

NEW DIMENSIONS OF CONSUMER WELFARE LEGISLATIONS IN INDIA VIS A VIS CONSUMER EDUCATION: AN ANALYTICAL STUDY

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ABSTRACT

The emergence of the concept of welfare state has influenced gradual development of the role of the government for protecting the interests of consumer's. In Indian scenario the impact of British rule has been to transform from duty conscious society to the right conscious society. Since Independence we have adopted the concept of welfare state under new constitution this has called for great intervention of state protecting the rights and interests of consumers as against strict adherence to caveat emptor principle. In the end of the nineteenth century, in the modern commercial age, the advancement in the commercial transaction, standard form of contract, globalisation brought an era of consumerism where consumers started facing exploitation by strong business class. In order to maintain social harmony legal intervention was called. By the end of nineteenth century the Anglo American jurists had summarised the whole jurisprudence upon the basis of rights of contract duty base. Gradually the emphasis was shifted from individual interests to social

interest. The emergence of the concept of welfare state has influenced gradual development of the role of the government for protecting the interests of consumer's. In the Indian scenario the impact of British rule has been to transform from duty conscious society to the right conscious society. Since Independence we have adopted the concept of welfare state under new constitution this has called for great intervention of state protecting the rights and interests of consumers as against strict adherence to caveat emptor principle. Need for protecting the interests of consumers also felt in our country. Several laws for consumer's protection were there since 1947, but enactment of consumer's protection Act, 1986, and new Amendment in 2002 gave more protection to consumers. The enactment of Competition Act, 2002 by replacing of MRTP Act, 1969 brought new dimensions to protection of consumer's interests in India.

Keywords: *consumer education, concept of consumerism, consumer Protection Act, 1986, New Amendment Act, 2002, the competition Act, 2002, consumer protection Act, 2019*

INTRODUCTION

Traditionally consumer education has been considered about making aware people from any exploitation, money management and understanding credit. But many jurists take the broader view that it should be education for living with the major emphasis on the economic, environmental, political and social decisions that learners will make today, tomorrow and in the future. In the beginning of nineteenth century the doctrine of laissez faire dominated the whole economic scene all over the world, it was an era when the supporters of the individualistic approach thrived where it was believed that there should be least interference in the freedom of contract so that the sanctity of contract may be maintained. So far as the consumers were concerned it was the view that the doctrine of caveat emptor should dominate the economic scene.

The Sale of Goods Act, 1930, caste upon a duty to the buyer to be careful while purchasing a good. If the goods are not suitable, the seller will not be responsible under the principle of 'caveat emptor' it is a general rule of contract of sale. A buyer is under obligation to examine the goods to his best skill and judgement and satisfy himself before purchase. The seller is not responsible for the selection and suitability of the goods to be purchased by the buyer. The seller is not under any obligation to disclose any defects.

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Gradually the emphasis was shifted from individual interests to social interest. The emergence of the concept of welfare state has influenced gradual development of the role of the government for protecting the interests of consumer's. In the Indian scenario the impact of British rule has been to transform from duty conscious society to the right conscious society. Since Independence we have adopted the concept of welfare state under new constitution this has called for great intervention of state protecting the rights and interests of consumers as against strict adherence to caveat emptor principle. Need for protecting the interests of consumers also felt in our country. Several laws for consumer's protection were there since 1947, but enactment of consumer's protection Act, 1986, and new Amendment in 2002 gave more protection to consumers. The enactment of Competition Act, 2002 by replacing of MRTP Act, 1969 brought new dimensions to protection of consumer's interests in India.

HISTORICAL DEVELOPMENT OF CONSUMERS LAWS

History reveals that the interest of the sellers and buyers have involuntary pulled apart, the former trying to obtain the highest price and latter hesitating to be exploited. Before dealing with the present legal position of consumer laws, a brief discussion of the historical development of the consumerism and the law prevailing in ancient and medieval India will be discussed.

Consumer movements in America

In early economic history of America private ownership was protected and the free competition was given recognition. Competitive activities in U.S. led to passing Sherman Act, 1890. The economic condition changed after formation of Consumers League in 1891. Federal Trade Commission, which was formed in 1914 recommended time to time amendments in laws to prevent unfair methods of competition. Neither tort based remedies nor contract based remedies helped the consumers by 1940. Recognition of consumer's rights by 1962 by President Kennedy gave a further impetus to the consumer's rights movements. After several attempts Uniform Commercial Code 1952 came into existence. Consumer awareness along with legislative consciousness, improved the consumer condition in U.S.A.

Consumer Movements in England

Contrary to the U.S. approach, in England consumers were being protected by judicial activism alone for a considerable period up to 1965. Yet the condition of consumers was not satisfactory, as the judge's views were dominated by the laissez faire approach and by the maxim "Caveat Emptor." Uniformity in the judicial decisions can now be found in England. Era of Codification began in England in the last part of the 19th Century. But the laws were codified in parts upon the demands of the businessmen. Sale of Goods Act was enacted in 1889, which continued to protect the consumer sale transactions as well, recognizing several exceptions to the "Caveat Emptor" rule, up to 1979 [in 1979 New sale of goods was enacted replacing old one] However, the earlier Sale of Goods Act was supplemented

by Supply of Goods (Implied Terms) Act, 1979, Consumer Credit Act, 1974 and Unfair Contract Act 1977 etc. Anti-trust kind of situation of U.S. also attracted attention and became a matter of concern in England, which led to the passing of Restrictive Trade Practices Act, 1956, Monopolies and Restrictive Trade Practices (Inquiry Control) Act, 1948, Resale Prices Act, 1964, Fair Trading Act, 1973 and Competition Act, 1980. Aforesaid enactments were felt necessary as the judicial check upon monopolies and unfair trade practices had proved ineffective. Certain laws were also enacted which provided penal punishments, like (Weights and Measures) Act etc. In England too, consumer consciousness grew in intensity, and this started influencing the political and economic atmosphere. The Monopoly Committee also made several proposals to make the laws more consumer oriented. These proposals thus formed the basis of the Consumer Protection Act, 1987 and a new Consumer Credit Act, 1978 was also enacted.

Consumer Movements in India

It has been seen that the consumer movement in India is gaining momentum these days. The historical development of Indian legal system reveals that consumer's interest was also protected in the past. We can divide the legal development in India in three stages for proper appreciations-

- The Ancient period,
- The Medieval period and
- The pre-independence period.

All the three stages of the developments reveal that whatever might have been the idea behind the laws, the public welfare was the ultimate

goal. The protections which were available to the consumer, public, during the above three periods in seriatim will be a matter of discussion in this part of paper. The development of consumer laws in our country thereafter shall be discussed in the subsequent part of this paper.

Consumer movement during Ancient Period

Ancient Hindu Law was a mixture of law and religion, as aptly observed by the English judges, 'vinculum juris and vinculum pudoris' was not discernible in the earlier Hindu Law. The Indian society has been a duty conscious society. The idea of civil wrongs was overshadowed by criminal wrongs in Hindu Jurisprudence. It may be noticed, that even for the breaches of contracts, punishments were prescribed. In this sense, consumer was a better protected lot in those times. Indian law of torts was not as advanced as the English Law of Torts . In 18 titles of Manu only an incidental reference of compensation has been made by him. But later Smritis evolved this further, and included the tort of fraud in different cases. Even the contract law was incomplete and defective. Wherever, the seller transgressed his contractual duties, he was required to pay fine, as the default was viewed as an offence; a consumer also had a war of replacement or a right to claim a refund of price. He also had a right to rescission in several cases, but these rights were subject to the principle of 'Caveat Emptor'.

Under law of crimes, provisions were made to ensure standard weights and measures, realizing the criminal tendency prevalent amongst traders . There were also rules for preventing adulteration and for strict adherence

of quality control. A Superintendent of Commerce was also appointed to enforce the trade regulations covering sale of goods and also for enforcing the terms of services. In fact the whole law meant for consumer protection, provided punishments, perhaps with an avowed objective of expiating the law breaker from sin, committed by him due to non-adherence of the duties fixed by Dharma .

Consumer movement during Medieval Period

Moghuls ruled India in the Medieval Period. They were much concerned with the expansion of their Empires and thus they had not much concern for the public in general and consumers in particular. Muslim Law was applied when both the parties were Muslims and the law of defendant, when one party was Hindu and the other was a Muslim. Muslim law was also dominated by the religion, as civil law was mixed with religion. Moreover, except Akbar, all the other rulers were strict enforcers of 'Sharia' and 'Hedaya' was the standard legal text book in Muslim ruled India. In absence of consumer associations, there was no voice of the consumers. Yet, law of sales was much concerned with the interests of consumers . Exceptions to 'Caveat Emptor' rule were recognized under Muslim law of sale, which recognized warranty of title and warranty of free from all defects. Several options to cancel the bargain were available to the consumers in cases of absence of consent, or fraud or where the goods were defective. Freedom of contract and sanctity of contract was also recognized under Muslim law, as it did not allow stepping in for completing the bargain. It may still be submitted that the position of consumers was not satisfactory during this period.

Consumer movement during Pre Independence Period

In pre-independent India, gradually the common law principles came to be applied by the British. Codification of laws was embarked upon, and in this process, laws came to be enacted even prior to the creation of public opinion in their favour.

From consumer's angle, Indian Contract Act 1872 was enacted, which also provided for the regulation of Sale of Goods. Later on in 1930, this part was repealed and re-enacted as Sale of Goods Act. The other two enactments, viz. Transfer of Property Act and Specific Relief Act also came to be enacted and had a bearing upon the consumers. Law of Torts did not develop in India at the same speed as it did in England. Indian Courts were apt to follow the law, as laid down in *Donoghue v. Stevenson*. Various provisions of the Indian Penal Code 1860, also declared certain activities of the traders as penal offences, Sections 272-276 dealt with the penalty for adulteration of food and drink, Section 486 further made sale of goods marked with false counterfeit property mark, punishable. Further Sections 415-425 made cheating an offence.

Indian economic-scene was also dominated with scarcity of goods during the World Wars. Various laws were thus enacted as emergency measures to solve the problem of scarcity of essential items. Hence the licensing system and commodity control measures were introduced by the Britishers in India through the enactment of Defence of India Act, 1939 and Essential Supplies Act, 1946 etc. Formation of Consumer Co-operatives was supported, which was regulated through the Cooperative Societies Acts, 1904 and of

1912. In the last phase very many other laws too came to be enacted, for the efficient and satisfactory functioning of the public utility services like electricity, transportation, posts and telegraphs etc.

Pre-independent India pictured a plethora of laws, which in some way or the other protected the consumers of India. Significantly, contrary to the duty based laws and rules prevalent in ancient India, these laws recognized the rights of the persons, whose interests were sought to be protected by these. These laws enacted by the Britishers, transformed the socio-economic scene from duty-based to a right-based society. Perhaps, this was the beginning of the arena, wherefrom the Indian people started becoming more conscious of their rights, forgetting the duties which they owed to their fellow beings. It may be submitted, that amongst other factors, this factor has attributed much towards the worsening of the conditions of Indian Consumers, though it had also laid base, for a strong case for consumer movement in India.

LEGISLATIVE CONSCIOUSNESS AND JUDICIAL ACTIVISM TO PROTECT THE CONSUMERS IN INDIA

After gaining, independence, we adopted welfare State concept under our new Constitution. Various protections and rights of Indian public were sought to be ensured through legislative consciousness and judicial activism. Process of codification of the laws in the country continued to favour consumers as against producers. The Governments, under the Constitution, were to pursue the policies according to the Directives' set out under Chapter IV. These Directives

came to be reflected in various Industrial Policy Resolutions. A mixed economy was adopted, wherein both public and private Sectors were to work together. More so, consumer protection against high prices and bad quality was specifically included in Industrial Policy Resolution of 1980.

In order to improve the economic conditions, State monopoly and nationalization of various industries was felt necessary. The Courts too responded in the favour of the government policies, yet it refused to grant blanket protection to all the legislations meant for creating State monopoly. It came to be established that all laws were to pass the two tests of reasonableness and public interest. However, these restrictions were allowed to go to the extent to prohibition, if the consumer and public interest demanded it. Thus various Control Orders passed under Essential Commodities Act and Industrial Development and Regulation Act came to be challenged before the courts. The courts significantly played an activist role, and tried to tilt the balance of competing interests of consumers and traders, in the favour of consumers.

Price Fixation was also considered as a part of social control, which became unavoidable under a socialistic pattern of society, which aimed at to achieve the common good. This was achieved by the Government under the Industrial Development and Regulation Act, 1957, Essential Commodities Act, 1955 and Tariffs Commissions Act etc. Supreme Court examined the price fixation aspect in several cases, beginning from Premier Automobiles and another v. UOI to Union of India v. Cynamide India Ltd .

In Shree Meenakshi Mills v. Union of India case Supreme Court, reviewing the cases decided between 1954-1973, held that price fixation and maintenance of a price line was necessary and was to be upheld, in order to give preference to the consumer 'interest over the interests of producers and traders.

This consumer oriented approach came to be dominated in the decision of Cynamide's case, wherein the court made the following three relevant suggestions with respect to price fixation domain. Legislative action, plenary or sub-ordinate is not subject to the rules of natural justice. Particularly where the legislator has not chosen to provide for any notice or hearing, no one can insist upon it.

Where matters involves commercial or technical prudence, court cannot assess that it would be hazardous for the courts to venture on a guess work as compared to the technical assessment that is made, correctness of which is not disproved by cogent materials. Court can only interfere upon finding mala fides or extraneous considerations.

The right to consumer education has been recognised under 6(f) of the consumer protection Act, 1986 as "the right to consumer education" one can surely access the importance of consumer education in a country like India where large section of the consumer is poor and illiterate. The concept of consumerism is yet to take a final shape in India. Unless the consumers are aware of their rights and remedies, unless the consumers are united and have the power to call the boycott of a particular traders or items, protection of there shall remain a myth. In this connection the role of consumer's councils is very important.

The basis of consumers rights have also been recognised under Indian Constitution

- a. Right to life –Article 21
- b. Right to basic need –Article 21 and 47
- c. Right to healthy environment- Article 47, 48-A, and 51-A

Indian Judiciary has also been performing an activist role in various pronouncements from M.C. Mehta v. UOI .

CONSUMER REDRESSAL AGENCIES UNDER CONSUMER PROTECTION ACT, 1986

Under the Consumer Protection Act, 1986 consumer Dispute Redressal Agencies have been established at District, State and National level.

1. District Forum
2. State Consumer Dispute Redressal Commission
3. National Consumer Dispute Redressal Commission

The supreme court of India is the final court of appeal. In Patel Roadways Ltd. Birla Yamaha Ltd , has been held that the consumer Dispute Redressal Agencies are vested with the power of adjudication of all types of consumer disputes. In Charan Singh v. Healing Touch Hospital , the Supreme Court recognised these Agencies as quasi-judicial bodies; hence these agencies should arrive at a conclusion based on reason. Their obligation not only introduce clarity but it also exclude, or at any rate minimise, the chances of arbitrariness and the higher forum can evaluate the correctness of those reasons. In the year 2003 Supreme Court of India passed three different judgements after considering

the importance of redressal for a constituted under the Act, 1986.

In state of Karnataka v. Vishwabharti House Building Co-op Society , where the constitutionality of the Redressal Forums was under challenged the Supreme Court upholding their constitutionality held that their establishment was within the legislative competence of parliament as Article 323A and 323B do not derogate from that legislative competence.

In another case State of Rajasthan v. Anand Prakash Solanki , held that the transfer of President and members of District Forum from one district to another district by the state government is permissible.

In CCI Chambers Co-op, Hsg Society Ltd. v Development Credit Bank Ltd , the court has held that such forums have been constituted at various level under the Act, with the avowed object of providing summary and speedy remedy. The justice has to be delivered observing the principle of natural justice, taking care of such grievance as an amendable to their jurisdiction. The prime objects are to relieve the conventional courts of their burden which is ever increasing and delaying the disposal due to technicalities.

Legislative Enactments

Most of the laws enacted, in consumer's interest, were Central enactments, however, some of these were also passed by the States, as earlier said, the laws enacted in favour of consumers were challenged before the courts, but the courts refused to go into the question of substantive reasonableness of these laws. Yet, the procedural reasonableness of these laws was stringently reviewed by the courts.

This inference can be derived after a review of the Supreme Court's approach towards the laws pertaining to the field of price control, commodity control and advertisement control. Some of these were even enacted, to regulate the supply and distribution of commodities in normal times.

Promotion of the health of consumers was also felt necessary by the Government. From time to time several committees were appointed by the Government to examine the health aspect, in order to fulfil the mandate guaranteed under Art 47 of the Constitution. These gave several recommendations from time to time, which led to the enactment of Prevention of Food Adulteration Act, 1955, Drugs Act, 1940, Drugs and Cosmetics Act, 1940 etc. These enactments, when they passed the constitutional test were upheld by the Supreme Court. It may be submitted, that these enactments have not been able to provide a healthy atmosphere to the consumers. Menace of adulteration of food and drugs is rampant, and prices of drugs consumers. The new Health Policy, 1987 was announced by the Ex-Prime Minister Mr Rajiv Gandhi Government, but it being anti-consumer, and being against the patient's interest, was criticized severely. In fact this policy has given a free hand to the manufacturers to manufacture hazardous drugs and to escalate prices of essential drugs. In this scenario, our Supreme Court in Vincent's case, again has acted as a watch-dog and has issued elaborate guidelines, to be followed by the government, to manifest the objective of promotion of health of the public.

Many problems faced by the Indian Consumers today, pertain to the deficient

services rendered by the public utility services. Notably, these public enterprises enjoy monopoly in certain important fields. But in due course of time these monopolies have become powerful. They are no longer concerned with the welfare of the consumers, utilising these services. After the dilution of the locus standi concept, since the decision of S.P. Gupta vs. Union of India, many cases have come up before the courts highlighting the deficiencies in the working of these public utility services. The courts have gradually followed utilitarian approach to deal with the problem.

CONSUMER PROTECTION ACT, 2019: A NEW DIMENSION ENSURING EFFECTIVE RESOLUTION OF DISPUTES.

The Indian consumer market has gone through a drastic change over the last two decades with the advent of digital technologies internet, rapid penetration of e-commerce etc. The Consumer Protection Act 1986, being only legislature for protecting the rights of the consumers that gradually become non effective to deal with rapid changes in the consumer marketplace, especially dealing with online shopping and misleading advertisements. Therefore it was felt to replace with the consumer protection Act, 2019. The new Act empowers and protects consumer's rights through various provisions Consumer's protection councils, consumer's disputes redressal commissions, mediation Product liability etc.

Simplified dispute resolution process

State and District commissions can now review their own orders. Now it's easy while

approaching consumer commission through e-filing of complaint and videoconferencing for hearing, deemed admissibility after 21 days of filing, appeals only on question of law after second stage. Central Consumer Protection Authority has been established to conduct investigation into violations of consumer's rights and institute complaints and prosecutions. Impose penalties on manufacturers of misleading advertisements.

E-commerce

E-commerce has been defined as buying or selling of goods or services including digital products over digital or electronic network. Section 2(16) of CPA 2019, the central government has been authorized to take measures and make rules to prevent unfair trade practices in e-commerce. Sections 94 & 101(2)(z g) of CPA 2019 In case of products being sold through online platforms, without charging any fees separately amounts to providing services needs to be ascertained. It is not clear whether off-shore e-commerce would also get covered and eventual enforcement of CPA 2019 qua such entities.

False or misleading advertisements

CCPA has also been empowered to take actions against false or misleading advertisements. CCPA can impose a penalty of up to INR1 million, and up to INR 5 million for every subsequent violations. It is important to note that such penalty can be imposed on endorsers too, thereby bringing actors/actresses in the scope of penalty. However, the endorser would be exempted from any liability if s/he establishes that they undertook due diligence to verify the veracity of the claims before endorsing the same. Therefore, endorsers/actors/celebrities will also have to conduct a thorough due

diligence/ research before signing up for any advertisements.

Penalties

The quantum of monetary penalty, in case of defiance of any order of commissions, have also been raised under the provisions of CPA 2019 Section 72 of CPA 2019. The commissions can now impose fines ranging from USD 350 to USD 1400, whereas earlier they could have only imposed fines in the range of USD 28- USD 140.

Increase in the pecuniary jurisdiction of the commissions

Appellate commissions to an extent, thereby ensuring swifter disposal of cases.

CONCLUSIONS

The Indian consumer marketplace has a drastic shift over the past few years with respect to technologies and fast prevalence of e-commerce. The Consumer Protection Act, 1986 was the only legislation to shield the rights of consumers now had become less effective to deal with fast changes in the consumer marketplace. Consequently it has been replaced by the new Consumer Protection Act, 2019.

Numerous cases were pending in the consumer's courts and there was delay in execution of cases. The new Act provides more effective mechanism for consumers in every aspect. The new Act empowers and protects consumer's rights through various rules. Consumer's protection councils, consumers dispute redressal commissions, mediations, product liability, rules of e-commerce and direct selling.

Central Consumer Protection Authority has been established to conduct investigation into violations of consumer's rights and institute complaints and prosecutions. Impose penalties on manufacturers of misleading advertisements.

It may also be worth mentioning that the consumers have been denied effective representation in the various bodies of these public sector companies. Effective representation of consumers can only solve the problem. Consumer is required to be represented at least in those meetings where

decisions affecting the interests of the consumers are going to be taken. The right to consumer education" one can surely access the importance of consumer education in a country like India where large section of the consumer is poor and illiterate. The concept of consumerism is yet to take a final shape in India. Unless consumers are aware of their rights and remedies, unless the consumers are united and have the power to call the boycott of a particular traders or items, protection of consumers interests shall remain a myth.

References

1. Kinter, W. (1979) Premier on Law of Deceptive Practice (2nd ed). Collier Macmillan Ltd.
2. F.T.C.Vs. Raldon Co., 283U.S.643 (1931)
3. Agravāla, K. M. (1990). Kautilya on crime and punishment, Almora: Shree Almora Book Depot.
4. Garden Barrie v. A.B.D diamond, the consumer society and the Law p.17
5. Gupta, V. K., & Kautalya, (1987) Kautilyan Jurisprudence
6. Ramsay, I. (2012). Consumer Law and Policy: Text and Materials on Regulating Consumer Markets.
7. Baillie, N. B. E. (1881). On the Duty Which Mohammedans in British India Owe, on the Principles of Their Own Law, to the Government of the Country. Cambridge University Press, The Journal of the Royal Asiatic Society of Great Britain and Ireland, 13, 429–436.
8. Upadhyaya, J. J. R. (1946). Licensing power in India and debates of the House of Commons (1st ed., Vol. 7). Previous Next Constituent Assembly of India Debates (Proceedings)
9. Sastry, K. (1961). Hindu Jurisprudence: A Study in Historical Jurisprudence (1st ed.). Eastern Law House, Calcutta.
10. Harvey, B. (2000). The law of consumer Protection and Fair Trading (6th edition) Oxford University Press
11. Rhyne, C.S. & Rhyne, W. S. (1975) Consumer protection law and the municipality, Washington: National Institute of Municipal Law Officers.
12. 1932, A.C 562
13. Howells, G. G., & Weatherill, S. (2017). Consumer protection law
14. , A.I.R, 1972 SC 1960
15. 1987. SC1801
16. A.I.R, 1974 SC. 366
17. AIR.1987 SC, 965, 982 and 1086
18. AIR, 2000, SC1461
19. 2000, 7 SCC 668

20. AIR, 2003 SC 1043
21. 2003, 7 SCC 403
22. 2003, 7 SCC 233
23. AIR 1932 SC 149
24. Cseres, K. J. (2005), Competition law and consumer protection