

A Study on Evolution of Consumer Protection Act in India – CPA1986

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ABSTRACT

Consumer Protection is a Socio-economic activity that is to be carried out by government and business with a prime interest of consumer satisfaction. Consumer protection has been a part of the responsibilities of the rulers in India even before independence. But a formal consumer protection law, which purely focuses on consumer protection, was enacted in the year 1986. The consumer movement that flourished in the early and middle of the 20th century made the whole world focus on formulation of strong consumer Acts. United nation guidelines were the basis for formulation of consumer protection policies and measures in many developing countries including India. Consumer Protection Act 1986 (CPA 1986), which was passed in Parliament in 1986, is considered as one of the best Acts for consumer protection among its counterparts. This paper brings out the evolution of consumer protection in India, formulation of CPA 1986 and its implementation.

Keywords: Consumer Protection, Consumer Protection Act 1989, UN guidelines, Consumer Movement.

1. INTRODUCTION

The concept of consumer protection is as old as human civilization. Protecting the consumer interests is one among the prime concerns of the business. According to Mahatma Gandhi, Father of the Nation, consumer is giving an opportunity for the business people to serve him and he is the ultimate purpose of the business. But the profit motive of many manufacturers and dealers is leading to consumer exploitation through deceitful and immoral market practices (Singh and Grewal 2013). Consumer Protection is a Socio-economic activity that is to be carried out by government and business with a prime interest of consumer satisfaction. It is the prime responsibility of the government to protect the rights and interest of consumers through formulating suitable policies, laws and administrative framework. There are different Acts and Laws were incorporated to protect the consumers. But Consumer Protection Act 1986 (CPA 1986) is considered as a milestone in the history of consumer protection in India. This paper discusses the background and evolution of Consumer Protection Act over a period of time. The study was purely depended on secondary data. The paper analyses the back ground of CPA 1986, its implementation and post implementation and changes.

2. CONSUMER PROTECTION IN INDIA

Consumer protection in India is as old as the civilization. The Consumer protection in India can be studied under three major parts viz. Ancient India, Medieval period and Post Independence.

2.1 Consumer Protection in Ancient India

The concept of consumer protection against unscrupulous, unfair and unethical malpractices and safeguarding the interest of consumers was a part of Indian administration centuries ago. Ancient Indian Dharmas like Manu Smriti (800 BC to 600 BC), The Yajnavalkya Smriti (300 B.C. to 100 B.C), The Narada Smriti (100 A.D to 200 A.D.), The Brihaspati Smriti (200A.D. to 400 A.D.), & The Katyayana Smriti (300 A.D. to 600 A.D) (Prasad A.R, 2008) were explained the living conditions of the people of that time and were basis for the Dharma to be followed at that time. They were even the basis for the legal system which is being followed now. In India, Manu Smriti was one of the most influential texts that dealt with various consumer matters. Arthashastra of Kautilya (there is a conflict on dates of his life.)a) is considered as one of the oldest and a very effective book on trade and commerce in ancient India. Kautilya has mentioned about different punishments to different types of exploitations, and wrong measures and services. The consumer protection was a part of common law during their period. (Shamasastri, 1951)

2.2 Medieval period and Pre-independence

During the medieval period Muslim kings who ruled India, like Alauddin Khilji, Sher Shah Suri, and Akbar etc. (Singh, 2014), considered protecting the consumers as one of their prime concerns. They introduced weights and measures standardization process. British rulers combined the old customs and culture (dharma) with a unified nationwide legal system that has modern elements of British localism (Prasad, 2008). They have introduced Acts like

- The Indian Penal Code, 1860
- Carriers Act, 1865 Law of Tort
- The Indian Contract Act, 1872
- The Agricultural Produce (Grading & Marking) Act, 1937
- The Drugs and Cosmetics Act, 1940

2.3 Post Independence

After independence, several laws were enacted in India for protecting innocent consumers from unfair and restrictive trade practices like a false and misleading description about the nature and quality of the goods exaggerated statements about their power and potency, false weights and measurements and obstruction of capital and resources into the stream of production. The Acts which were enacted in independent India are given below-

- The Drug (Control) Act, 1950
- The Industries (Development and Regulation) Act, 1951
- The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954
- The Prevention of Food Adulteration Act, 1954
- The Essential Commodities Act, 1955
- The Trade and Merchandise Marks Act, 1958
- The Monopolies and Restrictive Trade Practices Act, 1969
- The Cigarettes (Regulation of Production, Distribution, and Supply) Act, 1975
- The Standards of Weights and Measures Act, 1976
- The Prevention of Black Marketing and Maintenance of Supplies of Essential
- Commodities Act, 1980
- The Standards of Weights and Measures (Enforcement) Act, 1985
- The Bureau of Indian Standards Act, 1986

But all these Acts were not as successful as they were expected to be and that is why to provide for better protection of the interests of consumers and to save them from the evils of unfair trade practices, Consumer Protection Act -1986 was enacted by Indian Government and this act (CPA) is an additional act not the derogation of any other existing law.

3. SOME MAJOR CONSUMER PROTECTION ACTS

The first Bill to protect the consumers, passed after Independence, was Drug Control Act 1950. It was followed by Industries (Development and Regulation) Act, 1951, The Indian Standards Institution (Certificate Marks) Act 1952 and Drugs and Magic Remedies (Objectionable Advertisements) Act 1954. Though these Acts were intended to protect consumers, these Acts did not achieve the desired results.

3.1 Prevention of Food and Adulteration Act, 1954

It was the Prevention of Food and Adulteration Act, 1954, that was made every attempt to protect the consumers. There were detailed provisions for analysis of food, giving warranty by manufacturers, distributors and dealers, the disclosure of names by the vendors, food poisoning, the summary trial of cases, forfeiture of property, etc. The Act was enacted to eradicate the anti-social evil of food adulteration and ensure purity. The central government and state governments framed rules with regard to Central Food Laboratory, Standard of quality, public analysts and inspectors, ceiling, fattening and dispatch of samples, coloring matter, packing and labeling of foods, prohibition and regulating sales, conditions for sale and license, preservative, poisonous metals, and solvent-extracted oils and edible flour etc. After implementation of this Act, Essential Commodities Act was enabled to extend to control the production, supply, and distribution of certain essential commodities.

3.2 MRTP Act, 1969

Another important measure taken by Indian government to protect the consumers was Monopoly and Restrictive Trade Practices Act (MRTP Act) 1969. It was passed by Parliament on the recommendations of Mahalanobis Committee Report, 1954, Justice K C Gupta Commission Report, 1965. It came into enforcement on 1st June 1970. The Act was enacted so that there would not be any concentration of economic power as a result of economic system operations, and prohibition of Monopoly and restrictive trade practices. To accomplish the aims and objectives, there were provisions for the establishment of MRTP commission to enquire into monopolistic and restrictive trade practices and to grant a temporary injunction and compensation. The Act was amended in 1982, 1984, 1985 and 1986. (Pathak A, 2007)

3.3 Other Acts

The legal relationship and disabilities between the buyer and seller were by and large regulated by Law of Contract (1872) and Sale of Good Act (1930). Consumers were unable to avail these Acts when they had some grievances. Law

of Torts and Provisions of IPC 1980 were also applied to protect consumers. After Independence, there were around 40 legislations were enacted or strengthened to protect the consumers' interests, which included some of the British laws. But due to inadequacy in their implementation and improper coverage of consumer rights and redressal through the existing civil court system was cumbersome, lethargic and accused, none of them could able to protect the consumers against exploitation.

4. CHURNING PROCESS BEFORE THE ENACTMENT OF CONSUMER PROTECTION ACT

Though there were a series of legislative measures undertaken after Independence, the consumers had not been protected as the extent desired. There was a Private Bill for consumer protection law was introduced but failed in the Parliament in the year 1977 (CUTS report, 2001). Lokpal and Lokayukta were set up, after the suggestions of Administrative Reforms Commission headed by Morarji Desai, to resolve the grievances of citizens.

The Law Commission of India, in its 105th Report on Quality Control and Inspection of Consumer goods, October 1984 (Law Commission Report 1984), under the Chairmanship of KK Mathew, suggested that we need to establish a better system to safeguard the consumer interests without the consumer being driven to initiate costly and possibly long drawn out litigation.

During the same period, Madhya Pradesh State Government had introduced "Madhya Pradesh Consumer Protection Bill 1984" which was the outcome of an intensive and analytical study by Consumer Protection Sub-Committee of Madhya Pradesh Law Commission. The Bill had a provision to establish State Institute of Consumer Education Research and Training, State Fair Trade Practices Forum and Consumer Prices Review Commission. It also proposed a State action under Unified Comprehensive Consumer Code. The bill proposed legal protection to community activists and award punitive damages to those who were the victims of unfair trade practices. The bill was intended to make roads achieve social and economic goals where it could not act directly (Nayak, 1985). The bill also proposed to establish councils at District, City and Village and ward levels to collect information and a Consumer Ombudsman, who could recommend on policy and research, and also to suggest on Laws and publications on Safety and Standards. Meanwhile, Government of Delhi (then Union Territory) had proposed a bill for the protection of consumers (Pathak, 2007).

The Prime Minister's 20-point formula was one of the significant aspects in Consumer Protection, which was the brainchild of then Prime Minister Shri. Rajiv Gandhi. Initially, 20-point program was structured by Mrs. Indira Gandhi in 1975, restructured in 1982. The same was upgraded by Shri Rajiv Gandhi to improve the productivity of Indian Economy and to accelerate the upliftment of weaker sections. Consumer Protection was the 18th point among the socio-economic aspects described in that program (Madan, 1998).

4.1 United Nations Guidelines

Formal consumer protection Acts were first made in the western part of the world because of the consumer movement that flourished in the USA and Europe during early 20th century. Philip Kotler (1972) identified three phases of the consumer movement in the USA. The first phase was in early 1900's where American government passed bills like Pure Food and Drug Act (1906), The Meat Inspection Act (1906) and the Creation of Federal Trade Commission (1914). The second wave of consumerism in mid-1930's because of Upturn in consumer prices in midst of Depression, the sulfanilamide Scandal, and Detroit House wives strike. And the third is because of factors like structural conduciveness, structural strains, growth of a generalized belief, precipitating factors, mobilization for action and social control. (Rajanikanth, 2011). Ralph Nader gave consumerism a boom in 1960's. The international consumer movement reached its peak in most countries in late 1960's. In 1962 president John F. Kennedy proclaimed the consumer rights which symbolized consumerism. Consumer movement spread to Japan, UK, Belgium, Denmark, France, The Netherlands, Norway, and Sweden (Rajanikanth, 2011). But the consumers in developing and developed countries were victims of the market forces. In July 1981, the Secretary-General of United nations was requested to continue prior consultations on consumer protection by the Economic and Social Council of United nations (ECOSOC) with the aim to pursuing, inter alia, the elaboration of general guidelines with a special consideration of needs of developing nations. In 1982, a set of draft guidelines was submitted to the Governments of member countries for comment. A report with revised set of guidelines was submitted to ECOSOC by the Secretary-General in May 1983. On 9th April 1985, General Assembly of United Nations adopted these set of general guidelines for consumer protection unanimously and requested the Secretary-General to disseminate them to the parties of interest (Harland, 1987). These guidelines were basically intended for member countries, especially for developing and newly independent nations. According to "Javier Pérez de Cuéllar", The United Nations Secretary General, these draft guidelines represent initial attempt to create an international framework within which national consumer protection policies and measures could be worked out (Harland, 1987).

4.2 Consumer Protection bill and CPA1986

Based on the guidelines of United Nations, a 28-member National Consumer Protection Council, consisting of various ministry representatives, conducted two meetings and decided to organize a National Workshop on Consumer Protection on March 11-12, 1985 with consumer representatives. Based on the guidelines, suggestions and recommendations made by representatives of State Governments, Voluntary Consumer Organizations, Central Ministers and Officials of various Government departments, at the national seminar, a draft bill was formulated. The Laws of United Kingdom, United States of America, Australia, and New Zealand were closely studied, analyzed and were considered while drafting the Bill (Viswanathan, 2008).

After a number of inter-ministerial meetings, a final draft was prepared and submitted to the Lok Sabha by then Minister of Parliamentary Affairs, and Food and Civil Supplies, HKL Bhagat on 9th December 1986 (Rao M, 1999). There were some verbal and minor amendments suggested by Shri C. Madhava Reddy, Shri Mool Chand Daga, Prof N.G. Ranga, Shri Jainul Abedin, Shri Sharad Dhige, and Shri Thompson Thomas, but were withdrawn and passed on the same day (Rao M, 1999). Simultaneously six other consumer protection laws were amended to give consumers and their organizations the right to prosecute offenders. These laws are:

- Standards of Weights and Measures Act, 1976;
- Prevention of Food Adulteration Act, 1954;
- Bureau of Indian Standards Act, 1986;
- Agricultural Produce (Grading and Marking) Act, 1937;
- Monopolies & Restrictive Trade Practices Act, 1969; and
- Essential Commodities Act, 1955 (CUTS Report, 2001)).

The parliament enacted Consumer Protection Act 1986, which received the assent of Indian president on 24th December 1986. The Act is meant to provide single, speedy and inexpensive redressal for consumer grievances under a three-level quasi-judicial redressal agency. According to Shri H K L Bhagat, this legislation was intended to provide a prompt and meaningful remedy for consumer grievances. He pointed out that the success of the Act depends upon its effective implementation of Central and State governments and the development of broad-based voluntary consumer movement at the grassroots level.

5. CONSUMER PROTECTION ACT 1986

The preamble of the Act says, "An Act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith."

5.1 Objectives of the Act:

The Act seeks to provide for better protection of the consumers. There are provisions in the Act for the establishment of Councils and Authorities to settle the consumer disputes.

1. The Act seeks inter alia to promote and protect the rights of consumers.
2. The protection of consumers' interests and their rights are sought to be promoted and protected through consumer protection councils established at national and State level.
3. The Act seeks to provide speedy and simple redressal mechanism through quasi-judicial machinery at the District, State and Central level. These quasi-judicial bodies are supposed to observe the principles of Natural Justice. They are empowered
4. To give reliefs of a specific nature and
 - a. To award appropriate compensation to the consumer.
 - b. Penalties for non-compliance of the orders given by the quasi-judicial bodies have also been provided.(Kapoor N D, 2002)

An Act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith.

The Act came into effect from April 15th, 1987. And Chapter 3 of the Act, which deals with Consumer Redressal Agencies, came into effect from 1st July 1987 (Maheswari, 2008).

5.2 Amendments

The Consumer Protection Act 1986 was amended in 1991, 1993, 2002, 2010 and another amendment is due. The 2002 amendment was passed by Rajya Sabha on 11th April 2002 and by Lok Sabha on 30th July 2002 with some amendments and again by Rajya Sabha on 22nd November 2002, Assent of the President of India was given on 17th December 2002. The provisions of the Act are being brought into force with effect from 15th March 2003. Though CPA 1986 has remedies for the consumers in the market place, they are not sufficient and consumer finds himself/herself as helpless due to ineffective legal machinery (Chatterjee and Sahoo, 2011). The Act needs further amendments to provide better protection to consumers in the country. (Singh and Chadah, 2008). One amendment bill

was put forward, in the year 2011, before Parliament which was lapsed and Amendments were proposed in the year 2015, for which the bill has been in pending for approval (<http://www.prsindia.org/>). In the recent past Government has initiated a series of steps to strengthen the mechanism of consumer protection, in the era of E-Commerce (“Major Proposed Changes in Consumer Protection Act”, 2016). The amendments to the bill were drafted after due consultation with different stakeholders, with more emphasis to ensure simplicity, speed, access, affordability and timely delivery of justice (“New Consumer Protection Bill to Ensure Timely Justice”, 2016). To handle complaints related to misleading advertisements, issuances of guidelines, online case monitoring system in the Consumer Fora, a portal – Grievance Against Misleading Advertisements (GAMA) – has been launched. The government is even planning for e-filing complaints in Consumer Fora.

6. CONCLUSION

Consumer protection Act came into existence in the month of March 1987. This Act was appreciated for its simple, speedy, inexpensive and effective justice, and for less paperwork and formal procedures. It was considered to provide more effective protection to consumers than any other correspond legislation existing in the world. After its implementation, it was observed that there was a rise in the awareness of consumer rights and utilization of provisions in the consumer protection Act. There was a growth in the amount of self-regulation in public and private sectors. But over a period of time consumers were slowly losing their interest in the redressal mechanism as the remedies were insufficient and the legal machinery is ineffective. CPA is proving a relief to those who are aware of it, but there is a need to strengthen the agencies under it. It also shows that the Consumer Protection Act 1986 needs some amendments and clarifications about the terms and functioning of Redressal agencies in the changing the environmental context. At the same time, Consumer protection Act 1986 is treated as one among the best existing Consumer laws in the world, but the Act is not meeting the desired goal of protecting interests of the vast majority of consumers. It may be due to the poor promotion of the Act and its provisions among the rural consumers, by the National and State Commissions. As the government is amending the Act (See the Annexure) further, many issues may be resolved. It is expected that the new amendments may provide a better relief to the consumer in the market place and prove that the ‘Consumer is King’.

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Annexure I

THE CONSUMER PROTECTION BILL, 2015

Highlights of the Bill

- The Bill replaces the Consumer Protection Act, 1986. The Bill enforces consumer rights, and provides a mechanism for redressal of complaints regarding defect in goods and deficiency in services.
- Consumer Dispute Redressal Commissions will be set up at the district, state and national levels for adjudicating consumer complaints.
- The Bill establishes a Consumer Protection Authority to investigate into consumer complaints, issue safety notices for goods and services, and pass orders for recall of goods and against misleading advertisements.
- If a consumer suffers an injury from a defect in a good, he may file a claim of product liability against the manufacturer. The consumer must establish seven conditions in order to prove such a claim.
- The Bill classifies six contract terms as 'unfair'. These cover terms such as (i) payment of excessive security deposits; (ii) disproportionate penalty for a breach ; (iii) unilateral termination without cause; (iv) one which puts the consumer at a disadvantage.

Key Issues and Analysis

- The Bill empowers the central government to supervise the functioning of, and issue binding directions to the district, state and national consumer redressal commissions. This could affect the independence of these quasi-judicial bodies.
- The District Commission, a quasi-judicial body, may be headed by a District Magistrate, who is part of the executive. This could violate the principle of separation of powers between the judiciary and executive.
- The National Commission, headed by a judicial member and comprising at least 15 technical or judicial members, will examine complaints on questions of law. This could contradict a Supreme Court judgment that questioned the competence of such technical members.
- In order to claim product liability, a claimant must establish four kinds of defects in the product, the injury caused from it, and that it belonged to the manufacturer. The claimant must also establish that the manufacturer had knowledge of such a defect. It may be argued that the conditions to establish a product liability claim are unreasonable.
- The Bill defines product liability to include defects in goods and deficiency in services. However, the conditions to be proven to claim product liability do not include conditions for services. It is unclear how a consumer can claim product liability for deficiency in services under the Bill.

AUTHOR



Dr Rajanikanth M awarded PhD from Osmania University in the year 2017. He received his BSc and MBA degrees from Kakatiya University, Telangana in 1998 and 2002 respectively. He served as faculty member in various college affiliated to Osmania University from 2002 to 2017. Currently Dr Rajanikanth is associated with Sikkim Manipal University. His research interests include consumer protection, branding and rural marketing.