

FROM CAVEAT EMPTOR TO CAVEAT VENDITOR: A PARADIGM SHIFT

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Abstract

“Let the buyer beware” was the slogan about three decades ago which has been changed to “Let the seller beware” with the induction of the Consumer Protection Act, 1986 in the Indian Legal System. This has paved a new jurisprudence of the consumer laws in India where the consumer enjoys every comfort of goods or services. The Act has enshrined to the consumer certain basic enforceable rights and the three level redressal mechanisms, the District Forum, State Commission and the National Commission to strengthen the rights.

“The Consumers’ Expectations in 2016” is the cry of the people of India as the present Act has suffered enough drawbacks during the past three decades of its enactment. The paradigm shift that is presented by this Act is only a misnomer for a poor villager or for the rural masses. Should the provisions of The Consumer Protection Act be made use of only by those in the cities and towns or should those be the tools of social transformation in the hands of even the illiterate? Multiplication of the consumer redressal agencies in all levels is the need of the hour. The authors have made a sincere effort to evaluate the pros and cons of The Consumer Protection Act, 1986. Finally, certain practical suggestions have been given to improve the existing provisions of the Act.

Keywords: 3-Tier Radical System, Accessibility, Consumer Protection Act, Flaws, Pending Cases, Rights.

Introduction

Any market dominion should be as such where there is fair equality of opportunity. Ultimate configuration of the market should be the core subject of justice and to achieve the same, fair division should be introduced. To illustrate the former, consider a number of men to divide a cake. To have a fair division, the obvious solution is to have one man divide the cake and get the last piece, the others being allowed their pick before him. He will divide the cake equally, since in this

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way he assures for himself the largest share possible. This example demonstrates perfect procedural justice and explains what a fair division is [1]. The relationship between consumer and producer should be the same. To achieve this feat, the State ensured the protection by enactment of various laws; and the Consumer Protection Act, 1986 is the biggest leap taken. The mechanism has now evolved from Caveat Emptor to Caveat Venditor. The domination of industries and producers over their consumers is diminishing; yet to attain triumph and enter into a state which is so called fair justice. The change has taken a roller coaster and similar has been the effect on varying nature of goods bought and services availed.

Constitutional Provisions

The State has different functions to perform, which can be enlisted as Protector, Provider, Entrepreneur, Economic Controller and Arbitrator. But, as far as the implementation of consumer laws are concerned, function of the state will be as such of the Provider. And to accomplish this, social services are discharged through the imposition of compulsory duties. This discharge of social-service also requires a multiple of active administrative and managerial functions by government departments or independent public authorities [2]. The Constitution of India provides such duties, though they are not enforceable in the Courts of Law. The State has an obligation to promote welfare of people [3], raise their standard of living by raising the standard of nutrition and public health [4] and also to strive for the protection of environment and wildlife [5]. The State must proficiently standardize the laws regarding food and medicinal products. In addition to the above, the State shall also prevent black marketing, hoarding and any related activities. Also, people pay taxes to the government, despite the fact that they consume polluted air, contaminated water and are being compelled to live in a filthy environment. So, strict compliance of law is required which has to be maintained by the State. Mere enactment of laws would not help unless the State ensures its stringent implementation.

Insufficient Scenario of Consumer Laws

It is evident from the history itself that laws for consumer protection have been equally important. They had to be robustly implemented for the interests of the buyers and service seekers. There have been serious issues related to ditching punters; whether it be misleading advertisements, ambiguous claims or consumers' exploitation in one way or the other.

In fact, the consumers are unacquainted of their rights. This lack of consumer awareness has led to their manipulation and the State has not taken any such measure to overcome this obstacle. There has been no accounting on behalf of the producers or the State over certain problems. For instance, if a consumer belonging to lower economic class purchases any perishable goods and a part of it becomes unusable, then he does not possess any option to go to any redressal agencies due to small amount of the transaction in spite of the loss suffered by him. Also, market holds no responsibility for the transactions taken place without any exchange of bills as it can be seen in cases of daily-use products in local markets, petrol pumps, auto-rickshaws, etc. No such accountability is borne by anyone for operations involving middlemen, if things go wrong. Nonetheless, sky-rocketing prices of the real estates are not being regulated by government policies, giving people a point to worry upon. Regardless of the money given by the patients in government hospitals, they are awarded with petty and insignificantly poor services. However private hospitals boast of their services, they overtax their patients to equalize the effect by forcing them not to buy generic medicines. The answers for these aristocracies need to be reciprocated.

If a rational man is seated to justify the basis on which he would opt for any product, he prefers via advertisements. Ironical to say, the Indian market adores exceptional advertisement mechanism! Some of the prodigies can be enlisted as- “THUMS UP-TASTE THE THUNDER”; “MOUNTAIN DEW-DARR KE AAGE JEET HAI”; “MENTOS-DIMAAG KI BATTI JALA DE”. How can a prudent man enlighten his mind by eating a ‘Mentos’ is out of the rationalization!

Moreover, the society is strangled between the scourge of corruption and industrial despotism. Political interventions, favoritism, bureaucracy and red tapism have hoisted to such a dodgy situation that it is almost impossible to free ourselves. In view of image of the consumer which prevails in the Community, it was therefore expected that legislative actions be taken in the area of safeguarding the consumers’ right to correct information in marketing [6].

Other legislations

No such specific law governing and regulating protection of consumer was enacted before 1986 when The Consumer Protection Act came into play. But, there are a number of legislations in India, enacted both before and after independence, which deal directly or indirectly with consumer justice. These laws have been passed both by the central government as well as state governments. Some of the important legislations are [7]:

The Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, The Monopolies and Restrictive Practices Act, 1969, The Hire-Purchase Act, 1972, The Prevention of Food Adulteration Act, 1954, The Competition Act, 2002, The Specific Relief Act, 1963, The Sale of Goods Act, 1930, The Indian Contract Act, 1872, etc[8].

These acts got fortified only after the enactment of the Consumer Protection Act and consumers got something to cheer up for. Slowly and steadily, the tradition has set towards the concept of Caveat Venditor and is still in the way to achieve the desirable outcome.

Three-Tier Radical System

The Consumer Protection Act, 1986 has granted certain rights for the protection of consumers' interests. This heavy burden has been allotted to the Consumer Dispute Redressal Agencies formed through the Act [9]. These agencies have been further categorized under three different tiers:

- i. Consumer Dispute Redressal Forum, i.e., District Forum.
- ii. Consumer Dispute Redressal Commission, i.e., State Commission.
- iii. National Consumer Dispute Redressal Commission.

District Forum

Composition- The district forum consists of three members headed by a District Judge or the person qualified to be District Judge as its President, and one of the other two members must be a woman. Those two members should be at least 35 years of age, possess a Bachelor's Degree and should be persons of ability, integrity and standing. Also, they should not have been convicted to imprisonment, or, an undischarged solvent, or, of unsound mind, or, have been removed or dismissed from the service of government, or, have financial or other interests in the forum. They shall hold the office for a term of five years or till 65 years, whichever is earlier [10].

Jurisdiction- The pecuniary jurisdiction of the forum lies for the value of goods or services not exceeding rupees 20 lakhs. Its territorial jurisdiction has been restricted where the opposite party or each of the opposite parties resides or carries on business or has its branch for conduction of such business.

Filing of Complaint- A complaint can be filed for any deficiency in goods or services delivered, by the consumer itself, or, by any voluntary consumer association, or, by the Central Government or any State Government, or, by one or more consumers with same interest and in case, the consumer is dead, then by his legal heir or representative. The admissibility of the complaint has to be decided within 21 days from the date of receiving such complaint [11].

Procedure to be followed [12] - After the admission of complaint, notice has to be served to the opposite party referring a copy of complaint within 21 days and a rejoinder has to be filed within 30 days before the forum. If the complaint includes defect in the goods, then a sample of good is taken and is referred to the appropriate laboratory by the forum and findings have to be reported within 45 days of receipt of such reference.

If the complainant does not turn up before the forum, then the District Forum may dismiss the complaint or may also decide it on its merit.

On the basis of merit of the case, the forum may pass any such interim order as it may deem fit to the case.

Finding- If the District Forum is convinced that the allegations made for the defected goods or services are genuine, then it may order the opposite party to remove the defect, to replace the goods, to return the price or charges to the complainant and to pay any amount for any loss or injury suffered by the consumer due to the negligence of the opposite party. The District Forum may also award punitive damage to the complainant, if necessary. It may direct the opposite party to remove the defects in goods, to discontinue the unfair trade practices, cease and remove hazardous goods from sale, to pay at least 5% of value of defective goods, if loss or injury has been caused to large number of people, provide adequate costs to the parties and to issue corrective advertisement in case of misleading advertisements [13].

Appeal- Any person aggrieved of the order made by the District Forum can appeal to the State Commission within 30 days of the date of the order by depositing 50% of amount given in the order made or 25,000 rupees, whichever is less [14].

State Commission

Composition- The State Commission is headed by its President who is or has been a Judge of a High Court and there must be at least two members out of which one should compulsorily be a woman. Other qualifications are similar to the members as that of the District Forum. Their tenure of office is for five years or 67 years of age or whichever is earlier [15].

Jurisdiction- The original jurisdiction extends to the amount of suits between rupees twenty lakhs and rupees one crore. Its appellate jurisdiction covers orders given by the District Forum. Its revisional jurisdiction includes call for records pending before or decided by the District forum; if it feels that forum has failed to exercise or illegally exercised its jurisdiction as vested in it by law. The territorial jurisdiction extends where the opposite party or each of the opposite parties resides or carries on his business [16]. The supervisory jurisdiction extends to all the District Forums in its jurisdiction [17].

The procedure which is to be duly followed is similar to that of District Forum provided under Sections 12, 13 and 14 of the Act.

Appeal- The party aggrieved by the order of the State Commission can appeal to the National Commission within the 30 days from the date of the order after depositing 50% of the amount ordered by the State Commission or Rs. 35,000, whichever is less [18].

National Commission

Composition- The National Commission is headed by a person who is or has been a Judge of the Supreme Court and consists of not less than four members of whom one should at least be a woman. Other criterion for qualification and disqualification is the same as that of the State Commission [19].

Jurisdiction- The original jurisdiction of the Commission stands for claims exceeding rupees one crore. Its appellate jurisdiction covers all the appeals which are made against State Commission whereas the revisional jurisdiction extends for call of records of the cases pending before or decided by the State Forum where it seems to the National Commission that the State Commission has exceeded or not acted in its jurisdiction [20]. Its supervisory jurisdiction extends to all the District Forums [21].

The procedure which is to be duly followed is similar to that of the District Forum provided under Sections 12, 13 and 14 of the Act.

Appeal- Any of the party can appeal to the Supreme Court against the order delivered by the National Commission within 30 days of date of order by depositing 50% of the amount as ordered by the National Commission or Rs. 50,000, whichever is less [22].

Flaws in the mechanism

Although, the Act has provided for a hierarchical system comprising of three different levels to necessitate the needs of the consumers, the results do not seem to be satisfactory. In India, there are 35 State Commissions and 629 District Forums functional [23] as against 675 districts [24]. Now, the question arises, 'what about the establishment of law ensuring rights of consumers inhabiting in rest 46 districts where the State Government has not yet established the forums even after 30 years of enactment of the Consumer Protection Act, 1986?' In 1991 itself, bench of Hon'ble Chief Justice Ranganath Mishra and Hon'ble Justice P.B. Sawant ordered every district in India to have a district forum and said [25]:

"We direct that within two months from today, every district shall have a District Forum which would be presided over by an exclusively appointed Judicial Officer in terms of the prescription of the statute. In such districts only, where the minimum monthly load is not above 150 consistently for a six month period, it would be open to the State Government with the concurrence of the High Court to continue a sitting District Judge to do this work but the District Judge should devote attention to complaints under the statute on three alternate days of every week which would mean that he should be sitting as a consumer court on three days a week. We do not intend to divert judicial attention from normal work by our order and if the High Court is of the opinion that this would affect the normal judicial work, it is open to the High Court not to agree to this arrangement and that would mean that in those areas, the State Government will have an obligation to appoint a whole time Judicial Officer."

Yet, this has not gained recognition till date. Even at places where the District Forums are established, they lack basic infrastructural facilities and manpower [26]. Apart from these flaws, many of the District Forums do not update their web based case monitoring system and the CONFONET is also not operational in more than 100 district forums [27].

Over and above, the number of consumer complaints pending before the commission is piling on year by year after the enactment of the Consumer Protection Act, 1986. The total number of cases

pending altogether in all the three redressal agencies is 4, 67,363. Of these, almost 67% of the cases are pending in the District Forum itself [28]. Every single year, the pendency of cases is escalating rather than declining. The State is still sleeping over the issue and has not taken much response over non-performance of work at District Forums. This has somehow victimized the Consumers and has put the manufacturers and industrialists on the driver's seat.

Accessibility

Basically, any law is sought to reach through the masses in a holistic approach. However, the act has not yet gained such recognition. Accomplishment should actually be based on the number of people affected by the particular law. The purpose of any law should be to ensure the rights and establish the rule of law and it cannot be attained without getting through to the common man residing in distant areas. The success story of any Act should not be taken as the number of cases which it has dealt or disposed rather it should be based on whether it is accessible to people or not.

Taking a glimpse of plethora of cases pending in the District Forums and the new number of suits filed before the forum, it is getting hectic as well as unfeasible for a single Forum to manage them all. Besides, people from remote areas are not able to avail the services of the redressal mechanism. And we must acknowledge the fact that law is not made to serve the richer people as their concubines. Concisely, the law enacted should be such that it ought to escort the consumers of inferior economic class to bring them in an equally privileged state. Accordingly, the authors propose that the District Forums should also be further delegated at Tehsil level or a whole new level of redressal mechanism should be introduced which can increase the accessibility of the Act. Moreover, The Consumer Protection Bill, 2015 also gives the power to State to establish more than one District Commission in a district or it's functioning at different places [29]. The only motto is that consumers gain faith in the redressal agencies.

Pros And Cons

The Act which has created a milestone in the history of consumer laws has provided certain rights to the consumers which are to be enforced and protected by the Central Consumer Protection Council. These rights are [30]:

- a) Right to be protected: The Act makes certain that the consumers get better quality products which are not hazardous to their life and property. Hence, the government has given certain certifications marks to various varieties of products to ensure their quality. Some of them are ISI mark, Agmark, BIS Hallmark, FPO mark, etc.
- b) Right to be informed: The consumers have the right to be informed of the quality, quantity, purity, standard and price of goods or services for safe and healthy life perspective. A foremost example can be seen in a case where the High Court of Madras held that 'best before date' and 'expiry date' of any product are distinct and cannot be labeled one and same [31]. It has exemplified the right of consumers to know the particulars of any product.
- c) Right to be assured: The market must assure that practice of monopoly does not exist and the consumers can choose between varieties of products on healthy prices.
- d) Right to be heard: The consumers have been awarded the right to be heard in appropriate forum.
- e) Right to seek redressal: The right to seek redressal has been bestowed upon the consumers against unfair trade practices, restrictive trade practices or unscrupulous exploitation. In addition to the redressal mechanism set up, the consumers can also call on the National and State Consumer Helpline numbers to register their complaints.
- f) Right to consumer education: Campaigns like 'Jago Grahak Jago' have been introduced by the Government apart from Grahak Suvidha Kendra, which make consumers aware of their rights and also provide tips for pre-purchases. Government has also constituted National Resource Centre with the aim of facilitating resources for Consumer Information, Judgments, Articles, Legislation, Test Reports, etc.

The Consumer Protection Act has very well defended these rights. The importance of the Consumer Protection Act can also be observed by the words of Hon'ble Justice R.M. Sahai who said [32]:

"The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempts to remove the helplessness of a consumer which he faces against powerful business, described as, 'a network of rackets' or a society in which, 'producers have secured power' to 'rob the rest' and the might of public bodies which are degenerating into store house of inaction where papers do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked. The Act thus aims to protect the economic interest of a consumer as understood in commercial sense as a

purchaser of goods and in the larger sense of user of services. It is a milestone in history of socio-economic legislation and is directed towards achieving public benefit.”

Moreover, in comparison to civil court, the consumer fora consume less time and also has less prescribed court fee. Only nominal fee is taken on admission of complaints [33].

Feeble and Delicate Corners

Con Calls: We often receive fake calls from people demonstrating themselves as staffs of banks, lottery managers, central government employees, etc. These people defraud by alluring naïve people by asking for bank account numbers, credit card details and other such confidential information and hence burgle their money. Still, the consumer laws are ineffective in deciphering these issues.

Insurance Agents: Frequently, people who can't understand the delicacy of the terms and conditions mentioned by the insurance companies are befooled by their agents, who, rather than helping out people, ensnare them by luring with illusory statements. Consequently, innocent people sign those documents in faith of those agents and disburse huge amount of money despite of low profit. Even the consumer law is unable to rescue them in these circumstances.

Replaceable, non- refundable: The market does not provide the option for refunding the amount of goods purchased, if the consumer does not aspire for the product due to any reason which is often offered in e-shopping.

Ineffective Helpline Number: Only 17 states have State Consumer Helpline Numbers [34]. Furthermore, despite sanctions approved to the State governments by the Centre, only 21 out of a total of 32 authorized consumer helpline are functional [35]. Another major drawback of this so called facility is that most of the time the number does not ring or shows waiting.

Wrapping up, we can say that one side of the coin has strengthened the consumer rights but the other side is still facing a huge challenge in subtle areas.

Efficacy of the Consumer Laws

There is no control over advertisements of medicinal products as such Crocin, D-Cold Total, Disprin, Cough Syrups like Torex, etc. resulting to which gullible people like us get duped and consume them without any doctor's prescription; even though these commercials do not specifically

mention any disclaimer about the side-effects of the product. The consumers' right to get informed is not been properly taken into consideration.

Notwithstanding erroneous and illusive ads, there have been cases regarding medical negligence on the part of hospitals. It can be illustrated through a recent case which involved a premature birth of a girl child in which an exemplary damage was awarded to the petitioners. The baby was under due care of the hospital from 4 weeks to 13 weeks in her chronological age. What was completely overlooked was a well known medical phenomenon that a premature baby who has been administered supplemental oxygen and has been given blood transfusion is prone to a higher risk of a disease known as the Retinopathy of Prematurity (ROP). As a result the child was rendered blind for life. It was further observed that ROP is a visually devastating disease that often can be treated successfully if it is diagnosed in time. The Supreme Court awarded a compensation of Rs. 1,38,00,000 as future expenses and Rs. 42,87,921 in lieu of past medical expenses [36].

An additional case in which punitive damages were granted involved irregularity in telecom services. In this case filed before the State Consumer Dispute Redressal Commission, the request for activating the services of 'DO NOT DISTURB (DND)' was initiated several times but was not processed. Due to this deficiency of service and continued defaults, the Commission awarded a whopping amount of Rs. 3, 25,000 as compensation [37].

These judgements have emerged as landmarks for justice to the consumers and show the partial paradigm shift from Caveat Emptor to Caveat Venditor!

Methodology

The authors has used doctrinal mode of research.

Observations

There was a time when least protection and rights had been given to the consumers but the Consumer Protection Act, 1986 enlisted certain rights to the consumers which ensured the safety and welfare of the consumers. But this modern race of 2016 is taking advantage of loopholes of the

Act which needs certain vital amendments for ensuring the wellbeing of consumers and penalty to those who exploit the consumers.

Conclusion

Before concluding the paper, the authors would like to put forward certain suggestions:

- Consumer Education: Campaigns, seminars, street plays, distribution of pamphlets, etc. concerning consumer rights must be arranged frequently. Organisations of programs must necessarily be done on panchayat or tehsil levels as most of the unaware and uneducated class of consumers reside there and the events should serve the purpose to make them literate about their rights.
- Mediation: The Consumer Law must provide an option of mediation before the parties as a method of arbitration to solve their disputes, hence reducing time consumption [38].
- Strengthen Helpline Facilities: As we have earlier discussed, the Consumer helplines are mostly non-effective; the government needs to take a glance upon the issue and come up with a scheme to overhaul the inefficient help-tech.
- Minimum amount payable: Section 14(1)(hb) of the Consumer Protection Act, 1986 provides that the minimum amount of sum payable as damage shall not be less than 5% of value of defective goods. The authors propose to increase this minimum amount. The government should be petitioned to take steps to this effect as soon as possible.
- Punitive damages in misleading advertisements: In cases of damage being caused to mass population, harsher punishment should be awarded to the party at fault [39].
- Investigation and Inspection Teams: Investigation and inspection teams must be formed and in case of any complaint regarding irregularities of sellers, merchandisers, etc., they should be called upon.
- Social Responsibility: Unless and until the society itself determines to be protected, no Act can do some good. One educated must make aware another of his rights. Besides, major consumer groups and NGOs have been established in big cities and the same should be followed in the other parts of the country.

Now, the authors would like to cut this long story short. Consumers have always been known as the vulnerable side of the society. Nevertheless, the Consumer Protection Act, 1986 has taken a dive to bestow justice upon the ones who suffer without guilt. In a way, it has personified its motto, “Justice Prevails”.

On the contrary, Milton Friedman had once justified himself by quoting, “*Many people want the government to protect the consumer. A much more urgent problem is to protect the consumer from the government.*” Looks that, implementation of laws has modeled the same theory in India.

A picture paints a thousand words. Likewise, the functioning of consumer laws can be deduced only by having a scrutiny of the various forums across the country. Each forum would accommodate diverse people with diverse dilemmas. What’s more spontaneous to infer is that India is a country where laws are overflowing. The call of the hour is to modify and revamp these laws so that peace and tranquility sustains.

On the whole, consumer protection laws are *gold* in themselves but to uphold its real shine, the law makers need to polish them every now and then.

Contemplating the whole matter of fact, certain questions ought to be left to the readers; ‘what is the position of consumer law and where does it actually stand in this 21st century?’

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