

Consumer Protection in India

“Jago grahak jago” or “customer is the king” are some of the slogans that we often have come across in our daily lives and must have caught our attention at some point in time. These slogans are aimed at creating consumer awareness and advocating importance of consumer. Of late there is growing emphasis on consumer protection in India and this is especially important in economically booming economy as rightly said and observed by John F. Kennedy in the year 1962 when he recognised the importance of consumers and regarded them as important segments of society that drove the economy.

In today’s liberalised India where goods and services from across the world are just at a click away and are at the door step away, the consumer is definitely an important class and running the economy and it is equally important to protect the interest of this consumer as this leads to overall increase in standards of products or services offered thereby positively impacting the manufacturing and service provider sectors of industry and thereby contributing to growth of the economy.

India always had a culture of valuing consumer or the customer. This can be found in the ancient text that mentioned about the manner in which customer should be treated or in early modern times when the Mahatma Gandhi remarked that customer should be treated with respect as he is precious and does a favour on the seller by coming to him for buying things. Consumer interest was for the first time spoken about in the United States of America as mentioned above by President John F. Kennedy who presented the consumer Bill of rights and mentioned about the four rights:

- Right to safety,
- right to choose
- right to be heard,
- right to information

And these rights finally made their way to United Nations in the year 1985 and finally into framework of laws of countries around the world including India echoing the thought of consumer interest and protection. India passed the Consumer Protection Act in the year 1986 which aimed to provide for better protection of consumer interest and made provision for the establishment of consumer council and settlement of consumer disputes and matters connected therewith. This act has been passed in addition to the already existing laws that were protecting consumer interest though this is an act that is specifically aiming at providing a speedy and effective mechanism for resolution of consumer disputes. There are many other Acts that were already in force that were protecting consumer interest as mentioned above but were only preventive and punitive in nature that is providing preventive steps, the Consumer Protection Act on the other hand besides providing an alternative mechanism for consumer dispute is also providing compensation for the injustice done towards the consumer taking consumer protection to another different level.

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The present article aims to describe all laws with special emphasis on the Consumer Protection Act, 1986 and the repercussions of the hereby mentioned Acts on consumer protection in India.

Consumer protection though has been consolidated in full-fledged law but these principles have always been enshrined in law of the country. As mentioned above there are various laws in the country with varied subject matter that are operating in specialised fields and still manage to cooperate consumer interest and protect the interest of the consumer. It is first important to understand what is a consumer or a customer and then one can endeavour to understand what comprise consumer interest, the laws operating in the said field and how the rights of the consumer can be enforced.

What is the meaning of “consumer” or “customer”?

A consumer or customer is a person who buys goods or hires services. This person in exchange of a consideration or a price seeks goods or hires services from a trader or service provider respectively. The Consumer Protection Act, 1986 has enlarged the definition of consumer and includes a person who has bought the goods or hired the services for earning a livelihood. The Supreme Court of India has held that the said Act excludes a person from the definition of the consumer who has purchased goods or hired services for any activity directly intended to generate profit or commercial activity and thereby all other persons who buy goods or hire services are consumers within the definition of consumer under the Consumer Protection Act and those who intend to buy goods or hire services for the above mentioned that is an activity to generate profit is excluded from the definition of consumer under the said act.

Consumer interest:

A consumer interest lies in the fact that the consumer gets goods or is provided with services that he sought for in the first place in exchange of price or consideration that he paid. This interest is harmed in case he is provided with a good or service that suffer from defects or some kind of deficiency. In this case, injustice is done against him and he suffers a loss not just which is monetary as well as mentally i.e. loss of getting a defective good or deficient service which is of no use to him. The consumer protection act, 1986 aims to protect the same and a consumer can enforce his right under the said Act. There are some other remedies also available to this consumer or customer under some other acts that were enacted before enactment of consumer protection Act, 1986 and some acts passed after the enactment of 1986 Act whereby consumer protection is embodied.

Acts under which “consumer interest” can be enforced:

India has adopted the British Common law system whereby the person has a right under common law to enforce his inherent right against any civil wrong done to him. This is under the broader category of law of torts. A person in case suffers any injury then; he may seek or recover damages

against the wrong doer by action under Torts under various heads that includes negligence, product liability (for defective consumer products), defamation etc.

With respect to consumer interest and protection, an action under negligence can be brought against the wrong doer by proving that the wrong doer had duty of care towards the sufferer, there was a breach of duty, an injury was caused to the sufferer by the act of the wrong doer, the injury was the result of the breach, injury was not remotely linked to the breach and due diligence could have been exercised by the wrong doer. Manufacturer duty towards the customer may be categorised under this duty of care. The old English case of Donoghue V. Stevenson is fundamental case on Product liability. In the case, Donoghue sued the manufacturer for the damages for the loss caused to her by drinking a canned ginger drink containing a snail which made her ill. The seller of canned drink was not aware of the presence of the snail in the drink and the manufacturer had provided the canned drink to the seller and had not directly provided the drink to Donoghue. The House of Lords held that the manufacturer was liable to pay damages to Donoghue for the loss suffered by her as the manufacturer owed a duty of care to Donoghue which was breached. The House of Lords observed that manufacturer could have reasonably foreseen that drink was safely poured in the can thereby the can safely being contained with the drink. The House of Lords observed that there was failure on the part of the manufacturer in the present case and the manufacturers could have reasonably foreseen that failure on their part would have caused harm to the consumer who might be consuming the said unsafe drink.

Under Indian law, there are some Acts that echo the sentiment of Consumer Protection. The Contract act of 1872 governs the contract between seller and the buyer or the consumer in the present case and consumer can enforce his right against the seller in case the product for which the contract had been entered by the seller with the consumer in exchange of a price suffers from some defects or is not in accordance to the contract entered. The Sale of Goods of act that was passed in 1930 mentions about various conditions and warranties by which a seller can be held responsible to the buyer in case the conditions for the sale are not satisfied.

The drugs and Cosmetics act 1940, the Drugs Control Act 1950, the prevention of food adulteration act 1954, the essential commodities act 1954, the standard of weights and measures act, 1985 are some of acts that lay down standards for quality and quantity of goods. These acts aim to prohibit various unfair and restrictive practices that cause loss to the general public who are consumer or customer of goods covered under the respective Acts. These Acts are punitive and preventive. For example, the Prevention of Food Adulteration Act prescribes standards for good quality of foodstuff and prevents adulteration of foodstuff that is mixing the foodstuff with substances affecting its quality and quantity. The act makes adulteration of food stuff an offence. Recently the Competition Act was passed in 2002 repealing the Monopolies and Restrictive Trade Practice Act, 1969 and aimed to encourage fair competition and discourage monopolisation and also had provision that protect the consumer interest. There are certain certification mark that certify product have complied with the standards prescribed by Bureau of Indian standards or Directorate of Marketing and Inspection acting as advisory to the consumer who are buying the

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goods about the quality of goods. These include ISI mark for industrial products including majorly electronic items, AGMARK for food stuff or agricultural products and BIS Hallmark for purity of gold ornaments.

The Consumer Protection Act, 1986

The Consumer Protection Act, 1986 is the special social welfare legislation passed by the Parliament of India to protect consumer interest and provide a speedy, inexpensive and an effective dispute resolution mechanism with respect to disputes pertaining to consumer interest.

The act embodies:

- Right to safety whereby the consumer is protected against the marketing and advertising of goods and services that are harmful or hazardous to life of the consumer.
- Right to be informed about the quality, quantity, purity standard and price of goods and thereby protect the consumer from unfair trade practices that might be followed by some traders. Unfair trade practice includes for example selling food stuff below the quantity mentioned on the label of the packet selling that item or mixing of the food stuff with harmful substances.
- Right to choose includes that consumer shall have access to variety of goods or services at competitive prices that may include choice of consumer to reject the good in case it comes with an offer of something coming free with it and may ask for a that product without the said offer.
- Right to be heard advocates that consumer interest shall be heard and the consumer shall be provided with the opportunity to speak about his interest and violation in case it happens at the forums that are in existence for the respective cause.
- Right to seek redressal includes the right to seek damages or recovery from any loss accounted on the basis of any unfair trade practice.
- Right to consumer education includes providing adequate and essential knowledge with respect to goods and services offered so that the consumer can make informed choices. These include descriptions of contents, quantity displayed on the labels attached to the goods and services.

The department of consumer affairs has also through campaigns like “jago grahak jago” helped in spreading the message to the consumer to make informed choices about the goods or services which they wish to buy or hire and help in spreading awareness about the various rights held by consumers.

The Consumer Protection Act, 1986 has been passed embodying the above mentioned. The act has been made applicable to goods and services of any description and is an addition to already safeguards mentioned in the above mentioned acts. These goods and services includes foodstuff offered in market to electronic items offered on sale to services offered by airlines to even education imparted by educational institutions. Recently there are judgements of various forums established under the act whereby the educational institution were asked to refund the fee in case

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the student left the course before the term making “imparting of education” come within the category of services under the act and the “student” under the category of “consumers”.

There are various cases brought before the authorities established under the act whereby orders have been passed for variety of goods and services. For example, in Ford India Pvt. Ltd V. N. Ranghanath, the commission observed that there was duty of the manufacturer under the law to provide a defect free vehicle to the purchase and held that district forum was justified in holding that opposite part that is Ford India was deficient in providing services and awarding compensation to the complainant that is sufferer, the consumer.

The Act further makes the provision for the establishment of consumer Dispute Resolution Forums or commissions. These forums are quasi-judicial forums established under the 1986 act for hearing the dispute and resolving them. There are three dispute resolutions forums and on the basis of the below mentioned territorial and pecuniary jurisdiction, the complaints can be filed.

- At the district level, there is district consumer dispute redressal commission or district forum. Complaints can be filed in district forum within whose jurisdiction any of parties reside or in case cause of action accrued in within the respective jurisdiction. The district forum entertains only those matters where total value of the goods or services or damages sought are not exceeding 20 lakhs rupees.
- At the state level, there is state consumer dispute redressal commission or state commission. Each state is provided with its own state consumer redressal commission. Each state consumer redressal forum entertains complaints of those parties who reside within the respective jurisdiction of the commission or in case cause of action arose in respective jurisdiction of the State. The forum entertains only complaints where the value of the goods and services or compensation in total exceeds 20 lakhs rupees but does not exceed 1 crore rupees and entertain appeals too from respective district consumer dispute redressal forum.
- At the national level, there is national consumer dispute redressal commission. The forum entertains only complaints where total value of goods or services or damages claimed is more than 1 crore rupees, it entertains complaints and appeals from orders of state consumer dispute redressal forums. It is situated at New Delhi.
- Appeals from the orders of national commission shall lie with the Supreme Court of India.

These forums comprise of one President and two members in case of district and state forums and one president and four members in case of national commission. The President is the presiding officer of the commission and shall be a retired Judge of district court in case of district forum, a retired Judge of High Court in case of state commission and retired Judge of Supreme Court of India in case of National Commission. One member of each of these commissions shall be a female member. Circuit benches of the National Commissions are now being appointed to cater more and more cases throughout India.

These forums provide a speedy resolution of dispute whereby the matter is fixed up for hearing within 30 days of receipt of notice of the complaint to the opposite party that could be the trader, shop owner, manufacturer etc. These Forums do not follow elaborate court procedure for resolving the dispute or adjudicating the dispute. Adjournments orders are not generally passed thereby encouraging speedier resolution of disputes. Adjournment orders are basically those orders that are passed by courts or quasi-judicial bodies like the above mentioned commission whereby the proceeding of the forums are suspended for a time and postponed to a future time or place.

A consumer or complainant i.e. person who makes the complaint can make a complaint containing allegation to these forums established under the act with respect to:

- Unfair or restrictive trade practice that is quality of the good is below standard prescribed for the same.
- Goods bought suffer from defects and these may include spurious goods that are these goods are not genuine or are fake or imitated copies.
- Services that are hired or to be availed suffer from some deficiency.
- In case price charged for the goods are in excess to the price displayed on the cover or price fixed for the same by virtue of law in force or price agreed by the parties.
- In case the goods offered are in contravention to the prescribed safety standards or are risk to safety of consumer or the trader could have known after exercising due diligence that goods offered are unsafe.

These complaints are required to be filed in any of the above mentioned forums on the basis of territorial or pecuniary jurisdiction mentioned above within 2 years from the date when cause of action had accrued. However, these complaints may admitted beyond the said period if sufficient cause is shown by the complainant i.e. the one who makes the complaint but reasons for admitting the same are required to be recorded by the commission.

The complaint can be made by a consumer or lawyer authorised in this behalf or the state government or central government or a consumer protection organization or an heir of the sufferer.

The dispute resolution forum on proof of allegations contained in the complaint may order:

- Removal of the defect pointed out.
- Replacement of the goods with new goods of good quality.
- Return the price paid by the complainant for the goods or services.
- Pay as a damage or a compensation for the loss or injury suffered on account of negligence of the opposite party in case the forum is authorised to award punitive damages.
- To remove the defects or deficiency in the goods or services
- To discontinue the unfair trade or restrictive practice.

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- To not offer the hazardous goods and remove them from sale.
- To award adequate cost.

Some awards passed by the commission:

Recently, a bench presided by Justice Zaidi in district forum of Delhi has ordered a refund of the value of the goods bought. In this case, the good was a mobile phone and compensation was awarded. The forum held that the service provider was guilty of deficient services. The commission observed that the complainant has been harassed and deprived of the services of the mobile phone which has been purchased.

In another case, a forum recently directed an airline to pay compensation to a passenger for a 4 hour delay of his flight and causing mental harassment to the passenger.

In another case, a forum awarded punitive damages of 2 lakhs on the opposite party that was running a gym for terminating the contract of the complainant before the expiry of membership. The opposite party was asked to pay to the complainant damages for the harassment, psychological shock, humiliation and a sum for legal expenses.

The dispute resolution forum in case finds any allegations contained in the complaint as vexatious or frivolous than the forum shall dismiss the same and record reasons in writing for the same. The forum shall make an order that complainant shall pay to the opposite party a cost that is not exceeding 10,000 rupees.

The above mentioned are the variety of laws that operating in consumer protection field and aimed to protect the consumer interest and provide a mechanism for enforcement of consumer's rights.

There are some other mechanisms available to the consumer in case he suffers a loss or there is deficiency of services in some banking or insurance spheres. For example, banking operation come under category of services under the Consumer Protection Act and the customer of the bank in case of deficient services may enforce the right under Consumer Protection Act. The customer may also choose to apply to the grievance redressal cell of the bank or to RBI which is a central bank and controlling all the banks and their operations in the country. In case of any deficient service or harassment on the account of bank, the customer may complain about the same to the authority governing all banks in India, the RBI. In case any customer of insurance company suffers harassment by the insurance company then they may choose to apply under Consumer Protection Act or the IRDA that is Insurance Regulatory and Development Authority or the Ombudsman authorised in this behalf or in cases pertaining to security, then to SEBI i.e. Security Exchange board of India grievance cell or SEBI tribunal or grievance cell.

Conclusion:

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The above mentioned are some of the laws or mechanism functioning and fulfilling the objective of consumer protection in India and these are not an exhaustive list and there are many other acts which echo the thoughts of consumer protection and consumer interest.

It can be concluded that Consumer interest and protection of this interest is extremely important in an Indian economy and this can be clearly illustrated by the variety of laws that are in existence and are propagating ideas of consumer interest.

And thus, it can said and concluded that consumer rights, interest and their protection is not just important with respect to doing justice for the wrong or loss caused to them but also with respect to the growth of developing economy like India where the growth is required to be a sustainable and a qualitative growth which further can accelerate the economic growth of the country and in this respect, it is consumers or customer who play a pivotal role as they are the first to experience the nature of goods or services and by virtue of being daily users of goods or services can easily experience the nature of them and determine the future of many of these goods or services whether these goods or services shall be able to with stand the test of time and continue contributing to the national domestic product or the growth of the economy.

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