

1

CHAPTER

INTRODUCTION

PROLOGUE: In the preamble of this project study an articulated effort has been made to focus the urgent need of consumer protection in India through a broad based consumer movement and for this avowed objective a scheme of subjects and principles has been briefly touched upon and dealt in various chapters to begin thinking on consumerism in this predominantly agrarian society which has moved towards urbanization and industrialization since the attainment of freedom.

CONTENTS

1. The Concept	...	...	...	...	5
2. The Present Situation	...	...	...	...	6
3. Need For New Mechanism	...	...	...	...	9
4. The Synopsis	...	...	...	...	10

It is wrong to think that business is incompatible with ethics. I know that it is perfectly possible to carry one's business profitably and yet honestly and truthfully. The plea that business and ethics never agree is advanced only by those who are actuated by nothing higher than narrow self-interest. He who will serve his own ends will do so by all kinds of questionable means, but he who will earn to serve the community will never sacrifice truth or honesty. You must bear in mind that you have the right to earn as much as you like, but not the right to spend as much as you like. Anything that remains after the needs of a decent living are satisfied, belongs to the community.¹

Mahatma Gandhi

THE CONCEPT

THE much-talked about concept of 'Consumer Protection' centres around the problems of buyers in a world of sellers. The technological developments have multiplied the need of consumer and have changed the tradition, that guided our living in the past. The rapid industrial development has not only brought new innovations and products into common use but has also affected the very mode and outlook of our living. The simple kind of goods which were catering our needs have been replaced by complex and complicated products. In view of the socio-economic changes which have taken place in the lives of the people, it is imperative to build up a strong and broad based consumer movement which may give impetus and bring about socio-legal measures necessary for consumer protection. This study aims to project and suggest not only the ways and means to manufacturers, distributors, traders and all those engaged in serving the consumer but also to evolve balanced viewpoint between the buyers and sellers within socio-economic and legal framework of the society.

¹*Harijan*, May 4, 1935. Quoted in *The Wisdom of Gandhi* 49 (1967), (Philosophical Library, New York).

Consumer Protection Law in India

The question arises who is a consumer and the answer is that everybody is a consumer—one who eats food; buys commodities either from a cooperative store or grocer or approved ration shop; stands in a queue to buy kerosene; smokes *bidi* or cigarette; travels on horse, bullock-cart, camel-cart, bus, motor car, train or plane; hires taxi or auto rickshaw; takes flat or house on rent; buys house; gets teeth filled or extracted; gets clothes stitched; gets clothes dry cleaned; buys automobile or any other mode of transport; pays electricity and water charges; buys shoes or gets repaired and drinks alcohol. One is also a consumer who gets building work done; goes to doctor; lawyers or any professional; operates bank account and safe deposit vault; hires architect and surveyors; goes to cinema and theatre and involves in any kind of transaction. Keeping these few examples of human activities, it is necessary to build strong consumer consciousness for which the following consumer rights have been recognized the world over:

1. Right to safety;
2. Right to choose;
3. Right to truthful advertising;
4. Right to informative labelling and packaging;
5. Right to fair contracts;
6. Right to assert claims and defences;
7. Right to quality goods;
8. Right to remedies; and
9. Right to representation.

In order to create a consumer democracy and ensure these basic rights, it is equally necessary to have basic changes in the government's policies so as to give a better deal to more than half of India's population living below poverty line. There is urgent necessity on the part of the government to enforce laws relating to check consumer fraud such as malpractices, adulteration, production of sub-standard goods etc. strictly and vigorously so as to bring the violators to the book to ensure adequate protection to the consumer.

President Johnson of the United States emphatically said:

For far too long, the consumer has had too little voice and too little weight in government. As a worker, as a businessman, as a farmer, as a lawyer or doctor, the citizens are well represented. But as a consumer, he has had to take a back seat. That situation is changing. The consumer is moving forward, we cannot rest content until he is in the front row, not displacing

the interest of the producer, yet gaining equal rank in representation with that interest. What is new is the concern for the total interest of the consumer, recognition of certain basic consumer rights: the right to safety, the right to be informed, the right to choose, and the right to be heard.²

The central, state and local self-governments have definite role to play diligently in promoting the interest of consumer. There are a number of agencies which claim to be watch-dog of consumer interests whose functions are to aid and advise the buyers and defending the cause of consumers at large. Legislative enactments such as Indian Penal Code, 1860; The Indian Contract Act, 1872; the Sale of Goods Act, 1930; the Dangerous Drugs Act, 1930; the Agricultural Produce (Grading and Marking) Act, 1937; the Drugs and Cosmetics Act, 1940; the Drugs Control Act, 1950; the Emblems and Names (Prevention of Improper Use) Act, 1950; the Industries (Development and Regulation) Act, 1951; the Forward Contracts (Regulation) Act, 1952; the Indian Standards Institution (Certification Marks) Act, 1952; the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954; the Prevention of Food Adulteration Act, 1954; the Essential Commodities Act, 1955; the Standards of Weights and Measures Act, 1956; the Trade and Merchandise Marks Act, 1958; the Specific Relief Act, 1963; the Monopolies Restrictive Trade Practices Act 1969, the Hire Purchase Act, 1972; the Code of Criminal Procedure, 1973; the Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975; the Prevention Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980, the MRTP (Amendment) Act, 1984 and the Narcotic Drugs and Psychotropic Substances Act, 1985 etc. do exist on the statute book but how far they have been effective in protecting the interest of consumer is yet to be seen. Legislative enactments aimed at protecting the interest of consumer are yet to become the instruments of positive actions in redressing the grievances and deterrent in war against frauds on the consumer. The consumer needs to be educated and informed to enable him to defend his rights in the marketplace. Whatever legislation, we have in India, to protect the interest of consumer are not enforced properly and vigorously so as to control, eliminate and punish deceptive acts and practices of sellers. In the United States, majority states have enacted legislations to defend the interest of consumers. Most of the states in the U.S.A. have allocated money and manpower to enforce the Acts enacted by them.³ In the American consumer movement, laws are effective

² President Johnson, 110 Cong. Rec. 1958 (1964). (Emphasis added).

³ S. Morganstern, *Legal Protection for the Consumers 2* (1973).

due to large awareness of the consumers because they "take advantage of the services" offered.⁴

THE PRESENT SITUATION

The situation in India is altogether different. The consumers are confronted invariably with the non-availability of effective and speedy machinery for redressal of their grievances in the marketplace. It is imperative to consider consumers' problems and their scope and nature of grievances. However, some remedies can be suggested which the consumers confront various kinds of problems in the marketplace which have serious repercussions on their self-respect, self-image and also on their decision making processes. The consumers often experience in the marketplace frustration and sometimes humiliation too, due to the arrogant behaviour of the sellers, which is the product of the prevailing scarcity conditions of articles and cancerous tendency of hoarding in India. The consumers' problems are created in the marketplace from the range of frauds and deception to an outright rejection of their just protest and right to information about goods. Whatever the remedies which are available in India for the protection of the consumers in the marketplace are by no means sufficient and the consumers find themselves helpless due to ineffective legal machinery for redressal of the grievances. It is equally true that every consumer who has these problems in the marketplace does not adopt the legal course for the reparation of wrongs done to him. It is also not necessary that all consumer transactions give rise to legal causes of action. Even if they do, the helpless consumer neither has the means nor the courage to knock the doors of the appropriate court for the solution of the problem. Even if he decides to go to court of law, he has to go on his own financial resources, which in most of the cases will be the personal loss of the consumer without any surety of return from the legal action. If a consumer experiences that he has been cheated owing to the high pressure sales pitch or by scarcity of commodities or reductive advertisement techniques, or any other commercial means of exploitation, he may still remain passive sufferer inspite of knowing that he has not received the value of his money for the commodity he paid. So to say, the consumer is powerless to assert his rights and to compel a solution of his grievances in the marketplace. In the marketplace if he buys a wrong thing or a defective thing, or a particular commodity needs repair, he will have to depend on the goodwill, honesty and above all mercy of the seller from whom he purchased the commodity. If good sense on the part of the seller prevails then the powerless consumer is obliged.

⁴ *Ibid.*

There are so many factors which have contributed to the powerlessness of consumers and one of them is the lack of mechanism to which they can resort to in order to seek redress between them and the sellers or with an agency with whom they are subjected to in the marketplace. Among the consumers the impact on the low income consumer is the most.⁵ Their daily routine lives are dependent on everyday earning and everyday spending. Actually low income consumers cannot think of any legal remedies and for them law is an instrument of harassment and oppression.⁶ In theory law assures protection against injustice which consumers face in the marketplace, but these protections have no meaning, unless the grievances are eradicated.

There is no doubt that the legal system in India provides some remedies for the consumers' problems. Equality before the law is not only a constitutional right but it is an essential ingredient for making a state into just and effective welfare state.⁷ A just legal system has to operate in the defence of their citizens and also ultimately for the establishment of an egalitarian society. The position today that except for law suit in which substantial amounts of money are involved, the law courts have not proved to be an effective or even feasible mechanism geared to serve the needs of harassed and troubled consumers.⁸ The problems of cheating the consumer by delivering wrong goods, unsatisfactory servicing of goods, hazardous adulteration, landlord defaults in fulfilling his obligation under the law towards his tenant, personal injury or loss of time of the consumer due to purchase of adulterated, inferior or substandard commodities in the marketplace are still rampant in our present day social order.⁹ These types of problems hardly reach the courts due to various formalities, procedure, cost of litigation a consumer has to face. These factors make recourse to the law either unpalatable or infeasible. That is why consumers suffer from their powerlessness more in the marketplace when they find themselves unable to knock the doors of the courts for the injustice done to them. In the span of the study, it is proposed to suggestively evolve a mechanism for solving the problems of consumers in the marketplace. Through this mechanism, regeneration of energy and faith are needed to overcome psychological fear and the feeling of powerlessness to assert the consumer's rights within the formal structure of the existing legal institutions. In this regard, in

⁵ R.K. Nayak, "Justice For Consumers: A Cry" I, 1 *Indian Consumer Cooperator* 1 (April 1974).

⁶ *Id.* at 2.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

Consumer Protection Law in India

order to create a new mechanism, the lawyers, social workers, sellers, buyers and specialists of public and private distribution trade will have to join hands together in the solution of the grievances of the consumers in the marketplace.¹⁰ The resorting to legal remedy should not be the sole approach in the problem but approach should lie in developing a new mechanism and new institutions or utilization of already existing institutions which are in one way or the other engaged in the consumer protection movement in the country.¹¹

The consumers are equally responsible for their indifferent attitude towards defending their rights. The consumers frequently destroy or throw away the factual documents of transactions which are quite essential for establishing the rights and wrongs of the transaction and to meet the formal burden in order to prove the wrongs within the framework of legal system. It is also true that many consumers are not mentally prepared to assert or defend their rights through litigative methods. Many cannot afford the time which it involves and many have nagging uncertainties with regard to the merit of their grievances and many others, in spite of their frustration and dissatisfaction, do not wish to press their claims. Many deficiencies exist in our legal system, which prevent the consumers to come forward to their claims for redress in the court of law. They have the feeling of alienation which prevents them from doing anything against deceptive, unfair and unjust practices in the marketplace. These deficiencies no doubt endanger the consumer's confidence, judgement, integrity and responsibility which embolden the business community to continue their exploitation of the powerless and dumb consumers within the framework of business economy.

The consumer has the right to be properly informed of the commodity which he is buying. Some American Presidents have emphasized this right in messages to the Congress. This consumers' right to information is considered as a central philosophy governing requirements in this vital area of consumer protection. One philosophy behind consumers' right to information is to reduce the entanglements of the law and promote the traditional free market theory of economics. In this regard Prof. Milton Friedman said:

Fundamentally, there are only two ways of co-ordinating economic activities of the millions. Whereas one is central direction involving the use of coercion—the technique of the army and of the modern totalitarian state, the other is voluntary

¹⁰ R.K. Nayak, "Justice For Consumers: A Cry" II, 1 *Indian Consumer Cooperator*, 1 (May-July 1974.)

¹¹ *Ibid.*

cooperation of the individuals—the technique of marketplace. The possibility of coordination through voluntary cooperation rests on the elementary—yet frequently denied proposition that both parties to an economic transaction benefit from it, *provided the transaction is bilaterally voluntary and informed.*¹²

NEED FOR NEW MECHANISM

Improving on this philosophy, the central and state governments, voluntary agencies, cooperative consumer societies and other organizations committed to the cause of consumer protection can decisively play a vital role and evolve a mechanism which could be legalized under a comprehensive legislation relating to consumer protection to be enacted by the union government based on the only model Bill—‘the Madhya Pradesh Consumer Protection Bill, 1984’ which was introduced in the State Legislative Assembly in April, 1984 for making an enactment.¹³ The legislation is to deal with problems with a broad spectrum of consumer satisfaction so as to prevent injustices to the consumers. The mechanism under the legislation should be flexible enough in its approach and policies to evolve systems, lay down policies and train a cadre of workers to defend the rights of consumers and solve their grievances outside the legal framework and if necessary to take the matters to the court of law in those circumstances where it is absolutely necessary in wake of violation of the consumer’s legal rights. The comprehensive consumer protection legislation is meant for the creation of many channels for the speedy redress of consumer grievances, so that a frustrated and powerless consumer should have sufficient number of options before him to choose, when he is confronted with any problem in the marketplace. The proposed legislation must provide the specific role of all the consumer protection societies, state governments, social welfare organizations and above all the central government. This will also not only help the consumer, but it will also help in resisting the price spiral of the commodities which is taking place without any rationality in the country. In the proposed legislation, some apex body in the form of some national organisation of consumer ombudsman

¹² Milton Friedman, *Capitalism and Freedom* 30 (1962) (The italics are Prof. Friedman’s). This is also the view expressed by ‘the Federation of Indian Chambers of Commerce and Industry’ while commenting on ‘the Madhya Pradesh Consumer Protection Bill, 1984’, *The Times of India* (New Delhi) 15 July, 1985, p. 11.

¹³ ‘The Madhya Pradesh Consumer Protection Bill, 1984’ was prepared by the Consumer Protection Sub-Committee of the Madhya Pradesh Law Commission under the chairmanship of R. K. Nayak—the author of this project study.

should be created to have liaison with the industries, distributors and the sellers at the lower level. What are the problems the consumer is confronted with and what role consumer ombudsman can play is to be discussed in a separate chapter of this study.

THE SYNOPSIS

In the project study, an articulated attempt has been made to understand the need of a separate consumer protection law and to know the intrinsic merit of the philosophy of consumerism and the relevance of its pragmatic contents to India's socio-economic conditions. The development of consumer protection laws and the movements in the U.S.A., U.K. and Europe, Australia and some Asian countries have also been referred wherever it was necessary to do so. Thereafter, the role of the union and state governments with regard to consumers' interest in relation to producers' interest, development of public policy and the legislative enactments and their relevant provisions aimed at protecting the consumer in one form or the other have been dealt with at length.

The frauds on consumers is one of most vital areas covered to analyse the causes of exploitation to which they are confronted with in buying products in the marketplace. What are the responsibilities of sellers for quality control have also been discussed here.

Implied warranty of merchantable quality or fitness of goods for particular purpose dominates in the field which is an important aspect of consumer transaction. Sometimes the product may be merchantable, but still it may not be fit enough for consumption. In that situation how law will come into play and protect the interest of consumer is an interesting issue to think about.

In an affluent society the emphasis on economic activities shifts from essential goods to non-essential goods. But the Indian economy cannot afford to have emphasis on non-essential products. In India millions still live under very poor conditions and don't have basic essential commodities. Therefore, India at present does not need a very sophisticated technique of persuasive advertising in order to stimulate the desire of the consumer, but a technique of truthful advertising which may reveal proper contents, quality, usefulness, sturdiness and suitability for the people and their environment.

The human mind has been worrying about adulteration and much needed care for health. Problem of sub-standard goods is so acute that it covers the entire field of production. The problem is so serious that vital food and drugs which affect health of the people in general need attention of the government and more particularly of the consumers to

be tackled conscientiously and articulately with great devotion, sense of urgency and commitment.

Adulteration of drugs and its elimination through various drugs control measures is considered to be an important form of consumer protection. The Constitution of India puts an obligation on the union and state governments to take care that the adulterated and sub-standard drugs are not marketed in the larger public interest. The adulteration of drugs as found in India needs drastic curbing of the trade dealing specially in spurious and sub-standard drugs.

One of the main objectives of consumer protection is to defend the genuine rights of the consumer from unfair and deceptive trade and marketing practices. In this regard consumerists have been thinking and seeking new legal means to enable consumers to protect their legitimate rights from false and deceptive trade practices.

Price is a very complicated concept which is altogether different than what is understood by the producers and consumers. Producers and merchants are interested only in the profit making rather than to understand the concept of price. Price control on the products of Indian industries to a great extent influence the economy. India's socio-economic conditions and the stage of industrialization demand some kind of control in order to make available essential commodities at the government fixed prices directly or indirectly. A proper balance between the interests of producers on the one hand and of the consumers on the other is to be kept in view constantly while devising or arriving through the particular method for price fixation.

In the interest of vast consuming masses, it is necessary to establish a new institution of consumer ombudsman to have a watch-dog authority to regulate the business and to see that high standards of business are maintained through the laws. The establishment of this institution will be a new experiment in India but it is worth giving a trial in solving the problems of consumer and thereby adopting a positive step in the direction of consumer justice in the marketplace. This new institution has been envisaged first time in India by the state of Madhya Pradesh in the Part 3 in clauses from 35 to 45 of 'The Madhya Pradesh Consumer Protection Bill, 1984' (see Annexure 1).

The well-thought out suggestions formulated after careful considerations of the problems of the consumers in India will serve as guidelines to envisage and build a strong movement with people's participation in a democratically conceived legal order. The consumer movement through law and its instrumentalities is to create consumer awareness which has to take roots in the country. The basic rights of the consumer need to be created specifically, as suggested earlier, to reduce and gradually eliminate inequality of