



CONSUMER PROTECTION MECHANISM AND ENVIRONMENTAL LITIGATION IN INDIA: AN EMERGING TREND IN THE CONSUMER PROTECTION JURISPRUDENCE*

Introduction

In the past two decades, Indian Law has made some huge pace towards improving access to justice for huge population and is now among the most innovative jurisdictions, at the forefront of struggles to secure justice for the common citizen. Consumer Protection Act, 1986 in India and its three-tier mechanism of dispute redressal forum is a living embodiment of this struggle to improve access to justice and accountability of the state to its citizens. Besides the Consumer Protection Act, the Environment Protection Act, 1986 was another prominent statute passed by the Indian Parliament in the same year. It re- interpreted the right to life provided under the Indian Constitution as a new fundamental right to clean environment.¹

The Consumer protection Act, 1986 is a group of laws and organizations designed to ensure the rights of consumers like right to safety, right to heard, right to redressed etc. Under this law, Separate Consumer Dispute Redressal Forum have been set up throughout India in each and every district in which a consumer can file his complaint on a simple paper with nominal court fees and his complaint will be decided by the Presiding Officer of the District Level. Appeal could be filed to the State Consumer Disputes Redressal Commissions and after that to the National Consumer Disputes Redressal Commission (NCDRC). The procedures in these tribunals are relatively less formal and more people friendly and they also take less time to decide upon a consumer dispute when compared to the year's long time taken by the traditional Indian Judiciary.

The Environment Protection Act, 1986 enacted to provide for the protection and improvement of environment and for matters connected there². So, it explicitly deals with the issue related to environment which directly or indirectly affects the life of individuals and consequently infringes right to life provided by Indian Constitution. It defines environment as Environment includes

* Mr. Prakash Khinchi & Mr.Suyash Pranay Tripathi, Sixth Semester, BA.LLB(Hons), National Law University and Judicial Academy, Assam.

¹ GURJEET SINGH, THE LAW OF CONSUMER PROTECTION IN INDIA, DEEP & DEEP PUBLICATION,285,(1996).

² Environment Protection Act, ref. main title, no.29 of 1986,May 23,1986.

water, air and land and the inter- relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property.³ Under the Environment Protection Act, 1986, litigation pertaining to environment matters has come before the lower courts, but most litigation come direct to the Supreme Court, where the complainants have invoked the writ jurisdiction under Article 32 of the Indian Constitution.

Though, Environment Protection Act, 1986 was explicitly deals with the issue related to environment, an interesting development has come to be witnessed recently. A number of cases concerning environmental protection have recently been argued before the institutions established under Consumer Protection Act, 1986. This has been happen due to the absence of a similar local redressal mechanism under the Environment Protection Act as under the Consumer Protection Act and also due to the simple and comparatively non-technical procedure involved in filing a complaint under the Consumer Protection Act.

Rights of Consumer- Significance Foundation

Every individual is a consumer, regardless of occupation, age, gender, community or religious affiliation. The rights and well-being of consumers have become part of the life of an individual and we all made use of them for some or the other point in our daily routine.

Each 15 March is observed as "World Day of Consumer Rights" It commemorates a historic declaration (1962) by former US President John F. Kennedy of four basic consumer rights:

1. The right to security
2. The right to be informed
3. The right to choose
4. The right to be heard

This statement eventually led to the international recognition that all citizens, regardless of their income or social status, have fundamental rights as consumers. Another important date is April 9, 1985, when the United Nations General Assembly adopted a series of guidelines for consumer protection and the Secretary General of the United Nations was allowed to convince member countries to adopt these guidelines by changes in policy or law.

India, December 24 is celebrated as "National Consumer Rights Day", since the Law on Consumer Protection 1986 was adopted that day. The Law on Consumer Protection was adopted in 1986 on the basis UN directives in order to ensure better protection of consumer interests. the law provides for effective safeguards for consumers against various types of farms and abusive relationships, based on essentially compensatory rather than punitive approach or preventive. It

³ Environment Protection Act, , no.29 of 1986, Sec. 2,May 23,1986.

applies to all goods and services, unless specifically exempted and covers the private, public and cooperation and provides for rapid and inexpensive arbitration.

The rights under the 1986 Consumer Protection Act derive from the rights enshrined in Articles 14 to 19 of the Constitution of India. The Right to Information Act (RTI), which opened the process of governance of our country to the common public also has implications for the protection of large-scale consumers. According to the Act, a "consumer" is defined as follows:

1. Any person who purchases goods for examination, and anyone who uses goods with the approval of the buyer.
2. Any person who hires a service for consideration and any beneficiary of such services, provided that the service is used with the approval of the person who had rented the service for consideration.

In addition, the consideration for goods or services may be paid or promised or partly paid or promised or provided under a deferred payment system.

The Consumer Protection Act, 1986 seeks, *inter alia*, to promote and protect the following rights of consumers- The right to security: Under this law, subject to the protection of consumers Central Council is to promote and protect the right against the marketing of goods and services which are hazardous to life and property. Purchased goods and services availed of should not only meet their immediate needs, but also meet the long-term interests. Before buying, consumers should emphasize product quality and warranty products and services. They should preferably buy marked quality products such as ISI, AGMARK, etc.

Right to be informed: Means right to be informed about the quality, quantity, potency, purity, standard and price of goods so as to protect the consumer against unfair commercial practices. Consumers should insist on getting all the information about the product or service before making a choice or decision. This will allow him to act wisely and responsibly and also allow it to stop falling prey to high-pressure sales techniques.

Right to choose:-Right ways to be insured as far as possible access to the variety of goods and services at competitive prices. In the case of monopolies, it means the right to be assured of the quality and satisfactory service at a fair price. It also includes the right to basic goods and services. Indeed, the unlimited right of the minority to choose can mean a refusal of the majority of its fair share. This right may be exercised better in a competitive market where a variety of products are available at competitive prices.

Right to be heard: Under this law, consumer interests will be duly taken into consideration in the appropriate forums. It also includes the right to be represented in various forums formed to consider the welfare of the consumer. Consumers should form non-political and non-commercial organizations of consumers that can be given representation in various committees formed by the government and other agencies for consumers.

The right to compensation: Right means to seek redressal against unfair trade practices or unscrupulous exploitation of consumers. It also includes the right to a fair settlement of genuine grievances of the consumer. Consumers should complain to their genuine grievances. Many times their complaints can be low value, but its impact on society as a whole can be very large. They can also take the help of consumer organizations in the search redressal of their grievances.

The right to consumer education: Means the right to acquire the knowledge and skills necessary to be an informed consumer throughout life. Ignorance of consumers, especially rural consumers, is primarily responsible for their operation. They must know their rights and should exercise them. Only then real consumer protection can be achieved successfully. Thus, concern for consumer protection is to ensure fair trade practices; the quality of goods and efficient services with consumer information regarding the quality, quantity, potency, composition and price for their purchase choice. Such consumer protection policy creates an environment in which clients, customers and consumers receive satisfaction from the delivery of goods and services required by them.

Main Factors Causing Environmental Hazards

According to section 2(a) of Environment Protection Act 1986, Environment includes water, air and land⁴. So what makes these ingredients such as water, air and earth to the dangerous environment, automatically, the environment becomes life threatening for people because the environment also includes interrelationship among and between water, earth and air and living creatures.

Air pollution comes from natural and anthropogenic sources. However, the pollutants of human origin worldwide from combustion, construction, mining, agriculture and warfare are increasingly important in the equation of the air pollution. Emissions from motor vehicles are one of the main causes of air pollution. China, USA, Russia, Mexico, India and Japan are the world leaders in air pollution emissions. major stationary pollution sources include chemical plants, coal power plants, oil refineries, petrochemical plants, activities of nuclear waste disposal, large livestock farms (dairy

⁴ Environment Protection Act, no. 29 of 1986, Sec 2 (a), 1986

cows, pigs, poultry, etc.), PVC factories, metals production factories, plastics factories, and other heavy industries. pollution from agricultural air comes from contemporary practices which include clear felling and burning of natural vegetation as well as spraying of pesticides and herbicides. The smoke is discharged by industries, automobiles and kitchens is the mixture of carbon monoxide, carbon dioxide, methane, etc. These are all toxic gas. These cause lung cancer, tuberculosis, etc., which take a heavy toll of life. The glaring incident is the Bhopal gas leak in December 1984. Thousands of the residents of Bhopal died due to lungs problem which was caused by methylamine gas from the Union Carbide Plant. The garbage emitting foul smell, the decaying plants and animals also cause air pollution⁵.

Mills and factories discharge wastewater very harmful in many rivers and sea indiscriminate application of chemical fertilizers, insecticides and pesticides pollute the soil. Vegetables and fruits are quite damaging today because they contain poisonous insecticides and pesticides. Chemical waste from chemical plants polluted water and soil.

So if the air we breathe, the water we drink and the land that produces our crops, vegetables and fruits, all become increasingly impure, then our chances of good health and longevity will be much lower

Rights of Consumer Affected because of Environmental Hazards

There are eight consumer rights which have been recognised and championed by consumer associations throughout the world. The right to live in a clean and healthy environment is one of these prominent consumer rights as we all are consumer of environment. Thus, like other issue affecting consumer safety and interest, environmental issues have obviously become priority issues for the consumer associations the world over and are now at the top of their respective agenda.⁶

However, in India, the definition of the term 'consumer' given in the Consumer Protection Act, 1986 is a narrow one and a consumer has been defined to be a person who buys goods or hire services. The 1986 Act has not given any attention towards the concept of a consumer vis-a-vis the environment. This is reinforced by the fact that among the rights guaranteed to the consumers, right to healthy environment has not been mentioned, though it assumed to fall under the protective mechanisms of right to life, guaranteed in Article 21 of the Indian Constitution.

⁵ Mili, *Short essay on Environmental pollution*, <http://www.preservearticles.com/201104306076/short-essay-on-environmental-pollution.html>.

⁶GURJEET SINGH, "THE LAW OF CONSUMER PROTECTION IN INDIA", 127(1996)

From environmental hazards right to safety of consumer which comes under the ambit of right to life is violated. All human beings depend upon the various products of the environment and in turn are consumers of environment. In present, environment is not healthy and is polluted by different human activities and the products of such unhealthy or polluted environment are also polluted. So, when consumer consume such polluted product of environment he may be suffer from different health hazards that may even extend to permanent disability. Here right to safety of consumer and the need of clean environment is violated.

Shortcoming in the Litigation Framework Governing Environmental Protection- Necessity of Invoking CPA 1986

Under the Environment Protection Act, most litigation pertaining to environment matters has come before Supreme Court, where complainants have invoked the writ jurisdiction under Article 32 of the Indian Constitution. It seems that the focus on the Bhopal Disaster and the consequent obstacles in finding appropriate legal mechanisms to handle problems of such a magnitude have provided a kind of psychological block for the whole field of environment protection. In consumer protection law, on the other hand, a multitude of comparatively smaller issues ranging from inadequate bank services, and delayed insurance claims to misleading advertisements argued before Consumer Forums have now cumulatively reached a much more advanced stage of development because of local redressal mechanism and compensatory nature of justice.

The Indian judiciary adopted the technique of public interest litigation for the cause of environmental protection in many cases. The Supreme Court & High Courts shaded the inhibitions against refusing strangers to present the petitions on behalf of poor and ignorant individuals. The basic ideology behind adopting PIL is that access to justice ought not to be denied to the needy for the lack of knowledge or finances. In PIL a public spirited individual or organization can maintain petition on behalf of poor & ignorant individuals.⁷

In the area of environmental protection, PIL has proved to be an effective tool. In Rural Litigation and Entitlement Kendra vs. State of U.P.⁸ the Supreme Court prohibited continuance of mining operations terming it to be adversely affecting the environment.

In Indian Council for Enviro-Legal Action vs. Union of India⁹, the Supreme Court cautioned the industries discharging inherently dangerous Oleum and H acid. The court held that such type of pollution infringes right to wholesome environment and ultimately right to life.

⁷ Prof. Vijay Oak , *Role of PIL in Environmental Protection In India*,
<http://www.legalserviceindia.com>

⁸ 1989 AIR 594

⁹ AIR 1996 SC 1446

Though the CP Act, 1986 has to a greater extent come to solace of the aggrieved consumer, but considering the Indian situation and the common human psychic many more situations of consumer grievances are not redressed, simply because of the fact that the affected consumers do not approach the Fora either because of their ignorance, or because of lack of faith in the system or sheer economic inability. It is therefore necessary to adopt a proactive approach and set up a National Consumer Protection Authority (NCPA) who would suo moto initiate action and proceeding whenever the consumers are affected by the supplier or manufacture of goods or produce which would come under the category of hazardous item or are meant for direct human consumption.¹⁰

Difference between the Procedure of CPA 1986 And EPA 1986

Environmental Protection Act (adopted in March 1986 and entered into force on 19 November 1986) • The Constitution of India clearly states that it is the State's duty to "protect and enhance the environment and to safeguard the forests and wildlife of the country. " The Ministry of the Environment was established in India in 1980. This later became the Ministry of Environment and Forests in 1985. The EPA (Environment Protection) Act 1986 came into force shortly after the Bhopal tragedy Gas and is considered a framework law as it fills many gaps in existing laws. Subsequently, a large number of laws came into existence as the problems started arising, for example, handling and management of hazardous waste management regulations in 1989.

The Law on Consumer Protection was adopted in 1986 to ensure better protection of the interests of consumers and in order to make arrangements for the establishment of consumer councils and other authorities in the resolution of litigation consumption and for matters connected therewith. It aims, among others, to promote and protect consumer rights such as protection against the marketing of products which are hazardous to life and property, the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect consumers against unfair commercial practices, the right to be assured, wherever possible, access to the variety of products at competitive prices, the right to be heard and to be assured that consumer interest will be duly considered in the appropriate forum, the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers and the right to consumer education.

A number of cases relating to environmental protection have recently argued before the institution established under the Law on Consumer Protection, 1986. This was possible mainly because of the relatively simple procedure and not technical involved in filing a complaint under the Act on consumer protection. For example, while Article 19 (b) of the Environmental Protection Act requires a complainant to give sixty days notice to the other party before filing a complaint, no

¹⁰ <http://www.topnews.in/centre-amend-consumer-protection-act-255560> dt 26.02.2016

such notice is required under Article 12 of the law on consumer protection. As Section 19 (b) and Article 12 of the Law of Environmental Protection and the Law on Consumer Protection respectively with how complaints can be made. However, there is no legal formality to affix a tax of a court while filing a complaint under the law on consumer protection. In addition, the plaintiff need not approach a high court or the Supreme Court. The implementation of three-tier quasi-judicial mechanism under this Act has facilitated the filing of complaints, according to the amount involved, before one of three institutional forum of the district, the state commission, the national commission.

Thus, the redressal mechanism at three levels, non-technical procedures and compensatory justice are characteristics that are exclusively in the consumer protection law are the only reasons for the development of the new trend of filing a complaint relating to the protection of the environment under the law of consumer protection.

Significant Contribution Made by CDRA in the Area of Environmental Litigation

The Consumer Protection Act and the Environment Protection Act, 1986 were prominent statutes passed by the Indian parliament in the same year. Primarily due to the absence of a similar local redressal mechanism under the Environment Protection Act as under the consumer protection act, most litigation pertaining to environment matters has come before the Supreme Court. On the other hand, an interesting development has come to be witnessed. It concerns the coming up of an increasing amount of environmental litigation before the CDRA's. The consumer association have now started using the consumer tribunals as the appropriate forums for highlighting environmental violations, besides seeking redressal for consumer offences. A number of cases concerning environment protection have recently been argued before the Consumer Dispute Redressal Agency established under the Consumer Protection Act 1986. These institutional agencies give equal attention to the matters concerning environment and consumer protection.

Case Study:

There are various cases in which various consumer associations filed a complaint relating to environmental issue in Consumer Dispute Redressal Agencies and these agencies mark their contribution in environment litigation by pronouncing their judgments.

- ***Yamuna Vihar Residents Welfare Association v. Vice- Chairman, D. D.A. &Ors.*¹¹**

In this case, a petition was filed on the behalf of the residents of Yamuna Vihar Resident Association. The gist of the grievances put forward in the petition was that several of the amenities which were originally promised to be provided in the colony relating to drainage

¹¹ 1992(1) CPR 110 (NC)

facilities and maintenance of the proper hygienic conditions and environmental priority had not been provided by the Delhi Development Authority and later by Municipal Corporation. Notices were sent to the parties and in compliance with the order passed by the Haryana State Commission, the Municipal Corporation explained the steps which were proposed to be taken by them in order to rectify the defects that existed in regard to the drainage system and other factors referred to in the petition. The State Commission accordingly directed the Municipal Commission to duly implement the proposals within the time frame and to file a compliance report within the stipulated period.

- ***CERC Ahmedabad & Ors. V. Ahmedabad Municipal Corporation & Ors.***¹²

In this case the CERC along with two individuals had Filed a complaint petition complaining that there was gross negligence and failure on the part of the Ahmedabad Municipal Corporation to take adequate preventive measure before the onset of monsoon in 1998 such as clearing of garbage, repairing of pipe line, streamlining of the drainage system etc so as to avoid contamination of drinking water supplies to the public through the corporation water supply pipes. As a consequence thereof there was an outbreak of cholera and gastro- enteritis in epidemic form within the corporation limit of Ahmedabad. It was alleged that despite receiving numerous requests for clearing of garbage and dead animals etc. from different people who had apprehended that in the rainy season the contaminated material in the drains might enter into the damaged water supply lines, no attention was paid to such requests and the result was that after the first heavy rains, garbage of all kinds, including industrial waste was absorbed by the rain water and due to water logging, epidemic of cholera and gastro- enteritis broke out in the city and because of the outbreak of water born diseases like cholera 6500 persons were affected of whom 327 were said to have died in different hospitals.

The Corporation denied all charges and stated that the entire water supply had been super-chlorinated and the chlorine content in the water as being closely monitored every day and the areas where there had been outbreak of epidemic, water supply was being given through tankers whenever the private water supply system was found to be not satisfactory or there was contamination in such water.

¹² 1991 (1) CPR 191

Though the negligence of the corporation could not be proved and no relief could be granted to complainants but the rights i.e. right to be heard and redressed of consumer provided under Consumer Protection Act are protected by Consumer Forum.

Conclusion

India has a prominent environmental heritage which can be attributable to its biodiversity. However industrial and economic development as well as the tolerant attitude of the state in certain circumstances has had an adverse effect on the environment as well as on standard of living of human beings who are dependent on them. Hence there was an imperative need for the judiciary to step onto the plate and take an activist position to prevent further depletion of the valuable biodiversity of the country.

In this project we have studied about the contribution of the Consumer Protection Act 1986 and Consumer Dispute Redressal agency in environmental litigation. We conclude that the concern for a clear and pollution free environment is also an important concern for consumer law in India apart from the environment laws.

A number of cases concerning environmental protection have recently been argued before the institutions established under the consumer protection act, 1986. This has been possible mainly due to the simple and comparatively non –technical procedure involved in filing a complaint under the consumer protection act.

The consumer association have now started using the consumer tribunals as the appropriate forums for highlighting environmental violations, besides seeking redressal for consumer offences. A number of cases concerning environment protection have recently been argued before the Consumer Dispute Redressal Agency established under the Consumer Protection Act 1986 there by showing that these institutional agencies now give equal attention to the matters concerning environment and consumer protection.

LAW MANTRA
www.lawmantra.co.in