



CONSUMER PROTECTION ACT- AN EXPLORATORY STUDY FROM AN ACCESS TO JUSTICE PRESPECTIVE

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Introduction:

In this fast expanding consumer market post independence, protection of consumer interests in an equitable manner is a significant question. Initially the state assumed the responsibility to maintain the supply of essential commodities to the millions of its population who were previously been exploited in the market place.² However these laws to regulate the market condition and protect consumers from unscrupulous and deceptive market practices failed miserably in the new market condition.³ The legal and administrative measures remained primarily outside the reach of the majority of the poor consumers. It became an impossible task for an average consumer to take any step to redress her grievances regarding unsatisfactory service or goods. Consumers could hardly afford the luxury of availing the existing dispute resolution system in view of the expense and dilatory character of the process. Widespread illiteracy complemented with other existing access barriers within the system, majority of the consumers remained uninformed about the procedures and remedies available to them under the existing laws. The Supreme Court of India observed “*consumers were helpless faced against powerful business, described as network of rackets or a society in which, producers, have secured power to rob the rest and the might of public bodies which are degenerating into store house of inaction where papers do not move from one desk to another as a matter of duty and responsibility, but for extraneous considerations leaving the common man helpless, bewildered and shocked.*”⁴ These prevailing inadequacies in the legal framework coupled with

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² See Art 39(a) of the Constitution of India and the ‘*object and purpose*’ of the ‘*Essential Commodities Bill*’, ‘*Prevention of the Food Adulteration Bill*’, ‘*Monopolies and Restrictive Trade Practices Bill*’, Bureau of Indian Standards Act, 1986.

³ A new era in consumerism, K. Srinivasan, The Hindu, Oct. 31, 1999

⁴ Lucknow Development Authority v. M.K. Gupta, (AIR 1994 SC 787)

path breaking developments in international arena on consumer rights forced the Government in mid-nineteen eighties to search for better alternative and procedure to protect Indian consumers. These efforts culminated to enacting of the Consumer Protection Act.⁵ The law at its core aimed to adopt measures that facilitate consumer facing problems to secure justice in an effective and expeditious manner. The paper aims to offer an exploratory critique of this legislation from an access to justice perspective.

[I]. A Conceptual Basis of an “access to justice” perspective:

The concept of access to justice made its humble beginning as an idea to effectuate the existing dogmas in law to address the issue of making the institution of law accessible to all its beneficiaries. In its theoretical premise the concept represents a powerful reaction to a formalistic/dogmatic approach which pretends to identify the law with the “*system of norms*”.⁶ The access to justice theory tends to proceed from a criticism of formalism towards a more differentiated objective, more faithful to the complexities of human society. In its core idea it does not deny the normative component of law, but it is seen just as one element of the legal system. However, the principal elements of this approach are the people (with all their cultural, economic and social plurality), the institutions, and the processes from which the law originates, lives and evolves. The result of access to justice approach is a ‘contextual’ conception of the law.⁷ To exemplify, it no longer make sense to view or study law merely in its normative aspect: rather to analyze it within a framework in which the actors (parties, lawyers and judges), institutions and processes with its social, economic and cultural implications are also considered. Therefore what becomes predominant in this approach of study of law is the accessibility of the procedural phenomenon to individual, to the groups, to society. Thus generally: cost, duration, societal effects, means for adequate legal assistance for the poorer sections etc and their impacts on these actors are the central questions of any research involving the access to justice approach. The access to justice approach has become an integral part of policy discourses in many countries. The attractiveness of its symbolism has made it a convenient wrapper for many proposed changes in legal and institutional proceedings

⁵ Act 68 of 1986, enacted on 24th December 1986

⁶ Rene David, Sources of Law, Chapter 3, Vol-II, International Encyclopedia of Comparative Law, Mohr 1981.

⁷ Kelman, A Guide to Critical Legal Studies, Harvard University Press (1987).

and legal services.⁸ The access to justice approach is intimately associated with the rise of new tools at international and domestic consumer protection legal reforms.⁹

[II]. Vision of the Consumer Protection Act:

A new era started in Indian consumer jurisprudence with the enactment of the Consumer Protection Act.¹⁰ The Act is considered to be unique in several respects and argued to accommodate the basic features of the UN Guidelines on Consumer Protection adopted by the General Assembly in 1986.¹¹ It was drafted after in-depth study of consumer protection legislations in a number of countries and in consultation with representatives of consumers, trade and industry and other stakeholders.¹² It aimed at consolidating and amending the legal framework on consumer protection in India. The main objectives promoted in the legislations were recognition and promotion of six the rights of consumers namely safety, choice, information, consumer education, redressal and representation; strengthening and decentralization of administration of consumer protection and securing measure for consumer to get speedy and inexpensive redressal to consumer disputes. Explaining the noble objective of the parliament behind enacting this statute the Supreme Court of India expressed, *“the importance of the legislations in the opinion of its framers lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy and an attempt to remove the helplessness of a consumer, which he faces against powerful business.”*¹³

Promoting consumer awareness through education, enforcement of consumer rights and establishing simple, speedy and inexpensive grievance redressal mechanism for consumer were the major priorities that parliament aimed to address by incorporating this legislation. A three-tire quasi-judicial mechanism was established by the Act to provide speedy and inexpensive justice to consumers. Observing on the significance of the consumer forums in securing access to justice to consumers, the Supreme Court has observed, *“prior to the Act, consumers were required to approach the civil court for securing justice for the wrong done to them: and it is a known fact that decisions in a suit takes years. Under the Act, consumers are provided with an*

⁸ Garth, How Consumer Remedies Fail, 81 MICH. L. REV. 984 1982-83

⁹ Rickett & Telfer, International Perspective on Consumers Access to Justice, Cambridge Univ. Press, (2003).

¹⁰ Act 68 of 1986, Enacted on 24th December 1986

¹¹ UN Guidelines for Consumer Protection, Resolution No. 39/348, dated April 9, 1985

¹² D.N. Saraf, Law of Consumer Protection in India, , N.M. Tripathi (1990)

¹³ Lucknow Development Authority v. M.K. Gupta, (AIR 1994 SC 787)

alternative, efficacious and speedy remedy.”¹⁴ The consumer forums established under the Act in the apex court’s opinion were an alternative forum¹⁵ and empowered to follow such procedures which avoid delay of the proceedings¹⁶ and fulfill the goal of securing effective access to justice for consumers.

[III]. Features of the Consumer Protection Act to bolster effective access to justice for consumers in India:

Literatures on consumer protection are in an agreement that Consumer Protection Act is an unique piece of legislation, which meets the long felt necessity of protecting the average Indian consumer from such wrongs for which the remedy under ordinary law for various reasons has become illusory.¹⁷ The Act attempts to secure the long disregarded right of ‘consumers access to justice’.¹⁸ Some of these unique features deserve attention and are discussed below.

a. Creating a cheap and simple procedure for filing consumer complaint

The legislation enabled the consumers to file their complaints¹⁹ before the forums by merely submitting in writing their allegation in a plain paper. The court fees to be payable by consumers were kept moderate.²⁰ For appropriate assistance for disadvantaged complainants the complaint could be made orally, even though the complaint must ultimately be reduced to writing. Individuals can make a complaint without the help of a lawyer or other third party and with a payment of a moderate fee but it however did not deprive the parties of the right to be represented or assisted by a third party at any stage of the procedure.

b. Expeditious and cost effective dispute redressal

¹⁴ J.J. Merchant v. Srinath Chaturvedi [(2002) 6 SCC 635].

¹⁵ Synoco Industries v. State Bank of Bikaner & Jaipur [(2002) 2 SCC 1].

¹⁶ CCI Chambers Coop.HSG. Society Ltd. v. Development Credit Bank Ltd., [(2003) 7 SCC 233]

¹⁷ R.K. Nayak , Consumer Protection Law in India : An Eco-Legal Treatise on Consumer Justice, N.M. Tripathi, (1991), D.N. Saraf ,Law of Consumer Protection in India, , N.M. Tripathi (1990), Eradi, *Consumer protection jurisprudence*, (Butterworths , 2005) and in the International Conference on Consumer Protection held in Malaysia in 1997 organised by UN Economic and Social Council, the Indian Consumer Protection Act was described as “one which has set in motion a revolution in the fields of consumer rights, the parallel of which has not been seen anywhere else in the world” (A new era in consumerism , K. Srinivasan , Special issue with the Sunday Magazine from the publishers of THE HINDU, October 31, 1999)

¹⁸ Common Cause v. Union of India [AIR 1993SC1403]

¹⁹ Sec 12 of the Consumer Protection Act, 1986 (Act 68 Of 1986)

²⁰ Sec 12(2) of the Consumer Protection Act, 1986 (Act 68 Of 1986)

The Act provides for setting up a three-tier quasi-judicial machinery popularly known as "consumer courts" at national, state and district levels.²¹ The Forums have been specified with respective pecuniary and territorial jurisdiction limits. To ensure speedy disposal of consumers' grievances, the Act made it obligatory on the complainant or appellant or their authorized agents and the opposite parties to appear before the Forum/Commission on the date of hearing or any other date to which hearing could be adjourned. The Forums are required to decide complaints, as far as possible, within a period of three months from the date of notice received by the opposite party where complaint does not require analysis or testing of the commodities and within five months if it requires analysis or testing of commodities. The Commissions are required to decide the appeal as far as possible, within 90 days from the first date of hearing. Although the adversarial principle requires that the procedure followed should allow all the parties concerned to present their viewpoint before the competent body and to hear the arguments and facts put forward by the other party, and any experts' statements. But this tilt towards formality is mitigated to some extent by stating that and the forums need only follow natural justice principle.²²

The Act was further amended to make it more effective and purposeful. The amendments mainly aimed at facilitating quicker disposal of complaints, enhancing the capability of redressal agencies, strengthening them with more powers, streamlining the procedures and widening the scope of the Act to make it more functional and effective. Enabling provision were introduced by way of amendment *inter-alia* for creation of additional benches of National and State Commission; stipulated time-frame for admission of complaint, issue of notice and disposal of complaint; power to award decide cases *ex-parte* and bar no granting of unnecessary adjournments.²³

c. Maintaining impartiality and independence in decision making

The independence of Consumer Forums was secured by way of ensuring that process of appointment of the members was not fair and free from all interferences. To be eligible to become a member of a consumer forum persons were required to have demonstrate a standard of ability, integrity and knowledge in dealing with problems relating to consumers. The tenure and salary of a member was also secured for the entire term of their service with the forum.

²¹ Sec 9 of the Consumer Protection Act, 1986 (Act 68 Of 1986)

²² Held in the decisions of Supreme Court in J.J.Merchant v. Srinath Chatuvedi [(2002) 6 SCC 635]

²³ Substituted by the Consumer Protection (Amendment) Act, 2002 (Act 62 of 2002)

The members were required to provide every party appropriate opportunity to present their case and required to make their decision by way of majority.

d. Facilitating consumer awareness and education

The Act established Consumer Councils with the objective to promote consumer awareness, ensure meaningful participation in the decision making and education.²⁴ These councils were statutorily obligated to meet at least twice in a year, and discuss about contemporary issues to strengthen the mechanism for consumer protection.²⁵ The Act to encourage the scope for greater participation of the voluntary consumer organizations created increased opportunity in representing consumer problems before the forums and the administration, participating in the policy decision process and actively complement the state machinery in ensuring legal aid and consumer education for the poor and small consumers.²⁶ The Act entrusted the responsibility on the civil society organisations to represent the diffused interest groups and small claims to enhance protection of the consumers with small claim. The organisations are entitled to receive adequate grants from the state charged from the 'Consumer Welfare Fund'.

e. Representation of collective interests

It is a reality that consumer interests often remain diffused, and it is difficult to bring civil actions through procedures analogous to class action procedures or public law style controls permitting government bodies and consumer organizations to seek injunctions to protect such diffused interests. The enlargement of the scope of the Act so as to enable the consumers, consumer organization or the government to file class action complaints where such consumers have a common interest was a significant step to ensure representation of diffused interests.²⁷ The provisions in the legislation represent an attempt to provide compensation for small but widely dispersed losses that affect the consumer collectively.²⁸ Also a fairly extensive legal aid system by the legislation attempted to increased access to

²⁴ Sec 4 of the Consumer Protection Act, 1986 (Act 68 Of 1986)

²⁵ Sec 5 of the Consumer Protection Act, 1986 (Act 68 Of 1986)

²⁶ Sec 2(1)(b) of the Consumer Protection Act, 1986 (Act 68 Of 1986), Final Draft of National Consumer Policy, adopted during Consultation held at New Delhi, 3rd March 1998, and the Legal Services Authority Act, 1988.

²⁷ See Sec 2 (1) (b) & 14 of the Consumer Protection Act, 1986 (Act 68 Of 1986)

²⁸ See Sec 14 of the Consumer Protection Act, 1986 (Act 68 Of 1986)

justice for average consumers.²⁹

[IV]. Improved Access to Justice for Consumer in India: A Myth or Reality

The data on performance of the different consumer forums in India from inception to 18.09.2012 available at National Commission's web-site³⁰ is compiled and presented in the table below.

Name of Agency	Cases filed since inception	Cases disposed of since inception	Cases Pending	Percentage of total Disposal
National Commission	76909	66560	10349	86.54
State Commission	581102	485156	95946	83.49
District Forums	3169197	2925782	243415	93.32
Total	3827208	3477498	349710	90.86

The figures in the table states that a total of 3827208 number of consumer complaints have been filed in different forums nationwide in over till September 2012 from its inception. Total 3477498 complaints have been disposed of during this period by these special quasi-judicial institutions. The study of these data states 38 lakh consumer complaints have been filed in before different consumer forums in India since its inception till September, 2012. This huge inflow of consumer complaints before the consumer forums indicates that consumers in India are slowly becoming aware of these alternative forums and bypassing the civil courts. Also the forums are becoming popular every year and consumers are encouraged to approach these forums. The total percentage of disposal of complaints by the forums is 90.86 percent. This percentile figure of disposal by forum is satisfactory in comparison to other judicial or quasi-judicial institutions functioning in India. The rate of disposal of complaints is highest among the district forums and lowest in the state commissions. This figure of performance of the district forums is satisfactory. However, the state commissions need to improve the rate of disposal. But the statistics do not indicate as to how many complaints have been disposed within 90 and 150 days and beyond 150 this statutory period.

A comparative analysis of the previous ten years date on filing and disposal by different consumer forums in India states that total number of consumer complaints filed as on 2003 was

²⁹ Speedy justice under the Consumer Protection Act: A critical evaluation, Dr. V.K. Agarwal, (2004) 2 Comp L.J 97;

³⁰ Website of the NCDRC, available at <http://ncdrc.nic.in> (Last visited 31.04.2013)

2165510 which have now increased to 3727755 as on 2012.³¹ The total number consumer complaints disposed as on 2012 is 3373436.³² The figures above indicate that the percentage of filing of consumer complaints and disposal rate has increased from 2003 to 2012 in a significant manner. This indicates that there has been a significant increase in the workload of the forums and the percentage of disposal has also increased to keep pace with the increase of cases and avoid backlog.

Also the analysis of ten years date of cases pending before consumer forums states that the number of total pendency of consumer complaints has reduced by 2012.³³ This is a tremendous achievement compare to any other judicial or quasi-judicial institution in India. The figure clearly indicates that even with a substantial increase in the number of consumer complaints the forums have been successful to restrict the pendency to a respectable figure. The pendency percentage is improving every year as evident from figures in the chart above and the percentage of pendency has decrease from 16.62% in 2003 to 9.03% in year 2012.³⁴

The success of securing better access to justice to consumer was also dependent on generation of greater awareness about their right and responsibilities, coupled with knowledge about consumer forums by educating the consumer. In a big country like India, given the scenario of economic disparity and level of ignorance, educating the consumers remains a gigantic task. Government has taken up number of activities and schemes for promotion of consumer education. To increase consumer awareness Central Government launched the '*Jago Grahak Jago*' a weekly radio programme to spread consumer education. It was considered as the cheapest, fastest and most effective form of awareness programme as it had the widest reach. It is being broadcasted through 70 stations in 20 regional languages. But with its increasing popularity and impact the slogan '*Jago Grahak Jago*' in recent past it has become a well-established and through multimedia publicity campaign. It revolves round the theme of

³¹ Data is collected from the Annual Report of the Department of Consumer Affairs, 2011-2008, Govt. of India, available at <http://consumeraffairs.nic.in/consumer/sites/default/files/userfiles/AR2011-12-Eng.pdf> (Last visited 31.04.2013)

³² Data is collected from the Annual Report of the Department of Consumer Affairs, 2011-2008, Govt. of India, available at <http://consumeraffairs.nic.in/consumer/sites/default/files/userfiles/AR2011-12-Eng.pdf> (Last visited 31.04.2013)

³³ Data is collected from the Annual Report of the Department of Consumer Affairs, 2011-2008, Govt. of India, available at <http://consumeraffairs.nic.in/consumer/sites/default/files/userfiles/AR2011-12-Eng.pdf> (Last visited 31.04.2013)

³⁴ Data is collected from the Annual Report of the Department of Consumer Affairs, Govt. of India, available at <http://consumeraffairs.nic.in/consumer/?q=node/99> (Last visited 31.04.2013)

informing the common consumers about their rights and grievance redressal procedures.³⁵ Also repeated News Paper advertisements to educate the consumers about their rights and responsibilities are published. Similarly, to encourage research and giving visibility to consumer rights a bilingual quarterly magazine “*Upbhokta Jagran*” for educating consumers was started. The magazine is sent free of Cost to Voluntary consumer organization, State Consumer Protection Council (CCPC) State Governments to disseminate information at the grass root level.

Also in terms of securing better measures for legal aid various schemes have been adopted for legal assistance to poor consumers and for representation of the diffused interests by encouraging use of collective action. The Consumer Protection Regulation of 2005³⁶ framed by National Commission provides for legal assistance to illiterate, senior and disabled person filing consumer complaints before any forum established under the Act. Rule 25 of the Regulations states that “*Where a party appears in person and is illiterate, the Court Master or Bench Clerk shall give to that party the next date of hearing in writing.*” Moreover sub-rule 6 of Rule 26 provides that “*cases filed by or against the senior citizens, physically challenged, widows and persons suffering from serious ailments shall be listed and disposed of on a priority basis.*” In 1991, the Central Government created the ‘*Consumer Welfare Fund*’. The Fund has been set up by the Department of Revenue and is being operated by the Department of Consumer Affairs. The money, which is not refunded to manufacturers, is credited to the Fund. The main objective of the fund is to provide financial assistance for promoting and protecting the welfare of consumers, generating consumer awareness and strengthening the consumer education particularly targeted for vulnerable consumers. In every district of the country in a phased manner the Central Govt. has launched Consumer Information Center for dissemination of information to consumers and securing better protection for unfair trade practices. Also a ‘*Consumer Online Resource and Empowerment Centre (CORE Centre)*’ for providing consumer related information, guidance and consumer complaint guidance mechanism through the online medium has been setup. The CORE center intends to provide most scientific and effective system of collection and dissemination of consumer related information to generate consumer awareness and empowerment. To advise the consumers on the various issues concerning consumer protection a ‘*National Consumer Helpline*’ is being

³⁵ Annual Report of the Department of Consumer Affairs 2007-08, Govt. of India, available at <http://consumeraffairs.nic.in/consumer/sites/default/files/AnnualReports/Annual%20Report%202006-07%20English.pdf> (Last visited 31.04.2013)

³⁶ G.S.R. 342(E), 31st May, 2005

operated through the University of Delhi with the support of Department of Consumer Affairs. The toll no. 1800-11-4000 allows a consumer anywhere in the country to call this number and get proper advice regarding their problem. Further in association with FICCI various programs have been to promote ethical business practice. The recent initiative known as “*FICCI Alliance for Consumer Care*” is being undertaken to resolve consumers’ complaints at the first point of contact itself i.e. traders or service providers, thereby reducing the workload on the Consumer Forums. Leading Institutions/Central Universities like IITs, IIMs, National Law Universities have received financial grants to conduct research and advocacy focusing on a particular area of consumer welfare. Department of Consumer Affairs has set up an exclusive Chair on Consumer Law and Practice in the Indian Institute of Public Administration, New Delhi; National Law School of India University, Bangalore; and National Law University of India, Bhopal.³⁷

However, it can be observed that the percentage of disposal of cases is not uniform across the country. The disposal rate is poor in State Commissions across the country and District Fora in few States. Also there is no statistical evidence to show that the provisions regarding timely disposal of cases within 90 days is being adhered to. Although there is a provision for timely disposal of cases within 90 days in Consumer Fora or 180 days where testing is required, but no data is available to suggest whether the same is being followed or not. Also in order to avoid unnecessary delay in disposal of cases, there should be some alternate option available with the consumer e.g. mediation or negotiation. But currently the Act has no such provision for mediation of consumer cases. Hence, there should be a legal provision for mediation of complaint making mandatory when such a request is made by the consumer to manufacturer and service provider entity participate in good faith and settle the matter.

Another shortcoming of the Act as pointed its effective implementation on internet oriented market. Online commerce has grown at a frantic pace in the last decade. Number of Indian Internet users for routine tasks like communication, entertainment, work, and shopping is steadily increasing. As a result, Internet markets are also experiencing growth. But experts of consumer law are skeptic about the adaptability of the Act to the internet market place. The main reason for their lack of confidence stems from the very characteristic of the Internet. The entire Internet structure is relatively unregulated compared with entities that operate in the "real world". The Internet is free from substantial regulations and adequate regulatory

³⁷ Data is collected from the Annual Report of the Department of Consumer Affairs, 2011-2008, Govt. of India, available at <http://consumeraffairs.nic.in/consumer/sites/default/files/userfiles/AR2011-12-Eng.pdf> (Last visited 31.04.2013)

mechanisms, including consumer protection mechanisms. As a result, they view this environment as unsafe and unfavorable to commercial activities. This has raised a significant challenge for Indian scholars and policymakers to introduce a minimum level of legal protection in the Internet environment so as to ensure that consumers of the digital market place receive a minimum level of consumer protection which will boost their confidence and consequently help in the development of e-commerce.

Finally, a major area of concern remains over tackling the problem of '*false or misleading*' advertisement effectively. Literatures state that manufactures of consumer goods and suppliers of services has quite conveniently dogged the legal regime and continued to deceive the common consumers with their false and misleading advertisements in India. Currently in India a large number of complaints of misleading advertisements appearing in the electronic and print media making false and exaggerated claims about products. But very negligible number of cases are filed before consumer courts or independent regulators in various sectors all over the country on misleading advertisements. The scope of misleading advertisement needs to be well defined in the Act. The Consumer fora can only adjudicate over complaints filed before them. The consumer courts neither have the power nor the infrastructure to investigate like earlier MRTP Commission *suo-motto* into misleading advertisement nor take up such cases on their own. Also the proceedings relating to misleading advertisements before such courts suffer inordinate delays in pronouncing the final verdict. If someone complain against any such advertisement who have not had actual loss, so which fora he should complain.

Conclusion:

On the basis of the information on the actual working of the Consumer Protection as available from various secondary sources after nearly twenty-five years from its adoption evidence express a mixed reaction on the effectiveness of the Consumer Protection Act in securing consumer access to justice. The literatures claim that it is effective to promote increased use of consumer forums by consumer facing disputes over goods or services. But in terms of strengthening access to justice for consumers by increased awareness and education it is still far from achieving its objective. Further in certain areas it has totally failed to prevent violation of consumer rights and effective redressal of their grievances.