

The consumer movement in India is as old as trade and commerce. In Kautilya's Arthashastra, there are references of the concept of consumer protection against exploitation by the trade and industry, short weightment and measures, adulteration and punishment for these offences. However, there was no organised and systematic movement actually safeguarding the interests of the consumers. Prior to independence, the main laws under which the consumer interests were considered were the Indian Penal Code, Agricultural Production, Grading and Marketing Act, Drugs and Cosmetics Act, etc.

The success of consumerism depends on consumer awareness and the assistance provided by the government to this movement. The consumer movement got a boost and moral support from the late U.S. President John F. Kennedy in the historic declaration in Congress on March 15, 1962, declaring four basic consumer rights i.e choice, information, safety and the right to be heard. Subsequently, March 15 every year is celebrated as World Consumer Rights Day. A sub-continent like ours with regional imbalances and diversity of languages this annual ritual observation does not appear to have produced the desired results, it requires not only one but several Ralph Nadars. General Assembly of United Nations in 1985 issued the guidelines for consumer protection (a) to assist countries in achieving or maintaining adequate protection for their population as consumers; (b) to facilitate production and distribution patterns responsive to the needs and desires of consumers; (c) to encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers; (d) to assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers; (e) to facilitate the development of independent consumer groups; (f) to further international cooperation in the field of consumer protection; (g) to encourage the development of market conditions which provide consumers with greater choice at lower prices.

Review of Literature

Review of literature helps a researcher to be familiar with the emerging trends on the one hand and start some mental thinking on the other. It helps in finding fertile theoretical background, clear concepts, an idea of developing trends in research methodology, data processing, reporting pattern. Besides answering many a 'what' 'when' 'why' and 'how' these are helpful in distilling worthwhile result.

Nayak, Rajendra Kumar ¹: in his study entitled "Consumer Protection Act 1986: Law and Policy in India" emphasized on the importance of consumer protection Act in India and envisaged that this act is a landmark in the history of consumer protection movement in India. Researcher explained that the most important characteristic of this Act is that it

redefines the legal relationship between consumers and suppliers or manufacturers of goods and services. This paper was an attempt to analyze the provisions of consumer protection act 1986 in a lucid manner.

Ghosal, Anupama² in his study entitled "Consumer Protection in India: Past and Present, explained that consumer consideration and their protection is not be regarded as something new for India. Consumer considerations were present even in the Vedic Period (5000 BC-2500 BC) which is regarded as a glorious period of Cultural Revolution. The objective of this paper was to analysis the provision of consumer protection act 1986 and compares these provisions with the consumer protection provisions prevailing in ancient time.

Prashad, Rajendra A³: in his study entitled 'Historical Evolution of Consumer Protection and Law in India, A Bird's Eye View' is an exhaustive evaluation of consumer protection in ancient India. In his study researcher explained that consumer protection has its deep roots in the rich soil of Indian civilization, which dates back to 3200 B.C. In ancient India, human values were cherished and ethical practices were considered of great importance. The objective of this pqppe was to explain the provisions for consumer protection in Manu Smriti, Kautilya's Arthashtra, Medieval and Modern Periods. It envisaged that between 400 and 300 B.C. there was a director of trade whose primary responsibility was to monitor the market situations.

Sahoo Sheetal and Chaterjee Aman⁴: in his study entitled" Consumer Protection-Problem and prospects " is yet another exhaustive study on consumer protection. This study explained that the contemporary era is marked as the era of consumers. No country can knowingly or unknowingly disregard the interest of the consumers. This can be argued on the basis of fast enactment of consumer protection laws in almost all part of the world. To fulfill the objective of the study they also consulted the consumer protection act of various countries like Thialand, Sri Lanka, Korea, Mongolia, Philippines etc. The study had made an attempt to awake the consumer for their rights laid down in constitution of India.

Need of the Study

India is a vast country where a majority of consumers are poor and helpless. Further the market in India is generally a seller market and it is very easy to dupe the innocent consumers. A consumer is one of the important components of an economy as he exhibits his important role both on the demand as well as on the supply side. All economic activities are carried on because of the fundamentals existence of consumer's demands. Thus, consumers influence various economic and business activities through their consumption role. Therefore a consumer should be considered as a king but the situation is just reverse in today's arena. In view of the factual position of our society where problems like illiteracy, ignorance, poverty, and backwardness are still existing and trading community is well organized while the consumers are still unorganized, consequently their exploitation continues unchecked. It is now realized that a common consumer is neither knowledgeable nor well informed. He needs support and protection from unscrupulous seller. A common consumer is not in a position to approach civil court. Quick, cheap and speedy justice to his complaints is required. The biggest help in

this direction has come from the Government, when in the year 1986 for the protection of consumers, an act known as consumer protection Act 1986 is enacted. This paper is an attempt to explain how a consumer can get justice against exploitation by the seller under this act.

Objective of the Study

- To know the history of consumer movement in India.
- To know the objectives of consumer protection act.
- To know the provisions of consumer protection act.
- To know the procedure of redressal of complaint in consumer protection act.

Research Methodology

The proposed study is descriptive in nature so descriptive-analytical research methodology is used. The major portion of this study is consulted from the consumer protection act, scholarly books of eminent authorities and published research papers and articles were also consulted.

Analysis of the study

Consumer Protection Act

In the history of consumerism the year 1986 was a 'Magna Carta' as it witnessed the enactment of the Consumer Protection Act, which was the first ever, legislation in India of its kind. The objective of this Act was (a) to protect consumers who are the victims of the unfair trade practices and sub standard services rendered to them (b) to create a greater awareness amongst the consumers about their rights and privileges (c) to put in place a mechanism which would ensure that the consumers get their money's worth (d) to provide speedy and inexpensive redressal to the grievance of the consumers and provide them relief of a specific nature and award compensation wherever necessary. Unlike existing laws which are punitive or preventive in nature, the provisions of this act are compensatory in nature. The aim of this Act is also to ensure the rights of the consumer, viz. the right of choice, safety, information, redress, public hearing and consumer education. It applies to all goods and services unless specially exempted by the Central Government and covers all the sectors whether private, public or cooperative. This act extended to whole of India except the state of Jammu and Kashmir. It has been amended time-to-time, first in 1991, thereafter thoroughly amended in 1993, overhauled in 2002 and again amended in 2005 to provide teeth to the law enforcing agencies.

Consumer

U/s 2(d) (d) defines that a consumer means any person who 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 A person is not a consumer if he purchases goods and services for resale purpose.

Dispute

U/s 2(d) (e) defines that Consumer dispute means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint.

Defects

U/s 2(d) (f) defines that defect means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or (under any contract, express or implied, or) as is claimed by the trader in any manner whatsoever in relation to any goods.

Deficiency

U/s 2(d) (g) defines that deficiency means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

Redressal Machinery Under The Act

This act is designed to give relief to the consumer who is not in a position to go to the regular courts because of high cost and more time, so he should be given a forum where justice is cheap and speedy. To meet this objective one of the most important feature of this act is the provision for setting up three-tier quasi-judicial machinery known as Consumer Courts at National, State and District level.

District Forum U/S 10-14

District Consumer Disputes Redressal Forum commonly known as District Forum is the lowest authority having jurisdiction to decide the consumer complaint. The State Government establishes a District Forum in each district which may be more than one in any district if it deems fit to do so. There are three members in each District Forum including president who must possess the requisite qualification laid down under this act. A District Forum can entertain any complaint where the value of goods or services and compensation, if any does not exceeds rupees 20 lakhs. An affected consumer or his authorized agent or any voluntary consumer organization registered under the Societies Act or Companies Act 1956, Central and State Government may file complaint and get benefits under this act. A complaint must hold the following points —(a) it must contain facts and allegations in writing (b) It ought to have suffered injury or loss due to unfair trade practice, defective goods and deficiency of services or excessive price of goods (c) the document if any to get orders for one or more of the relief.

After receiving the complaint, District Forum refers a copy of complaint to the opposite party/parties to give his version within a period of thirty days which can be extended up to forty five days by the District Forum. If the opposite party/parties deny/denies or fail/fails to submit his version then the District Forum may settle the matter in the prescribed manner. If the complaint alleges a defect in the goods which cannot be find without proper testing than the Forum will obtain a sample of goods and send it to the

appropriate laboratory with direction. The laboratory testing fee will be deposited by the opposite party. If any of the parties (complainant or opposite) have dispute either about the correctness of the findings of appropriate laboratory or method of testing, then they will have to submit their objection in writing. The District Forum will give an opportunity of hearing to the parties and then pass an order under the law.

The Court may pass one or more of the following orders U/S 14 to grant relief to the aggrieved consumer — (a) to remove the defect pointed out by the appropriate laboratory from the goods (b) to replace the goods with new goods of similar description. (c) to return to the complainant the price or charges paid by the complainant (d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party (e) to remove the deficiencies in the services (f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them (g) not to offer the hazardous goods for sale (h) to withdraw the hazardous goods from being offered for sale (i) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature (j) to pay such sum as may be determined by it if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently (k) to issue corrective advertisement to neutralize the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement; (l) to provide for adequate costs to parties.

State Commission U/S 15-18

State Consumer Disputes Redressal Commission commonly known as State Commission is the second highest authority having original as well as appellate jurisdiction over the entire state. Every State Government has a State Commission comprising Chairman and two members. The State Commission has right to entertain any complaints where the value of goods or services and compensation, if any, claimed exceeds Rs Twenty Lakhs but does not exceeds Rs One Crore and appeal against the orders of any District Forums within the State. The State Commission has also right to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity. Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission with a period of thirty days from the date of such order. State Commission can entertain an appeal after the expiry of the said thirty days if it is satisfied that there was sufficient cause for not filling it within stipulated period. The State Commission has right to revise the order of the District Forum with such modifications as may be necessary.

National Commission U/S 19-22

The National Consumer Disputes Redressal Commission is known as National Commission situated in Delhi comprising chairman and four members. Any person

aggrieved by an order passed by State Commission may prefer an appeal against such order to National Commission within a period of thirty days from the date of the order. National Commission may entertain any appeal after the expiry of said thirty days if it is satisfied that there was sufficient cause for not filling it within the prescribed time. National Commission has right to entertain any complaints where the value of goods or services and compensation, if any exceeds rupees one crore and an appeal against the orders of any State Commission. It has right 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 where it appears to National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. National Commission has all the powers of a Civil Court and the power to issue an order to the opposite party directing him to do any one or more of the acts referred to sec 14 of this act.

Supreme Court U/S 23

Any person aggrieved by the order passed by National Commission may prefer an appeal against such order to Supreme Court within a period of thirty days from the date of such order. Supreme Court may entertain an appeal after the expiry of thirty days if it is satisfied that there was sufficient cause for not filling it within the prescribed time. Any order passed by the Supreme Court is final and binding for all parties.

Finality of Order U/S 24

Every order passed by District Forum, State Commission or National Commission will be final if no appeal has been filed against such order within prescribed period. District Forum, State Commission or National Commission will not entertain any complaint filed under this act after two years from the date on which the cause of action has arisen. A complaint may be entertained after the expiry of the specified period if District Forum, State Commission or National Commission as the case may be is satisfied that there was sufficient cause for not filing the complaint within the stipulated period but no complaint will be entertained unless the District Forum, State Commission or National Commission as the case may be records its reason for condoning such delay.

Enforcement of Orders U/S 25

Any order passed by District Forum, State Commission or National Commission as the case may be is enforced by the respective commission itself in such a manner as it were a decree or order made by a court in a suit pending therein.

Dismissal of Frivolous Complaints U/S 26

If a complaint filed before the District Forum, State Commission or National Commission as the case may be is found frivolous than concerned commission after

giving the reason may dismiss the complaint and passed an order for compensation which cannot be more than rupees ten thousands.

Punishment for Non Compliance of Order U/S 27

If any party fails to comply the order passed by the District Forum, State Forum or National Forum as the case may be then the concerned party is punished with the imprisonment for a term not less than one month but not more than three years or fine of rupees minimum two thousand but not more than ten thousand or both. District Forum, State Forum or National Forum as the case may be can reduce the penalty amount or term of imprisonment if the circumstance requires.

Protection of Action Taken in Good Faith U/S 28

No one can file a suit against the member of District Forum, State Commission or National Commission or any member or officer for executing any order passed by these courts.

Conclusion & Suggestions

Consumer protection is always a matter of great concern in any country especially in India where consumers are unorganized. It is patently obvious that consumers are not only the largest economic group but also the pivots of all the economic activities. It is also very true that consumers are the most unaware or voiceless group in India. As per the news published in Amar Ujala (A National Hindi Daily News Paper) dated 5 March 2018, about 26886 complaints have been filed under this act in the last year. This figure depicts that still in India with a population of more than 125 crore only such a nominal number of cases have been filed under this act while the actual suffers are much more than this. Though there are plethora of laws and other mechanism to ensure the welfare of consumers, yet they have no power to order where he can make his purchase at will. Instead, whenever he turns he finds only a seller's market. The seller's attitude towards consumer is as 'my way or high way'. At the time of enactment of Consumer Protection Act in 1986, it was expected that with the active application of this act, consumerism will dominate the Indian market in near future. The transition will flow from a predominantly sellers market to a buyers' market where the choice exercised by the consumer will be influenced by the level of consumer awareness achieved. But the reality is far away from satisfactory level and the consumer in India is still not getting his dues. One of the main causes for this sorry state of affairs is unawareness of the consumers about their rights. It is the need of the hour that consumers should wake up and realize their rights. Consumer should arm himself with information about their financial condition, the requirements of the industry and the multitude of choices available to him. They should become their own personal financial consultant, understand and learn about every aspect of their financial profile. This does not mean to ignore the assistance a professional can give to them, but should know enough to make sure that they make an appropriate decision which is complimentary to their own risk profile and within an overall financial plan. All is not dark in this way. Every cloud has a silver lining. The hopeful side of this scenario is that

Government has taken and still taking some important steps to aware the consumers for their rights under this act. Considering the importance of education for the spread of consumer awareness, the latest step has been taken by University Grants Commission (UGC) for higher education is, inclusion of consumer protection act at graduate level syllabus. Further the following suggestions need serious attention so that consumer can realize that this act is a boon for them:

- Educate consumers so that they can understand their rights and responsibilities as consumer, it is well said that 'Knowledge is anti dot to fear'.
- 'One flower makes no garland' so consumers should organize to develop their strength.
- A Rule is as good as it is implemented therefore rules of punishment under this act should be harsher and strongly implemented so that seller should think million times before adopting cheating tactics.
- Government along with Voluntary Consumer Organizations should organize various awareness campaigns to wake up consumers to realize their rights and responsibilities, as God Hanuman also required someone else to remind him for his powers..
- Redress procedure should be made more logical, easy to understand and shall be so designed to have an easy handling and quick disposal of cases.

This is the right time to act. Let us usher in a new era of consumerism. When we cross the winter, spring cannot be far behind.

References

- 1- Nayak, Rajendra Kumar: Consumer Protection Act, 1986: Law and Policy in India: published in Journal of Consumer Policy 10 (1987) 417-423.
- 2- Ghosal, Anupma: Consumer Protection In India: Past and Present, Published in Jadavpur Journal of internationalonal Relation 2010.
- 3- Prashad, Rajendra A: Historical Evolution of Consumer Protection and Law in India, A Bird's Eye View, published in Journal of Texas consumer law retrieve from ----
- 4- Sahoo Shgeetal and Chaterjee Aman: in his study entitled" Consumer Protection- Problem and prospects , retrieved from
- 5- Srinivasan, K: A New Era in Consumerism, published in the The Hindu Dated 31,1999.
- 6- Pati, PAS: The Consumer Protection (Amendment Act)
- 7- Kapoor Pankaj : The Consumer Protection Act 1986 — An Overview.
- 8- Bhattacharya Manoj : The Consumer Protection (Amendment) Bill 29 July, 2005.
- 9- Taxman's : Economic Laws, published by Taxman Allied Services Pvt. Ltd..
- 10-Verma, D.P.S.:
- 11-Consumer Protection Act: Published by Government of India.
- 12- Geet, S.D.: Business Law, published by SCDL Pune.
- 13- Amar Ujala: A National Hindi Daily News Paper, Dated 5 March 2018.