

Consumer Protection in India

Some Reflections

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CONSUMER PROTECTION IN INDIA

SOME REFLECTIONS

*T*he growing interdependence of the world economy and international character of many business practices have contributed to the development of universal emphasis on consumer rights protection and promotion. Consumers, clients and customers world over, are demanding value for money in the form of quality goods and better services. Modern technological developments have no doubt made a great impact on the quality, availability and safety of goods and services. But the fact of life is that the consumers are still victims of unscrupulous and exploitative practices. Exploitation of consumers assumes numerous forms such as adulteration of food, spurious drugs, dubious hire purchase plans, high prices, poor quality, deficient services, deceptive advertisements, hazardous products, black marketing and many more. In addition, with revolution in information technology newer kinds of challenges are thrown on the consumer like cyber crimes, plastic money etc., which affect the consumer in even bigger way. 'Consumer is sovereign' and 'customer is the king' are nothing more than myths in the present scenario particularly in the developing societies. However, it has been realised and rightly so that the Consumer protection is a socio- economic programme to be pursued by the government as well as the business as the satisfaction of the consumers is in the interest of both. In this context, the government, however, has a primary responsibility to protect the consumers' interests and rights through appropriate policy measures, legal structure and administrative framework.

CONSUMERISM: CONCEPTUAL CONSIDERATION

In the good olden days the principle of '*Caveat emptor*', which meant buyer beware governed the relationship between seller and the buyer. In the era of open markets buyer and seller came face to face, seller exhibited his goods, buyer thoroughly examined them and then purchased them. It was assumed that he would use all care and skill while entering into transaction.

The maxim relieved the seller of the obligation to make disclosure about the quality of the product. In addition, the personal relation between the buyer and the seller was one of the major factors in their relations. But with the growth of trade and its globalization the rule no more holds true. It is now impossible for the buyer to examine the goods before hand and most of the transactions are concluded by correspondence. Further on account of complex structure of the modern goods, it is only the producer / seller who can assure the quality of goods. With manufacturing activity becoming more organised, the producers / sellers are becoming more strong and organised whereas the buyers are still weak and unorganised. In the age of revolutionised information technology and with the emergence of e-commerce related innovations the consumers are further deprived to a great extent. As a result buyer is being misled, duped and deceived day in and day out.

Mahatma Gandhi, the father of nation, attached great importance to what he described as the "poor consumer", who according to him should be the principal beneficiary of the consumer movement. He said:

"A Consumer is the most important visitor on our premises. He is not dependent on us we are on him. He is not an interruption to our work; he is the purpose of it. We are not doing a favour to a consumer by giving him an

opportunity. He is doing us a favour by giving an opportunity to serve him.”

In spite of these views consumerism is still in its infancy in our country, thanks to the sellers market and the government monopoly in most services. Consumer awareness is low due to the apathy and lack of education among the masses. No one has told them about their rights – to be informed about product quality, price, protection against unsafe products, access to variety of goods at competitive prices, consumer education etc. What consumerism lacks here is education and information resources, testing facilities, competent leadership, price control mechanism, and adequate quasi-judicial machinery. The providers of goods and services have been reluctant to give due consideration to consumer interest protection.

In present situation, consumer protection, though as old as consumer exploitation, has assumed greater importance and relevance. Consumerism is a recent and universal phenomenon. It is a social movement. Consumerism is all about protection of the interests of the consumers¹. According to McMillan Dictionary (1985) “Consumerism is concerned with protecting consumers from all organisations with which there is exchanged relationship. It encompasses the set of activities of government, business, independent organisations and concerned consumers that are designed to protect the rights of consumers”. The Chamber’s Dictionary (1993) defines Consumerism as the protection of the interests of the buyers of goods and services against defective or dangerous goods etc. “Consumerism is a movement or policies aimed at regulating the products or services, methods or standards of

¹ *The new Shorter Oxford Dictionary*, 1993, p.490. The word “Consumerism” is also used in pejorative sense meaning ‘preoccupation with consumer goods and their acquisition.’ However, its use in the present work is in a positive sense.

manufacturers, sellers and advertisers in the interest of buyers, such regulation may be institutional, statutory or embodied in a voluntary code occupied by a particular industry or it may result more indirectly from the influence of consumer organisations”²

As commonly understood consumerism refers to wide range of activities of government, business and independent organisations designed to protect rights of the consumers. Consumerism is a process through which the consumers seek redress, restitution and remedy for their dissatisfaction and frustration with the help of their all organised or unorganised efforts and activities. It is, in-fact a social movement seeking to protect the rights of consumers in relation to the producers of goods and providers of services. In-fact consumerism today is an all-pervasive term meaning nothing more than people’s search for getting better value for their money. Consumer is the focal point of any business. Consumers’ satisfaction will benefit not only business but government and society as well. So consumerism should not be considered as consumers’ war against business. It is a collective consciousness on the part of consumers, business, government and civil society to enhance consumers’ satisfaction and social welfare which will in turn benefit all of them and finally make the society a better place to live in.

There are various components of consumerism. First and foremost is self-protection by consumers. Consumer must be aware of his rights, raise voice against exploitation and seek redressal of his grievances. Consumers’ consciousness determines the effectiveness of consumerism. It is the duty of the consumer to identify his rights and to protect them. Voluntary Consumer Organisations engaged in organising consumers and encouraging them to safeguard their interests is another important element of consumer movement. The success of consumerism lies in the realisation of the business that

² *Encyclopaedia Britannica, Micropaedia*, Vol. III, p.108.

there is no substitute for voluntary self-regulations. Little attention from the business will not only serve consumers' interest but will also benefit them. Some businesses in India have come together to adopt a code of conduct for regulating their own activities. Regulation of business through legislation is one of the important means of protecting the consumers. . Consumerism has over the time developed into a sound force designed to aid and protect the consumer by exerting, legal, moral and economic pressure on producers and providers in some of the developed countries.

Consumer Protection: International Scenario

One could be forgiven for thinking that consumerism was largely invented by Mr. Ralph Nader, the well-known American Advocate. History of protection of Consumer's rights by law has long been recognised dating back to 1824. Every year the 15th of March is observed as the World Consumer Rights Day. On that day in 1962 President John F. Kennedy of U.S. called upon the U.S. Congress to accord its approval to the Consumer Bill of Rights. They are (i) right to choice; (ii) right to information, (iii) right to safety and (iv) right to be heard. President Gerald R. Ford added one more right i.e. right to consumer education. Further other rights such as right to healthy environment and right to basic needs (Food, Clothing and Shelter) were added. In India we have recently started celebrating 24th December every year as the National Consumer Rights Day.

In the history of the development of consumer policy, April 9, 1985 is a very significant date for it was on that day that the General Assembly of the United Nations adopted a set of general guidelines³ for consumer protection and the Secretary General of the United Nations was authorised to persuade member countries to adopt

³ General Assembly Resolution 39/85

these guidelines through policy changes or law. These guidelines constitute a comprehensive policy framework outlining what governments need to do to promote consumer protection in following seven areas:

- i* Physical safety;
- ii* Protection and Promotion of the consumer economic interest;
- iii* Standards for the safety and quality of consumer goods and services;
- iv* Distribution facilities for consumer goods and services;
- v* Measures enabling consumers to obtain redress;
- vi* Measures relating to specific areas (food, water and pharmaceuticals) and
- vii* Consumer education and information programme.

Though not legally binding, the guidelines provide an internationally recognised set of basic objectives particularly for governments of developing and newly independent countries for structuring and strengthening their consumer protection policies and legislations. These guidelines were adopted recognizing that consumers often face imbalances in economic terms, educational levels and bargaining power and bearing in mind that consumers should have the right of access to non hazardous products as well as the importance of promoting just, equitable and sustainable economic and social development. These U.N. guidelines for Consumer Protection can assist in the identification of priorities particularly in the light of emerging trends in a globalised and liberalised world economy.

The U.N. guidelines were never intended to be a static document and required to be revisited in the changed social, political and economic circumstances. On reexamination of U.N. guidelines in 1999 “sustainable consumption” was also included in the list which is certainly an important step in this direction. It would perhaps be

apt to highlight that long back Mahatma Gandhi said that "the rich must live more simply so that the poor may simply live." There cannot be a better expression championing the cause of sustainable consumption. It may not be out of place to mention that the increased internationalisation of cooperation is also a part of the globalisation process. Rules adopted for corporations trading in OECD countries for the protection of the interests of consumers can now also be applied to their conduct for the protection of the interests of the consumers in non-OECD countries. A new investment guideline from the OECD spells out principles to be applied by multinational corporations dealing with consumers. The Guidelines, which deal with fair business, marketing and advertising practices as well as safety and quality of goods and services lend themselves to consumer monitoring and campaigning. Possibilities for action include twinning arrangements in which groups from non-OECD countries work with groups from the home countries of multinational corporations to hold them accountable for failure to adhere to the Guidelines.

Before moving in the direction of consideration of provisions of the Consumer Protection Act, 1986, perhaps it would be better to summarise the factors responsible for legislations to protect consumer's rights. These factors are as follows:

- rapidly increasing variety of goods and services which modern technology has made available;
- growing size and complexity of production and distribution system;
- high level of sophistication in marketing and selling practices, in advertising and other forms of production;
- removal of personal relationship of buyer and seller as a result of mass marketing methods; and
- consumers' increased mobility.

Consumer Protection Act, 1986: Some Reflections.

It may be mentioned at the outset that any one interested in the task of consumer protection movement has to be well versed in various laws and not merely with the Consumer Protection Act, 1986. He should have knowledge of laws relating to Contract, Tort, Railways, Telegraphs, Telephones, Post, Air Travel, Insurance, Electricity, Water, Housing, Medicine, Banking, Finance, Engineering, Motor Vehicles, Hotel Industry, Entertainment, Cooperative Societies, Tourism Agencies, Sales Tax, Central Excise, Limitation, Transport etc. There is no limit to subjects, which may come before a Consumer Forum / Commission for decision. In addition, one should also be well versed with the laws relating to unfair trade practice and restrictive trade practices. Be it as it may.

In India various Acts intended to protect the consumers against different forms of exploitation were enacted, such as, the Indian Penal Code, 1860; Indian Contract Act, 1872; Drugs Control Act, 1950; Industries (Development and Regulation) Act, 1951; Indian Standards Institution (certification marks) Act, 1952; Drug and Magic Remedies (Objectional Advertisement) Acts, 1954; Prevention of Food Adulteration Act, 1954; Essential commodities Act, 1955; Trade and Merchandise Marks Act, 1958; Hire purchase Act, 1972; Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975; Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980; Essential commodities (Special Provisions) Act, 1981; Multi-State-Co-operative Societies Act, 1984; Standard of Weights and Measures (Enforcement) Act, 1985; and Narcotic Drugs and Psychotropic Substances Act, 1985. Some significant consumer protection enactments of pre-independence time are the Sale of Goods Act, 1930; Agriculture Produce (Grading and Marketing) Act, 1837 and Drugs and Cosmetics Act, 1940.

Except for the Monopolies and Restrictive Trade Practices (MRTP) Act (now repealed) all the other Acts were mainly punitive and preventive in nature. The consumer could not seek remedy or redressal against the offending trader or manufacturer and negligent, careless providers of services. However the MRTP Commission enabled the consumer to approach it in case of complaints. In spite of these Acts the consumers did not have any effective mechanism or institutional arrangement for the speedy redressal of their grievances and also the lack of effective popular movement isolated the consumer and his plight only increased. Seeing the pressure mounting from various consumer protection groups and the consumer themselves the Parliament enacted the Consumer Protection Act in 1986.

A latest addition to the list of legislations is the Competition Act, 2002. A high level Committee was constituted in October 1999 under the Chairmanship of Shri SVS Raghavan, which submitted its report on May 2000. The committee framed the new Competition Policy which proposed repeal of Monopolies and Restrictive trade Practices Act, 1969 and enactment of a new Competition Law and establishment of a regulatory authority Competition Commission for implementation of Competition Act. On recommendation of the Committee the Competition Act was passed and the Monopolies and Restrictive Trade Practices Act, 1969 has been repealed.

The Competition Act is a comprehensive legislation, which deals with matters of competition and monopolies.

Objectives of the Act

The purpose of the Act is to provide for the establishment of the Commission :

- To prevent practices having adverse effect on competition;
- To promote and sustain competition in markets;
- To protect the interests of consumers and
- To ensure freedom of trade carried on by other participants in the markets, in India

The major focus of the Act is on the following areas:

- Prohibition of anti competitive agreements;
- Prohibition against abuse of dominant position;
- Regulation of combinations;
- Advocacy of competition policy.

The legislative intention behind this Act is to clear all hurdles in promoting competition among business units whether of domestic or foreign origin.

The Consumer Protection Act of 1986 was enacted with an objective to provide better protection of the interests of the Consumers, to make provision for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes. This is indeed a very unique and highly progressive piece of Social Welfare Legislation. The provisions of this Act are intended to provide effective and efficient safeguards to the consumers against various types of exploitations and unfair dealings. Unlike other laws, which are basically punitive or preventive in nature, the provisions of the Act are compensatory. It is a matter of great satisfaction that we can legitimately boast that we now have in our country a statute, which provides more effective protection to the consumers than any corresponding legislation in force in countries, which are considered to be much more advanced and industrialised. CPA has

been in operation for about 18 years. A number of deficiencies and shortcoming in respect of its operation have come to light thereby requiring amendments thrice, still leaving scope for further improvements. Despite all this it is a handy weapon for consumers to ensure accountability of producers of goods and providers of services. In the International Conference on Consumer Protection held in Malaysia in 1997, the Indian Consumer Protection Act was described as one “which has set in motion a revolution in the field of consumer rights, the parallel of which has not been seen anywhere else in the world”.

Important Features of the C.P. Act

This may be summed up as under:

- The Act applies to all goods and services unless specifically exempted by the Central Government.
- It covers all the sectors – private, public and cooperative.
- The provisions of the Act are compensatory in nature.
- It provides adjudicatory authorities, which are simple, speedy and less expensive.
- It also provides for Consumer Protection Councils at the National, State and District levels.

The provisions of this Act are in addition to and not in derogation of the provisions of any other law for the time being in force.

Consumer Rights under the Act

The Act enshrines the following rights:

- The right to be protected against the marketing of goods which are hazardous to life and property;
- The right to be informed about the quality, quantity, potency, purity, standard and price of goods so as to protect the consumer against unfair trade practices;
- The right to be assured, wherever possible access to variety of goods at competitive prices;
- The right to be heard;
- The right to seek redressal against unfair trade practices or unscrupulous exploitation of consumer; and
- The right to consumer education.

The Act provides for the establishment of the Consumer Protection Councils at the National, State and District levels. The objectives of these councils are to help the respective governments in adopting and reviewing policies for promoting and protecting the rights of the consumers. The composition of these consumer councils are broad based. The citizens and organisations representing different interest groups having implications for consumer's rights protection are members of these councils. One may like to add, that the Consumer Councils are required to be constituted on public-private partnership basis for better feed back and thereby review of the policy in the area of consumer's rights protection. The main objective of these councils is to promote and protect rights and interests of consumers in the society.

It also provides for Consumer Disputes Redressal Adjudicatory bodies established at three levels i.e. District, State and National. They are known as District Forums, State Commissions and National Commission. District Forum is composed of President and two

members (one member is woman). Every member of the District Forum shall hold office for a term of five years or upto the age of 65 years, whichever is earlier and shall be eligible for reappointment. Now graduation is the minimum educational qualification for a member. The State Commission is presided over by Retired High Court Judge. The National Commission is presided over by the retired Supreme Court Judge. The District Forum can adjudicate on the matter upto Rs. 20 lakhs, State Commission upto one crore and National Commission above Rs. one crore. The proceedings before these adjudicatory bodies are regulated in accordance with the principles of natural justice. At present 571 District Fora and 35 State Commissions are functioning all over the country besides the National Commission. Now State Commissions and National Commission have started sitting in Circuit Benches. It may, however, be highlighted that there are 253 Vacancies of the Presidents and Members of the Forums in the entire Country. It may also be mentioned that at present there are 73 District Forums, which are non-functional. Now complaints filed are required to be accompanied with such amount of fee and payable in such manner as may be prescribed. Fee structure for the cases filed in the District Forums has been prescribed by the Ministry of Consumer Affairs, Food and Public Distribution by Rule 9A of the Consumer Protection (Amendment) Rules, 2004, which is as follows:

<i>Value of goods or services and compensation claimed</i>	Amount of fee payable
(1) Upto one lakh rupee	Rs. 100
(2) One lakh and above but less than five lakh rupees	Rs. 200
(3) Five lakh rupees and above but less than Rs.10 lakh	Rs. 400
(4) Ten lakh rupees and above but not exceeding Rs.20 lakh	Rs. 500

As on 30.9.2004 the total number of cases filed and disposed of in the National Commission, State Commissions and as on 30.06.2004, District Forums are as below:

Redressal Agency	Complaints Filed	Complaints Disposed of	Percentage
National Commission	35535	27729	78.03%
State Commissions	355012	237808	66.99%
District Forums	1944768	1709603	87.91%
TOTAL	2335315	1975140	84.57%

The National Commission, State Commissions and District Forums are required to decide complaint, 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 commodities and within five months if it requires analysis or testing of commodities. The Appeals are allowed within 30 days against the order of the District Forum to the State Commission and against the order of the State Commission, to the National Commission. Appeal can also be preferred to the Supreme Court against the order of the National Commission within a period of 30 days. No appeal by a person who is required to pay any amount in terms of an order of the National Commission shall be entertained by the Supreme Court unless that person has deposited in the prescribed manner fifty percent of that amount or rupees fifty thousand, whichever is less. Similarly there is a requirement for depositing Rs. 35000/- and Rs. 25000/- in case of appeals to National Commission and State Commission.

From the various reports and feedback received by the Central Government, it is evident that many of the consumer forums have

not been provided with adequate accommodation, infrastructure facilities and staff. In many State Commissions and District Forums, vacancies of Presidents/Members have not been filled up which adversely affects the disposal of cases. It should be remembered that the confidence of the consumer ultimately depends upon the successful functioning of the Consumer Commissions/Forums. It is, therefore, a matter of utmost importance that these agencies must function effectively, efficiently and without any interruption. For this to happen state governments are having definite role to perform.

Other Important Aspects of C.P. Act

Who is a Complainant⁴?

Complainant means

- a Consumer;
- any Voluntary Consumer Association;
- the Central Government;
- the State Governments or Union Territory Administration;
- one or more consumers , where there are numerous consumers having the same interest and
- in case of death of a consumer, his legal heir or representative.

What Constitute a Complaint⁵?

An allegation in writing made by the complainant that

- Any unfair trade practice or restrictive trade practice has been adopted by any trader.
- The goods bought or agreed to be bought suffer from one or more defects.
- Services hired /availed or agreed to be hired /availed suffer from deficiencies in any respect.
- That a trader has charged for the goods or services mentioned in the complaint, a price in excess of the stipulated price.
 - (i) fixed by or under any law for the time being in force; or
 - (ii) displayed on goods; or
 - (iii) displayed on any package containing such goods
- That goods or services which are hazardous to life and safety of the public are being offered to the public

The definitions of 'goods', 'services' and 'deficiencies' are given in the Act.

⁴ CPASec2(1)(b)

⁵ *Ibid*Sec2(1)(c)

Who can file a Complaint⁶?

A complaint can be filed by

- A consumer to whom goods are sold or delivered or agreed to be sold or delivered or such services provided or agreed to be provided.
- Voluntary Consumer Organisation
- the Central Government;
- the State Governments or Union Territory Administration;
- one or more consumers , where there are numerous consumers having the same interest

The definition of consumer is wide but only a consumer to whom goods are sold or delivered or agreed to be sold or delivered or such services provided or agreed to be provided can file complaint. The definition as provided under Sec. 2(1) (b) is different from list of persons who can file complaint. The legal heirs or representatives of the deceased have been included in definition of ‘complainant’ by 2002 amendment but have not been specified in Sec. 12(1) as person who can file complaint, which, creates a doubt that he can not file and can only continue as a complainant after the death of the complainant.

A Complaint should contain the following information

- (a) The name, description and address of the complainant;
- (b) The name, description and address of the opposite party or parties;
- (c) The facts relating the complaint and when and where it arose;
- (d) Documents ‘if any’ in support of allegations and
- (e) The relief which the complainant is seeking.

⁶*Ibid* Sec 12(1)

The complaint should be signed by the Complainant or his/ her authorised agent.

Reliefs Available to Consumers:

Following reliefs are available to the Consumers under the Act⁷:

- Removal of defects from the goods;
- Replacement of the goods;
- Refund of the price paid;
- Award of compensation for the loss or injury suffered;
- Discontinue and not to repeat unfair trade practice or restrictive trade practice;
- not to offer hazardous goods for sale;
- to withdraw hazardous goods from sale;
- to cease manufacture of hazardous goods and desist from offering services which are hazardous in nature;
- if the loss or injury has been suffered by a large number of consumers who are not identifiable conveniently, to pay such sum (not less than 5% of the value of such defective goods or services provided) which shall be determined by Forum;
- to issue corrective advertisement to neutralise the effect of misleading advertisement;
- to provide adequate costs to parties.

V. Highlights of the Consumer Protection (Amendment) Act, 2002 as notified on 15th March 2003

- In case of death of a consumer, his legal heir or representative – a new sub-clause (1) under Section 2 of the Principal Act.
- Exclusion of a person who avails of such service for any commercial purpose from the category of the consumer. However, the “Commercial purpose” does not include use by a

⁷ *Ibid* Sec 14(1)

person of goods bought and used by him and services availed by him exclusively for the purpose of earning his livelihood by means of self-employment.

- “Spurious goods and services” in the form of new clause (oo) after clause (o) under Section 2 of the Principal Act.
- With a view to promote and protect within the district the rights of the consumer laid down under the Principal Act “establishment of the District Consumer Protection Council” under the Chairmanship of the District Collector, insertion of new Sections 8A and 8B; is proposed.
- Qualifications including academic and also disqualifications for members.
- Re-appointment of a member for another term of five years or up to the age of sixty-five years, which ever is earlier.
- Substitution of new Section for Section 12 dealing with the manner in which complaint shall be made.
- Provisions dealing with adjournment – “no adjournment shall be ordinarily granted”. Proviso to the new sub-clause (3A) under Section 13 of the Principal Act.
- Power to make “interim order” new sub-clause (3B) of Section 13.
- Power to grant “punitive damages” new proviso to clause (d) of Sub-Section (1) of Section 14.
- Power to issue “corrective advertisement” to neutralize the effect of misleading advertisement at the cost of the opposite party, new clause (nc) under Sub-Section (1) of Section 14.
- Benches of the State Commission may be constituted by the President of the State Commission with one or more members.
- Insertion of new Section 17A authorising the State Commission, on the application of the complainant or of its own motion, to transfer any complaint pending before the

District Forum to another District Forum within the State in the interest of justice.

- Creation of benches of the National Commission.
- Power of the National Commission to review its own order, when there is an error apparent on the face of record.
- Provision in regard to the execution of orders of the District Forum, the State Commission or the National Commission.
- All offences under the Consumer Protection Act may be tried summarily, notwithstanding anything contained in the code of Criminal Procedure, 1973. The District Forum, the State Commission or the National Commission shall have the power of a Judicial Magistrate of the first class for the trial of offences.
- New Section 28-A dealing with the procedure for service of notice.

Consumer Protection: Implications for Good Governance

An effective, efficient and fair implementation of the Consumer Protection Act is one of the conditions precedent for promoting the culture of good governance and thereby ensuring the better promotion and protection of the rights of the consumers. If the rights of the consumers in relation to the quality of goods and services are assured and taken care of then there will be no cause for complaints. This situation would certainly create an atmosphere wherein the clients, customers and consumers would feel satisfied with the things needed most to them. In this context, the concerns of the good governance need to be mentioned briefly with a view to establish linkage with the concern of the Consumer Protection law and institutions. Generally speaking, the thrusts of the good governance movement are – efficiency, effectiveness, ethics, equality, economy, transparency, accountability, empowerment, rationality, impartiality and participation.

In view of these requirements of the good governance one can easily and with success establish the co-relations with the concerns of the Consumer Protection law and policies. From the point of view of the concerns of the Consumer Protection Law, it may generally be emphasised that the concerns of consumers' rights protection are to ensure fair trade practices, quality goods and deficiency free services with information in regard to quality, quantity, potency, components and price with a view to provide opportunity to the consumers in regard to their choices.

In view of the remedies available to the consumers under the Consumer Protection laws there is no doubt that at the end of the day, if efforts of the operators of law and agencies are genuine and there is a sense of commitment, the culture of good governance

would pervade wherein the consumers would feel highly satisfied and there would be no real cause for making a complaint or showing their dissatisfaction in any way. Therefore, the proper and effective implementation of the laws, dealing with the protection of the Consumers' rights would promote the cause and concern of the good governance.

It would, finally, be better to highlight one or two areas with a view to focus the developments in regard to the protection of Consumers' rights as well as the concern of the good governance. As stated earlier, one of the concerns of the good governance movement is to promote and ensure accountability of producers and providers in public domain. The judgement of the Supreme Court in *Lucknow Development Authority Vs. M.K.Gupta*⁸ may be cited as an illustration. In the instant case the Supreme Court while establishing the jurisdiction of the Consumer Disputes Redressal Agencies created under the Consumer Protection Act emphasised that the service provided by a private body or a statutory or public authority are within the jurisdiction of the Consumer Protection Act. In this context, the Supreme Court also laid down that any defect or deficiency in such service would be treated as unfair trade practice and would amount to denial of service.

It would be instructive to highlight the observation of the Supreme Court in the above case in regard to the concept of public accountability. The Supreme Court observed as follow:

“ The administrative law of accountability of public authorities for their arbitrary and even *ultra-vires* actions has taken many strides. It is now accepted that the state is liable to compensate for loss or injury suffered by a citizen due to arbitrary actions of its employees ... No functionary

⁸ (1994) 1SCC 243, See also *Ghaziabad Development Authority vs Balbir Singh*, AIR 2004SCW 2362.

in exercise of statutory power can claim immunity ... Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour... Each hierarchy in the Act is empowered to entertain a complaint by the Consumer for value of the goods or services and compensation... The Commission or the Forum in the Act is thus entitled to award not only value of the good or services but also to compensate a consumer for injustice suffered by him.”⁹

In continuation, it was further observed that the award of compensation is not the only issue today. The concept of public functionary has undergone tremendous change with passage of time and change in socio-economic outlook ... In a modern society no authority can arrogate to itself the power to act in a manner which is arbitrary ... It is now imperative and implicit in the exercise of power that it should be for the sake of society. “ It is, therefore, necessary that the Commission when it is satisfied that a complainant is entitled to compensation for harassment or mental agony or oppression... then it should, further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour...”¹⁰

In view of the above law of personal accountability of the concerned public functionary as laid down by the Supreme Court while protecting the rights of Consumers under the Consumer Protection Act is in fact an appreciable contribution to the body of law on public accountability which is one of the major concerns of

⁹ *Ibid.* 258

¹⁰ *Ibid.* 264

the good governance movement. In view of the importance of the law on public accountability and the role of the Consumers' adjudicatory bodies, the above decision should be made a compulsory reading for all those having role to play in the promotion and protection of the consumers' rights and also with the process of administrative reforms for good governance.

Similarly, the approach of the Supreme Court in ensuring qualitative change in the attitude of the medical service provided by the hospitals and the medical professionals followed in the *Indian Medical Association Vs. V.P. Shantha and Ors*¹¹, deserves high appreciation with a view to giving real meaning to the accountability of professionals. In *Charan Singh's judgment*¹² the observation of the Supreme Court to the effect that "the Consumer Forums while quantifying damages are required to make an attempt to serve the ends of justice so that compensation is awarded, in an established case, which not only serve the purpose of recompensing the individual, but which also at the same time, aims to bring about a qualitative change in the attitude of the service provider". It may, in addition, be pointed out, in view of the number of complaints brought before the Consumer Forums and Commissions, that the number of complaints in regard to the quality of public services are more than complaints dealing with defects in goods. Keeping in view the changing economic scenario, the number of complaints in regard to the deficiencies in services would certainly increase in the future. Therefore, the Consumer Forums and Commissions established under the Consumer Protection Act, need to be given extra attention to ensure its efficient, effective, fair and inexpensive functioning.

¹¹ AIR 1996 SC 550, See also *Dr. J.J. Merchant and ors Vs. Srinath Chaturvedi*, III, (2002) CPJ 8 (SC).

¹² *Charan Singh Vs Healing Touch Hospital and ors.* (2000) 7 SCC 668

VII. Consumer Protection Movement – Future Direction.

Consumer Protection movement to be effective and meaningful needs the proactive support of the government, business, organisations of Civil Society, Educational Institutions – Schools, Colleges, Universities and Research Institutions. Over and above the support of *pro bono publico* and of every individual is a sine qua non for the Consumer movement to be purposeful. The policies, schemes and programmes of the Government of India through the Department of Consumer Affairs are no doubt useful but their effectiveness finally depend on the involvement of the institutions and the people at large. A number of schemes have already been in operation such as, Grahak Jagaran, Consumer Clubs in Schools, Promoting involvement of Research Institutions, Universities, Colleges, etc. in Consumer Protection and Welfare etc. Similar schemes and programmes are needed at the State Government level also to provide further impetus to the Consumer movement in the Country. Organisations of the Civil Societies are having special responsibility in this regard and so is the case of the educational institutions.

While expanding the scope of Consumer Law, National Commission opened new doors in *Bhupesh Khurana and others V Vishwa Budha Parishad and others*¹³ that imparting education falls within the ambit of service as defined under CPA. It was held that fees are paid for services to be rendered by way of imparting education by educational institutions. This is a great move in the direction of Consumer Protection as many Five stars schools & colleges are mushrooming day by day. These claim of false affiliation with well known Universities in India as well as abroad and charge huge sums in the name of fees and other charges, which is unaffordable for the common man. Many of these institutions appoint unqualified staff and faculty to teach a particular stream and sometimes even such

¹³(2000) CTJ801.

faculty is not available. Examinations are not held in time or results are not declared for months or even years, or certificates are not issued to them. Most of such Institutions are being run by fly- by-night operators with only commercial motives. In the last decade imparting education has become just another business rather than service to the society. To be cheated and lose hard earned money is one thing but more important fact is that the future of many students is at stake.

In many such cases, which have come before the National Commission, the apex consumer court has clearly held that providing education is a service and has compensated the aggrieved consumer. In a number of cases the non supply of Roll Number, unexplained delay in deciding the application for admission, misrepresentation in advertisement and prospectus about the recognition of the college, non refund of the initial payment as college fee etc. have been held as deficiency in service.

Role of Educational Institutions in Consumer Protection Movement may not legitimately be denied on any conceivable ground. Educational Institutions, therefore, are expected to play a positive role in promoting Consumer Protection Movement. There may be different ways to achieve the objective of Consumer education about their rights and interest. It is said that aware Consumer is an asset to the society. Various methodologies, Educational Institutions are expected to follow such as, Seminars, Workshops, Lectures, Discussions, Colloquiums, Essay Competitions, Quizzes etc. in the area of Consumer Protection and Welfare to give boost to the Consumer Protection Movement in the Country.

Concluding Remarks

The efficient and effective programme of Consumer Protection is of special significance to all of us because we all are consumers. Even a manufacturer or provider of a service is a consumer of some other goods or services. If both the producers/providers and consumers realize the need for co-existence, adulterated products, spurious goods and other deficiencies in services would become a thing of the past. The active involvement and participation from all quarters i.e. the central and state governments, the educational Institutions, the NGO's, the print and electronic media and the adoption and observance of a voluntary code of conduct by the trade and industry and the citizen's charter by the service providers is necessary to see that the consumers get their due. The need of the hour is for total commitment to the consumer cause and social responsiveness to consumer needs. This should, however, proceed in a harmonious manner so that our society becomes a better place for all of us to live in.

(Annexure)

MODEL FORM OF NOTICE, COMPLAINT, AFFIDAVIT AND REPLY
MODEL FORM-1 NOTICE BEFORE FILING THE COMPLAINT

Name and address

.....
(of the trader, dealer, firm, company, etc.)

.....
(Complete address)

IN RE: (Mention the goods/services complained of giving details)

.....
Dear Sir,

This is to bring to your kind notice that I had purchased.....from your for a consideration of Rs..... paid in cash vide your cash memo/Receipt/ Invoice No..... (or through cheque No dated drawn on bank for a sum of Rs

The said goods are suffering from the following defects:

- (i)
- (ii)etc

I have reported the above matter to you several times (give reference of earlier letters, if any) but despite all my pleadings you have not made good the defect in the goods (or deficiency in services) which is indeed regrettable and highly unbusiness like. On account of your aforesaid dereliction of duty and failure and neglect to rectify the same I have suffered losses/incurred expenses

.....
.....
.....
.....
.....

(give details)

which you are liable to compensate to me.

You are hereby finally called upon to

(i) remove the said defects in the goods
and/or

(ii) replace the goods with new goods
and/or

(iii) return the price/ charges paid

(iv) pay compensation for financial loss/injury/interest
suffered due to your negligence
(give details)

in the sum of Rs with interest @ % per
annum within days of the receipt of this
notice failing which I shall be constrained to initiate against
you for redressal of my aforesaid grievances and recovery of
the aforesaid amount such proceedings, both civil and criminal
as are warranted by law, besides filing a complaint under the
statutory provisions of The Consumer Protection Act, 1986
exclusively at your own risk, cost, responsibility and
consequences which please note.

Place.....

Dated.....

Sd/-

.....

Model Form –2 -The complaint

BEFORE THE HON'BLE DISTRICT CONSUMER DISPUTES
 REDRESSAL FORUM AT

OR

BEFORE THE HON'BLE STATE CONSUMER DISPUTES
 REDRESSAL COMMISSION AT

OR

BEFORE THE HON'BLE NATIONAL CONSUMER DISPUTES REDRESSAL
 COMMISSION AT NEW DELHI

IN RE: COMPLAINT NO OF 20 IN THE MATTER OF:
 (FULL NAME)(DESCRIPTION)(COMPLETE ADDRESS)

..... Complainant

VERSUS

(FULL NAME)(DESCRIPTION)(COMPLETE ADDRESS)

..... Opposite Party/Parties

**COMPLAINT UNDER SECTION 12/SECTION 17/
 SECTION 21 OF THE CONSUMER PROTECTION ACT, 1986.**

RESPECTFULLY SHOWETH

INTRODUCTION

(In this opening paragraph the complainant should give his introduction as well as that of the opposite party/parties.)

TRANSACTION

(In this paragraph complainant should describe the transaction complained of, *i.e.*, particulars and details of goods/ services availed; items of goods/kind and nature of service; date of purchase of goods/ availing of service; amount paid as price/consideration, full or in part towards the goods/service; Photocopies of the bill/cash memo/ voucher or receipt should be attached and properly marked as Annexure – A,B,C and so forth or 1,2,3 and so forth.)

DEFECT/DEFICIENCY

(In this paragraph complainant should explain the grievance, *i.e.*, whether the loss or damage has been caused by some unfair trade practice or restrictive trade practice adopted by any trader or there is some defect in the goods or there has been deficiency in service or the trader has charged excessive price for the goods. One should elucidate the nature of unfair trade practice adopted by the trader, *i.e.*, relating to the quality of goods/services; sponsorship; warranty or guarantee for such period promised. The nature and extent of defects in goods should be explained and so should the deficiency in service. In case of excessive price one should specify the details of actual price fixed by or under any law for the time being in force or as set out on goods and their packing vis-a-vis the price charged by the trader. Complaint can also be filed against offer for sale of goods hazardous to life and safety when used. You should narrate your grievance and rest assured it is being read /heard by compassionate and pragmatic judges. Photocopies of relevant documents must be attached.)

RECTIFICATION

(In this paragraph complainant should highlight what attempts were made by him to set things right, *i.e.*, personal visits or negotiations; communication in writing if any; whether any legal notice was got served and / or whether he has approached any other agency for redressal like, Civil or Criminal Court of competent jurisdiction; the stage of its proceedings, its outcome, if any, alongwith copies (certified preferably) of such proceedings. The nature of response got from the trader when irregularities were brought to his notice, should also be disclosed here).

OTHER PROVISIONS

(In this paragraph reference may be made to any other law or rules or regulations of particular procedure which is applicable to the case and/ or which has been violated by the trader and consumer's rights under the same. There are incidental statutory obligations, which traders must fulfil and in case of their failure to do so the case in *prima facie* made out and Forum would take cognizance).

EVIDENCE

(In this paragraph complainant should give details of documents and/ or witnesses he will rely upon to substantiate his case. The documents attached as Annexures as stated above may be incorporated in a proper list and a list of witnesses (if any) may be filed similarly).The annexures should be attested as “True Copy”.

JURISDICTION

(In this paragraph complainant should liquidate the claim in the complaint, *i.e.*, upto 20 lakh; 20 lakh to one crore; or above and set out the pecuniary jurisdiction of the Forum/ State Commission/National Commission, as the case may be. The territorial Jurisdiction should be highlighted to obviate any formal objection).

LIMITATION

That the present complaint is being filed within the period prescribed under section 24A of the Act.

RELIEF CLAIMED

(In this paragraph complainant should describe the nature of relief he wants to claim. *i.e.*, for removal of defects in goods or deficiency in service; replacement with new goods; return of the price or charges, etc., paid and/or compensation on account of financial loss or injury or detriment to his interest occasioned by negligence of the opposite party and elucidate how you have calculated the amount of compensation claimed).

PRAYER CLAUSE

It is, therefore, most respectfully prayed that this Hon’ble Forum/ Commission may kindly be pleased to (Details of reliefs which complainant wants the Court to grant)

Place:

Dated:

Complainant Through
(Advocate or Consumer Association, etc.)

Verification.

I, the complainant above named, do hereby solemnly verify that the contents of my above complaint are true and correct to my knowledge, no part of it is false and nothing material has been concealed therein. Verified this day of 20 at Complainant.

Note: Although it is not compulsory, complainant may file an affidavit in support of the complaint which adds to the truth and veracity of allegations and gives credibility to the cause. It need not be on a Stamp paper but one should get it attested from an Oath Commissioner appointed by a High Court. The format is just as simple.

Model Form –3- Affidavit in support of the complaint

BEFORE THE HON'BLE.....IN RE: COMPLAINT NO.....OF
20.....IN THE MATTER OF:

.....
..... Complainant

.....
..... Opposite party

AFFIDAVIT

Affidavit of
Shri.....S/o. Shri
aged.....years, resident of

- (1) That I am complainant in the above case, thoroughly conversant with the facts and circumstances of the present case and am competent to swear this affidavit.
- (2) That the facts contained in my accompanying complaint, the contents of which have not been repeated herein for the sake of brevity may be read as an integral part of this affidavit and are true and correct to my knowledge.

Deponent

Verification:

I, the above named deponent do hereby solemnly verify that the contents of my above affidavit are true and correct to my knowledge, no part of it is false and nothing material has been concealed therein. Verified this.....day of.....20.....
at.....

Deponent

Model Form –4- Reply by the trader to the complaint

BEFORE THE HON'BLE..... THE CONSUMER
DISPUTES REDRESSAL FORUM/COMMISSION AT.....

IN RE: COMPLAINT NO..... OF 20.....

IN THE MATTER OF:

..... Complainant

VERSUS

..... Opposite Party

DATE OF HEARING.....

**WRITTEN STATEMENT ON BEHALF OF RESPONDENTS TO
THE COMPLAINT OF THE COMPLAINANT**

RESPECTFULLY SHOWETH:

Preliminary Objections

- 1 That the present complaint is wholly misconceived, groundless and unsustainable in law and is liable to be dismissed as such. The transaction question was without any consideration and free of charge.
- 2 That this Hon'ble Forum/ Commission has no jurisdiction to entertain and adjudicate upon the dispute involved in the complaint in as much as it is not a consumer dispute and does not fall within the ambit of the provisions of the Consumer Protection Act, 1986, hereinafter called the said Act and is exclusively triable by a Civil Court and as such the complaint is liable to be dismissed summarily on this score alone.
- 3 That the dispute raised by the complainant in the present complaint is manifestly outside the purview of the said Act and in any event, the Act is in addition to and not in derogation of the provisions of the..... Act. The proceedings initiated by the complainant under the Act are honest, null and void and without jurisdiction.
- 4 That the definitions of 'Complainant', 'Complaint', 'Consumer Dispute' and 'Service', as defined in Section 2(1) of the said Act do not cover the claims arising under the present dispute and that from the aforesaid definitions, the complainant is not 'consumer' and the controversy involved in the complaint is not a 'consumer dispute'.
- 5 That the present complaint is baseless and flagrant abuse of process of law to harass and blackmail the answering respondent.
- 6 That the complainant has no *locus standi* to initiate the present proceedings.
- 7 That the complaint is bad for non-joinder of necessary and proper party and is liable to be dismissed on this score alone.
8. That the complainant has already filed a Civil Suit for in a court of competent jurisdiction which is pending disposal in the Court of and the present complaint has become infructuous.

9. That the present complaint is hopelessly barred by limitation.
10. That this Hon'ble Forum/Commission has no territorial or pecuniary jurisdiction in as much as the amount involved in the subject-matter exceeds/is less than the limit prescribed by Section 11(1) Section 17(1)(a)(i)/Section 21(a)(i) of the Act.
11. That the present complaint is frivolous and vexatious and liable to be dismissed under Section 26 of the Act.
12. That the present complaint has not been verified in accordance with law.

On Merits:

In these paragraphs respondent must reply each and every allegation made and contention raised by the complainant, factual and legal as well. In case one has already made good the defect or deficiency, elucidate steps taken. One may have, *inter alia*, following goods defences as well.

1. That the transaction entered between the parties to the above dispute is a commercial one and the complainant cannot claim any relief from this authority in as much as
(give details)
2. That the complainant had purchased the goods as a seller/retailer/distributor, etc., for consideration of resale and as such is barred from moving this Hon'ble Forum/Commission for the alleged defect/deficiency etc. in as much as
(give details)
3. That the complainant has already availed the warranty period during which the answering respondent has repaired/replaced the goods in question. The complainant is thus legally stopped from enforcing this complaint or to take benefit of his own wrong.
4. That the present complaint is an exaggeration beyond proportion despite the fact that the complainant is himself responsible for delay and laches in as much as he has on several occasions changed his option for class of goods/type of allotment scheme of flats/model of vehicle, etc
(give details)
5. That the answering respondent is well within his rights to charge extra price for the subject-matter of the above dispute in as much as time was not the essence of delivery thereof. The complainant is

liable to pay the increased price w.e.f on account of escalation due to excise duty/budgetary provisions etc. in as much as..... (give details)

6. That the complainant has accepted the goods and/or service towards repair/replacement etc. without protest and the present complaint is merely an after thought.
7. That without prejudice the answering respondent as a gesture of goodwill is prepared to..... (give details of rectification, if any, which can be done in case of minor or tolerable problems to avoid harassment to consumer and litigation problems)

The allegations of defect/default/negligence and/or deficiency in service are wholly misconceived, groundless, false, untenable in law besides being extraneous and irrelevant having regard to the facts and circumstances of the matter under reference.

Prayer clause with all the submissions made therein is absolutely wrong and is emphatically denied. Complainant is not entitled to any relief whatsoever and is not entitled Model Form costs.

Sd/-

(Opposite Party)

Place:

Dated:

through

(Advocate)

Verification

I, the above named respondent do hereby verify that the contents of paras to of the written statement on merits are true and correct to my knowledge. While paras to of preliminary objections and to of reply on merits are true to my information, belief and legal advice received by me and believed to be true while the last para is prayer to this Hon'ble Court. Verified at this day of 20.....

Sd/-

(Opposite party)