

Original Paper

Consumer Protection: Policy and Law in India

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Abstract

Consumer Protection Policy creates an environment where consumers receive satisfaction from the goods or services availed by them. One of the disquieting features of consumerism is that an average consumer continues to suffer due to poverty, illiteracy, ignorance or general apathy. Adulterated food, spurious medicines and substandard domestic appliances etc., are pushed over the counter with ease. Glossy and unethical advertisements are published in the print and electronic media with intent to allure and dupe gullible consumers. So, it becomes imperative for the State to initiate steps for safeguarding the interest of consumers by enacting suitable legislations. The present study is a modest attempt at ascertaining the need for consumer protection, identification of factors responsible for exploitation of consumers, and the role law can play in protecting consumer rights visa-a-vis the vendors and in striking a balance between the interests of the two.

Keywords

caveat emptor, consumer exploitation, consumer grievance, consumer protection, unfair trade practices

1. Introduction

In the present day market driven economy, consumer is the pivot around which the whole of the marketing system revolves. Marketers undertake studies to precisely ascertain the needs of the consumers, so as to provide goods or services accordingly. However, from the practical point of view, modern day consumers are subjected to various forms of exploitation. In fact, consumers all around the world are victims of poor quality, unsafe goods, under-measurement, adulteration and false promises.

They continue to suffer and lose a lot year after year due to adulteration, quantity and quality deceptions. In the contemporary marketing environment, consumer ultimately becomes a “slave”

though in the marketing parlance he is considered a “king”. Modern day marketers, armed with advanced techniques coupled with persuasive powers of promotion and advertising, are in a far better position to exploit the consumers, including the highly educated urban elite. Deceptive advertising, misleading promotion, offers of gifts, discounts, false assurances, poor quality of goods and services are some of the unfair trade practices which consumers are often subjected to. In short, modern day consumers are, more or less, at the mercy of sellers. Therefore, there is a felt need for effective consumer protection.

2. Need for Consumer Protection

In the process of sale and purchase, the parties concerned, i.e., the seller and the consumer are expected to achieve mutual benefits, the former getting a reasonable profit and the latter getting goods and services of desired quality and quantity at a reasonable price. Due to exploitative measures adopted by the influential trading community, mutual trust, the very foundation of seller-consumer relationship, gets severely undermined. The imbalance that arises therefrom takes the shape of serious social problems, and hence the society urgently needs to evolve ways and means to balance the conflict of interests. The support that the society extends to the consumer to neutralize the adverse effects of various forms of exploitation resorted to by the business is known as consumer protection.

The concept of ‘Consumer Protection’ addresses the problems of the buyers in the sellers world. It protects, defends, safeguards them from injury, attack, invasion, loss, and injustice. There are individuals or groups in society who by virtue of their unenviable socio-economic position are ignorant about their rights and as such unable to safeguard their interest which results in their exploitation and suffering. Such category of people needs to be protected by the society, which may be provided in two distinct ways. Protection, in the first place, is tacitly transformed into guidance and is applied to people, who though not strictly incapable of managing their affairs, are in all likelihood unable to protect their interest. Secondly, protection may be made to include arrangement for safeguarding, not only the special classes but also all citizens as a whole against lapses which can be avoided by a consumer of ordinary prudence with a small dose of care and caution. The first form of protection may be afforded to the consumer by providing adequate information about various products or services, which would guide him to make an effective purchase decision. The second one involves prescribing certain duties and responsibilities to rein in the business community and if necessary imposing ban on certain products or services.

3. Causes of Consumer Exploitation

Factors that contribute to the consumer becoming victim of exploitation can be broadly divided into three categories-Social, Economic and Legal. Any one element out of the projected three is potent enough to bring to shambles the so called principle of consumer sovereignty but as commonly observed, all the three taken together or in twos, operate in league and thereby completely dupe the consumers in

the market place. The first being the social issues which can be identified with certain specific characteristics of a given society and may broadly be geographical, historical, cultural, moral or ethical. A particular society has its own social, moral and ethical mores that tend to develop a fixed pattern of behaviour irrespective of advantage or disadvantage inherent therein.

The second, i.e., the economic issue, where the consumer can be undermined in economic terms, is the value or the ratio of satisfaction derived in comparison to the money paid for availing any product or services.

The third and the last one is the legal issue, i.e., law as an instrument of social control can strike a balance between the conflict of interest existing between the consumer of goods or services and the providers thereof under the value system of a given society.

3.1 Poverty and Ignorance

Poverty and ignorance are the two major social evils which, taken together, have the capacity to accentuate social exploitation. Poverty is associated with scarce economic means which cripples a person from meeting even bare necessities of life.

Ignorance is associated with lack of proper knowledge or education which results in incapacity to judge and choose things in their right perspective.

These two socio-economic factors could be illustratively said to be the two segments of a vicious circle. When a consumer is poor, his bargaining power in the market place is strikingly less as he has either a small amount of money or no money at all at his disposal. More often than not, it is the poor who fails to complain and resigns to his fate having been exposed to the exploitative propensities of the one with whom he trades. This may be either due to lower expectation of success of his cause or hesitation on his part to jeopardise his relations with the trader.

3.2 Lack of Information

Knowledge is key to the solution of major consumer problems. In a free market which promotes competition, consumer is expected to exercise his right to choose and thereby satisfy his needs effectively. But lack of information about the product, availability of similar products under varied brands, products capable of multiple uses, etc., hamper his sovereignty. Lack of information may manifest either in complete ignorance about the product or services or the absence of sufficient information required for proper evaluation of the pros and cons of the product or services. Total ignorance about a product or services not only affects the poor and the under, privileged section of the society but also the entire spectrum of consumers alike. So far as access to information is concerned, the rich, educated and affluent consumers stand on a better footing than their poor, uneducated and underprivileged counterparts.

The market is now flooded with varieties of goods and services having similar or marginally different characteristics, under various brand names produced and marketed by different producers or sellers. Not only the products are complex but also the prices of such products are fixed in such a manner that it necessitates a lot of information to reach a proper purchase decision. The more the necessity of

obtaining the information, the more difficult it becomes to acquire. With the best of his knowledge and experience, the consumer is no longer able to ascertain the quality vis-a-vis the price of the products or services, the villain being the technical complexities of such products and services.

When the consumer cannot rely on his prudence and the information available in the market is not reliable, he has no other go but to depend on information provided by the seller which is generally biased or insufficient and hence stands as an impediment in the achievement of consumer sovereignty.

3.3 Lack of Grievance Redressal

The dissatisfaction of the consumer in availing goods and services as per his expectation gives rise to consumer grievance. In the days when the market offered a limited number of products which were simple in nature, the buyer had the opportunity to detect the defects. In case of any complaint regarding quality, quantity or price, the issue was resolved amicably between the buyer and the seller concerned as, in most of the cases, they were known to each other. In modern times, consumer grievances stem from the increasing complexities of products and services and also from the complex nature of marketing. When the process of production and marketing becomes associated with umpteen unethical practices like misrepresentation, fraud, deceit etc., the grievances become all the more serious.

Grievance culminates in the consumer seeking redressal. Due to the impersonal buyer-seller relationship and ambiguous placement of responsibilities while grievances increase, the probability of their satisfactory resolution decreases. There is a manifest imbalance of power when the consumer confronts the business with his grievances. The consumer is no match for a seller because of its larger than life image in the market. Financial resources at the disposal of the seller is enormous in comparison to that of the consumers. The trader, with his organised professional fraternity, panel of expert advisers in the field of law, commerce and public relations and his symbiotic relationship with the government and trade unions, is almost invincible. So far as the consumer is concerned, inconvenience, time and the cost factor stand on his way to a legal recourse. Such inherent drawbacks deprive the consumer of his right to seek redress of his grievance.

3.4 Sales Promotion Methods

Sellers actively and deliberately influence the buying behaviour of consumer in favour of goods and services provided by them. At times, consumer is not able to decide what is best for him because his preferences are moulded by circumstances. Sales promotion techniques like advertisements, prizes, discounts, product warranty, samples, coupons, free trials, free offers, cash refunds etc. are some of the external agents responsible for such manipulation.

Though many of these sales promotion methods theoretically appear to be beneficial to the consumer, in real practice they are not. Dishonest manufacturers and sellers use these tools to lure the consumer to purchase goods or services of such quality and quantity and at such prices, which the consumer would not have normally availed, without such allurements or had he been provided with adequate information about the same.

3.5 Unfair Trade Practices

Consumers are also victims of exploitation by unfair trade practices resorted to by manufacturers, distributors or retailers with the objective of inducing them to make a purchase through false representations about the quality, quantity, standard, composition etc. of the goods or services. It is an unfair trade practice to make a false representation about the goods or services, that they were of a particular quality, composition or model or to push reconditioned or renovated goods as new ones or to represent that goods have features or characteristics which they lack or to make false or misleading statements regarding the utility thereof. On the price front, various traders also resort to unfair trade practices through deceptive pricing to attract consumers and thereby inducing them to make a purchase. The impact of unfair trade practices is most conspicuous amongst the underprivileged classes of the society, as they are more susceptible to the allurements of the offers and thus fail to understand the ulterior motive existing behind the same. Such practices are not only unfair, and unethical affecting the individual consumer but also to the society at large.

3.6 Adulteration

Adulteration is another cause of consumer exploitation. Many unscrupulous traders use this process to harvest easy and fabulous gain without taking into consideration the injuries likely to be inflicted on the ultimate consumers. The menace of this practice is widely felt in the field of food and drug items. Food items are normally adulterated with substandard categories of the same item or by mixing certain alien substances, the admixture of which is not easily detectable in the ordinary process of examination. Similarly, drug preparations are adulterated with certain substances which de-potentialize, nullify the efficacy of such drug and render it toxic. Due to poor purchasing power and ignorance of consumers, it becomes difficult on their part to detect adulterated food and drug items. It is only when adulteration results in health hazards, realization dawns on the common man about his victimization.

The legal measures to prevent adulteration are so technical that it becomes virtually impossible to take the adulterators to task. Even though at times they are punished, the quantum of punishment hardly acts as a deterrent. Hence, the practice goes on unabated and the consumer pays heavy a price not only in terms of money but also in terms of health and happiness.

3.7 Monopoly

The practice of monopoly limits consumers choice and thereby affects consumer sovereignty to a large extent. In general term, the word monopoly refers to a market where there is a single seller of goods or services whereas in Economics it is linked with the degree of competition prevalent in the market. Monopoly is said to exist when a certain firm is the sole producer and seller of a product or services without any competitor. The freedom of choice that the consumer enjoys under free competition is lacking in a monopolistic market. The consumer is not in a position to exert any influence on the pricing of the goods or services and is virtually forced to go for goods or services at the price predetermined by the provider.

4. Legal Doctrines and Principles

The purpose of legal doctrines and principles are to protect the rights of individual or groups. However, in certain cases they have proved to be detrimental to some specific groups as mentioned below.

4.1 Privity of Contract

The doctrine of privity of contract, so beloved in the common law, is a distorting factor in the law of consumer protection. The general rule of common law says that no one but the parties to a contract can be bound by it. Under the principle known as privity of contract, a third party cannot be bound by the terms of a contract to which he is not a party nor can he benefit therefrom. At a point of time it was thought that if the person who was to avail benefit under the contract was related by blood to the party, right of action would rest with him. But this benefit even to blood relation was denied in the 19th century, and the principle was applied with all stringency during the early days of the present century. The notable opposition to the application of this rule came from Lord Denning who dubbed it as a 19th century innovation. However, his view did not find favour with the House of Lords.

This doctrine made a distinction between buyer and consumer and prevented the ultimate consumer from seeking legal redress in the event of loss or damage caused to him, if he himself was not the buyer.

4.2 Caveat Emptor

In the era of laissez faire, any restraint on the liberty of an individual was looked upon with disfavour by the society. There was a presumption that each individual was the best judge of his own interest. In this golden age of individualism, it was assumed that a buyer would exercise all care and caution while making a purchase. From this assumption developed the maxim of *caveat emptor*- "Let the buyer beware". The maxim envisaged that the seller could be relieved of the obligation to make disclosures about the quality of the product. Even an enlightened consumer of soaps, drugs, fruits, radios, cars and other commodities of everyday use, is unable to judge the quality of the commodities, as it cannot be expected of him to fully examine the goods on the spot and reach at the right buying decision.

It was only in the 19th century that the law of Sale of Goods underwent a sea change. The courts also developed the theory of sale by description to restrict the application of the doctrine. Even changes in the law relating to Sale of Goods and change in the judicial approach could not effectively protect the consumer from the application of the doctrine.

4.3 Standard Form of Contract

One of the most important developments in the sphere of contract during the last century has been the appearance of the standard form of contracts or contracts of adhesion. The idea of an agreement freely negotiated between the parties has given way to the necessity of a uniform set of printed conditions which can be used repeatedly and for a large number of persons. Theoretically a standard form of contract devised by the supplier has either to be accepted or rejected by the consumer. But in reality a consumer has no option but to accept it, since he does not negotiate, but merely adheres to it. This principle curtails to a large extent the right of freedom of contract as there is no room for independence

of the parties to decide the terms of the agreement by mutual negotiation. Today, an active consumer enters into scores of contracts every day every week without in the real sense agreeing to the terms and conditions for the very reason that these terms and conditions are imposed rather than agreed upon; they are mostly unfair as the consumer is wrongly presumed to have assented to the propositions mentioned in the written agreement.

4.5 Inaccessibility to Law

Consumer protection is mainly a matter of civil law. So far as the individuals redress is concerned, this branch of law makes good the loss suffered by providing for damages. A glaring flaw of this law is the fortuitous nature of its enforcement. A large section of consumers fail to take advantage of the law because of the ignorance of legal procedure and lack of financial resources to institute legal proceeding. When the consumer makes a cost-benefit analysis, the meagre quantum of relief that is expected after a prolonged legal battle deters him from exercising his right to redressal of his grievance.

5. Law and the Protection of Consumers

Out of the two parties, i.e., the buyer and the seller, usually the former, is the weaker. This is also true in the case of employer-employee and landlord-tenant relationship. Employees are given protection under various legislations intended to promote their welfare. Similarly, the interest of tenants is protected under the rent control law. In view of the above facts, it becomes all the more necessary to protect the consumer from unscrupulous practices adopted by goods and service providers, be it for unsatisfactory telephone service, dirty railway compartments, adulterated food, unsafe buildings, hazardous toys, faulty gas stove or false and deceptive advertisement.

When self-help fails to protect the individual, it becomes necessary on the part of the State to interfere and accord necessary protection to those whose interests are at stake. To achieve this objective, law acts as an effective instrument in the hands of the State. In a pluralistic society, where there is a perpetual conflict between the interests of various groups, law balances such conflicting interests in order to achieve social harmony. In the early times, law was primarily meant for maintenance of peace. In contrast, the modern state has become a welfare state with obligation to provide a wide range of social services and securities. The welfare state is a compromise between the two extremes of consumerism one the on hand and the unbridled individualization on the other and as such, despite imperfections, it sets a pattern for any progressive human society. A welfare state is the institutional outcome of the assumption of responsibility by the society for the general well-being of its members. With the change in its objective from *laissez-faire* to welfare, the modern State as and when necessary, plays a pro-active role and interferes in the economic matters keeping in view the larger interest of the weaker sections of the society.

The primary purpose of consumer law is the same as that of any other law, i.e., advancement of justice which is the constant and perpetual will to render to everyone to what he is entitled. Justice is identified with a certain attitude of human mind, a willingness to be fair and readiness to give recognition to the

claims and concerns of others. Clearly, a society depends on the interaction of the will of its members, exchanging benefits and burdens, setting rewards and punishments and seeking equitable distribution of the scarce resources. The foundation of law is not force but justice and as an instrument of which law constitutes a deterrence to the forces responsible for disintegration and depersonalisation of individuals.

In the process of market transaction, for justice to prevail, the parties concerned i.e., consumers and sellers, are expected to give each other their legitimate due. A reasonable profit is the sellers due which consumers ordinarily do not hesitate to provide. In return they expect the supply of goods and services of reasonable standard of quality, quantity and price as their legitimate claim. Invariably, greed prompts the business community to deprive consumers of their reasonable due by adopting various unfair trade practices. Such an attitude gives rise to the necessity of law prescribing norms and making it obligatory on the part of the business to provide the consumers what is socially, morally and of course legally their due. Hence, consumer justice requires the sellers to liberate themselves from their exclusively aggrandising impulses and help the consumers avail their reasonable due.

Principle of justice aims at establishing equality among the individuals and groups in a society and its distributive aspect is primarily concerned with the allocation of rights, powers, duties and burdens amongst them. Such concept of justice emphasises that every individual should be given full chance to lead a good and worthwhile existence. Equality promotes justice, whereas inequality breeds injustice. It is the prime concern of every orderly society to deliver justice and to do away with injustice. Law is invariably used as an effective tool, for achieving such a goal. Law promotes equality by allocating rights, duties and power, etc., among individuals or groups in such a manner that the existing inequality is minimized to the maximum extent possible.

The consumers and the sellers are two major groups into which the entire population of the society can be divided. The dominance of the sellers over the consumers is the outcome of the inequality of power the two groups enjoy. In order justice to prevail, such inequality has to be removed, so that the consumers can prosper and lead a worthwhile existence. With such objective in view, consumer laws have not only recognised the various rights of the consumer but also prescribed a number of duties and responsibilities with a view to enhancing the power of the buyers, while curtailing the same of the sellers, so as to put them on equal footing.

To protect the Consumers, in 1986 the Consumer Protection Act was enacted by the Parliament. In 2019 major changes were Incorporated in it. The notable changes are:

- i. Definition of the term “consumer” has been widened to cover persons who buy goods through e-means;
- ii. The pecuniary jurisdiction of the District, State and the National Commissions have been enhanced;
- iii. Flexibility has been brought about in filing of consumer complaints. A consumer can file even at the place of his residence. There is also provision for e-filing of complaints and hearing through video conferencing;

- iv. Provision has been made for the establishment of a Central Consumer Protection Authority, with wide powers of enforcement and an investigation wing headed by a Director General;
- v. The product manufacturer, product service provider and product seller are all made liable for claims of compensation;
- vi. Unfair trade practice now includes sharing of personal information given in confidence by the consumer;
- vii. Provision has been made for higher fines and imprisonment for misleading advertisements; and
- viii. Mediation has been provided as an Alternative Disputes Resolution mechanism for settlement of consumer disputes.

Needless to say, the changes aim at providing a bigger and better umbrella of protection for consumers against unfair trade practices as well as for on-line transactions and e-business; and also for ensuring quicker justice.

References

- Mohanty, S., & Nabi, M. I. (2014). Deficiency in Service and Judicial Response. *IIM Journal*, 3(1), 171-187.
- Nabi, M. I. (2014). Consumer Education and Awareness. *DIRD Rays*, 1, 16-22.
- Nabi, M. I., & Nabi, M. K. (2013). A Critical Appraisal on Consumer Protection: A Study of Service Sector Redressal in the State of Odisha. *IIM Journal*, 2(1), 87-88.
- Nabi, M. I., & Nabi, M. K. (20198). Consumer Protection: New Age Challenges. *The Orissa Journal of Commerce*, IV, 66-75.
- Nabi, M. K., Nabi, M. I., & Raut, K. C. (2015). *Consumer Rights and Protection in India*. New Century Publications, New Delhi.