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## Consumerism (Public Policy and Consumer Protection)

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“Consumer is first. He is the boss. He is not dependent on us.  
We are dependent on him.”

Consumer protection is the duty of the government and the society.  
Consumer must be protected against all exploitation.

*The chapter gives an insight into:*

- *Need for consumer protection*
- *How consumer is exploited*
- *Public policy to safeguard consumer*
- *Consumer rights*

# Consumerism

## (Public Policy and Consumer Protection)

Consumerism is one of the most popular social issues and is being publicised very fast. The consumer today wants his rights. He wants his full value for the money he spends. He is not ready to accept substandard good or goods whose usage date has expired. He wants full satisfaction from the products he buys.

In today's society, the dissatisfaction of the consumer and the protection of his rights need quick redressal. The government has made many laws, rules and regulations to nab the defaulting manufacturers, distributors and other members connected with the business and take them to the court of law.

The consumer today is very demanding, skeptical and critical. Therefore, marketeers must understand the consumer behaviour to be successful in this changing environment.

### Definition

“It is a social movement of citizens and government to enhance the rights and power of buyers in relation to sellers.”

Consumer problems can be associated with hospitals, libraries, schools, police force and various government agencies as well as with other business manufacturing and distributing durable, non-durable, industrial goods and service products.

There are many causes or *roots of dissatisfaction* of consumers, which gave rise to consumerism. They can be listed as under:

1. *Performance Gap*: The consumers are dissatisfied with the performance of the products, which are below their expectations. The consumers feel that the promise-performance gap is widening *e.g.*, the scooter not giving the mileage promised.
2. *Dissatisfaction with the System*: Many institutions are subjected to public scrutiny. There is a lot of trust and a loss of esteem by these institutions or enterprises. One glaring example of dissatisfaction for the consumers is the issue of passport. The procedure is cumbersome. There is shortage of staff and even when the passport has been made and is ready for despatch, the despatch does not take place even after six months. Similar is the case in the issue of licenses, ration cards, telephone connections etc.
3. *The Consumer Information Gap*: The consumer is not fully informed about the number of products available in the market and a customer who is short of time and does not

have the interest or intelligence to process information is at a loss. Such incidents occur while buying computers, small cars etc. The processing of decision making is complex and often the consumer makes a wrong choice.

4. *Non-credibility of Advertising*: Some consumers have an antagonistic attitude towards advertising. They feel that the advertisements are not credible and doubt their truthfulness. Some want to keep away from the advertising clutter, which irritates them.
5. *Impersonal and Unresponsiveness Marketing and Service Organisation*: The response to the human voice by a computer is sometimes annoying. Telemarketing is a great annoyance to the consumer. Lack of complete knowledge by salesman etc. e.g. Most of the banks selling credit cards will call you at any hour and disturb you in your work, your meeting etc. The number of such calls are many in a day and many salesman of the same bank are calling you over and over again. As a courtesy you do not shut them up but it is very irritating and time consuming. Another example of the railway where the bell keeps ringing for long and nobody responds or responds after a long time. If you have too questions to ask before the first question is fully answered, the phone is put down and you are left with incomplete information.
6. *Intrusion of Privacy*: Many consumer information databases are prepared. In this computerised society, this information is easily accessible and effects the consumer's privacy.

These factors and others have given rise to consumer movement. In India, we find a lot of consumable items are either of not right quality, or not of proper weight and price. Some times they have external material or elements like insects, cockroaches and other foreign elements. Although these cases are very rare but they are highlighted and give a boost to the consumer movement.

## ■ 21.1 Introduction

In the earlier decades the consumer was unorganised and was generally taken for a ride. Today, the consumer is aware of his rights and is highly educated and experienced.

He was earlier being exploited in many ways. These were the adulteration practices of the manufactures and middlemen. Variations in the contents of the pack, misleading and deceptive advertising which led even the educated consumer to buy unwanted and unnecessary goods to a large extent. Consumers also complained and criticised the factors like price, quality, advertising, packing, distribution, after sales service etc. There were many unfair trade practices prevalent in India, some example are given below:

*Advertising* of scooters and cars claiming a much exaggerated average per litre than the actual. The sale of magic rings for the cure of diseases like blood pressure and diabetes.

The sale of medicines claiming to increase the height of children, and other unbelievable claims. Adulterating the food with cheaper stuff to increase the weight of the product, like adding papaya seeds to black pepper to increase the bulk and weight. Adding animal fat to Ghee, water to milk, supplying poor quality products that did not last long, etc. many other practices which harmed the consumer considerably—amputating the wrong leg of a patient by

oversight in a government hospital. Patients losing their sight because of negligence of doctors using infectious surgical instrument in the operation theatre. Doctors leaving scissors or radioactive elements in the body of the patient. A patient was operated upon for the removal of an ovarian cyst, when actually there was none, and other practices which were injurious, unhealthy and unfair to consumers.

The examples show that the attitude of business towards consumers have been very indifferent. This mostly happens in a sellers market, but where there is competitive selling or sellers are many, the needs of the consumer is the first priority, and the marketing concept is being practised.

The exploitation of the consumer has led to the creation of the consumer movement also known as consumerism. Consumerism is the range of activities of the government business, and independent organisation that are designed to protect the consumer from the unlawful practices of the business that infringe upon their rights as consumers. There has been an awakening in the consumer and the government has passed many laws and statutory obligations that must be adhered to, by companies.

The subject of the present chapter is to highlight how far a consumer is safeguarded by the existing legal provisions, and what were the reasons for the passing Consumer Protection Act, 1986. Consumer is a person who has ability to pay for the product, who possesses the power to make the buying decision. Therefore, consumer is designated *asking of the market*.

In spite of existing enactments like the Weights and Measures Act, 1956. Essential Commodities Act, 1955, Prevention of Food Adulteration Act, 1954, MRTP Act, 1969, Sale of Goods Act, 1930 and others having bearing on consumer's right, the consumer's rights were being violated. Under law of nature or, law of the jungle, big fish eats the small ones. The persons in power if not put under legal limitations will repeat the system in which big fish eats the small one. An orderly society where rule of law prevails, brings peace and prosperity.

The consumer protection Act, 1986 has provided a legal umbrella to safeguard the interests of consumers and to give them cheap and speedy justice. In order to know the significance of the consumer protection Act, 1986, a bird's eye view of the provisions may be made, and then it can be assessed whether the enactment has really given relief to the consumer.

*Aims and objective of the Act:* In the statement of objects and reasons it is said that since the Act seeks to provide speedy and simple redressal to consumer disputes, a quasi-judicial machinery is sought to be set up at the District, State and Central levels. These quasi-judicial bodies will observe the principles of natural justice, and have been empowered to give relief of a specific nature and wherever appropriate, compensation to consumers. Penalties for non-compliance of orders given by the quasi-judicial bodies have also been provided. It shall be the duty of consumers councils to promote and protect the rights of the consumers. In Section 6 of the Act, a provision for consumers councils has been made. It provides a list of the rights of consumers. They are:

(i) *Protection against hazardous goods:* This right is generally taken care of under the law of Tort and since the time of *Donohue vs Stevenson*, where remains of a dead snail emerged from the bottle, and the customer had already taken a part of the content, aggravating her illness, and the manufacturers were held liable to the distant user. Now it has become an established principle that, producer providing goods in the market would be liable to the ultimate user, if his person or property is injured in the normal use of the goods. The consumer is

assured by this Act, that if he has been victimised into purchasing goods which have injured his person or property, he will have a speedy and effective remedy under the redressal hierarchy constituted under the Act, for example, adulterated food is dangerous to life and weak cement is dangerous to property, and who-so-ever would supply such items in the market, shall be liable to the consumer.

The consumer wants safety standard to be provided in the use of product and its consumption. It can be the use to appliances. The leak in Gas Cylinders. Safety in the use of electric appliances etc.

(ii) *Right to information*: The right to be informed about the quantity, quantity potency, purity, standard and price of goods which the consumer buys, has been given to the consumer to protect him against unfair trade practices. *The case of Consumer Protection Council vs. National Dairy Development Board* (1991) demonstrates the significance of this right. In this case, the complainant wanted to know in what way the Dairy Board was using imported Palmolene oil, and the Board was refusing to furnish the information, on the ground that, Boards were prevented from disclosure in public interest. Without that information, the complainant was not able to make out his case. It was held that the consumer had the right to the requisite information.

The consumer must not be given wrong information or mislead about any products. All ingredients on the label of the package be printed. Sometimes, the comparative advertisements becomes deceptive. A group of law students in America designated themselves as SOUP (Stamp out unfair practices). They were also concerned to wipe out the impression created false advertising earlier in the minds of the consumer. This was done by correct advertising.

### Affirmative Disclosure

Information is provided on negative attributes. It shows the deficiencies and limitations of the product e.g., "Tobacco is injurious to health."

(iii) *Right to access*: This right would facilitate the shop-keepers in selecting and stocking goods of choice and variety and at competitive prices.

(iv) *Right of proper hearing*: The Central Council is, in the fourth place, charged with the responsibility of assuring the consumers that they would be heard, as of right, by the appropriate forums and the consumer will receive due attention and consideration from such forums.

(v) *Right to seek redressal*: The consumer has been given the right to seek redressal against unfair trade practices or unscrupulous exploitation. In *M.O. Hasan Kuthoos, Naricar vs. Joseph K. Thomas* (1991), where money was deposited in advance for the supply of a car within two months, and the car was actually supplied sometime after two months, the retention of money beyond the period was held to be an unfair trade practice, entitling the party to 14 per cent interest on the deposit for the period of delay.

(vi) *Right to consumer education*: Education makes the consumer aware of his rights and the chances of exploitation become meagre. Every person is a consumer in one way or the other. When aroused by a proper consumer education, one is likely to be above petty temptations and, therefore, more effective in its mission. This has been a mission of the Consumer Protection Act, 1986 that consumer's education is a must. The Consumer Councils have been charged with responsibility to provide to the people, education in terms of their remedies under the Act. If the consumer is educated properly about his rights and remedies, the public

servants shall cease to act as public exploiters, and corruption and malpractices in the public life will be reduced, if not eradicated.

Besides all this there should be proper pricing truthful labelling, nutritional ingredients be shown and displayed. Expiry dates should be displayed. The date of manufacture, proper weights, proper quality of material and proper packing, purity and hygiene be considered as well.

*The implementation of the act:* The National Policy in the sphere of consumerism to the responsibility of the Consumer Council. Consumerism has assumed great importance in the field of commerce. The meaning of consumer in relation to the transactions with producers, sellers which affect his day-to-day life, is explained as follows.

*Consumer:* Section 2(d) of the Consumer Protection Act, 1986 defines consumer in two parts. It provides that consumer is a person (a) who buys goods for consideration and (b) who hires or avails of any services for a consideration. In its explanation, it is made clear that if goods are purchased for commercial purposes, then he will cease to be a consumer, but if the goods are bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment, he would be deemed to be a consumer.

Thus, consumerism is a result of contract, and for contract, consideration is a must, whether for buying goods or, hiring services. Another important requirement is that a sale in course of trade necessary. Consumerism deals in buying and selling.

The cause of action arises when there is:

(a) *Defect in goods:* The producer or seller shall be held liable only when

- (i) the buyer makes it clear to the seller that the goods are required for a particular purpose;
- (ii) the buyer relies on the seller's skill or judgement.
- (iii) The famous case on this point was decided in 1936.

The name of the case was *Grant vs. Australian Knitting Mills*. In that case, the plaintiff, a doctor, purchased from the retailer, two woollen underpants manufactured by the defendants. Next day after wearing one of them he became ill. His illness was diagnosed as dermatitis caused by a chemical irritant, which the defendants had negligently omitted to remove in the process of manufacturing. The manufacturers were held liable for the defect in the goods.

The second category of consumer is that of user of services. Deficiency in service was explained by the Apex Court in *Lucknow Development Authority vs M.K. Gupta (1994) ISCC 243*. The court held that a housing authority would be liable for any deficiency in service, even if the contract for the service was made before the amendment made in 1993. In *Indian Medical Association vs. V.P. Shantha (1995) 6 SCC 651*, the Supreme Court held that the use of words, potential users does not have the effect of excluding medical services from the purview of the word 'service'. However, the services must be of commercial nature, in the sense that they must be on payment, which may be either in cash or kind, and which may be made either at once, or partly on credit. In this category of consumer also, any beneficiary of the service would be included, though he is not the hirer. In this category comes a nominee of an insurance policy who is entitled to the service with the approval of the user.

Unlike other remedies available under various Acts, the Consumer Protection Act does give a new forum which will be comparatively free from all weaknesses. Court fee is not there,

lawyers are not needed and, time limit is set for disposal. In a favour case of *Laxmi Engineering Works vs. PSG Industrial Institute Air 1995 SC 1428*, the Supreme Court determined the nature of protection, and held that the quasi-judicial bodies created by the Act are not courts though invested with some of the powers of the court. They are quasi-judicial tribunals, brought into existence to render inexpensive and speedy remedies to the consumers. These bodies are not supposed to supplant but supplement the existing judicial system. The idea was to provide an additional forum, providing inexpensive and speedy resolution of disputes arising between consumers and suppliers of goods and services purchased and availed of by them, in a market dominated by large trading and manufacturing bodies. Indeed, the entire Act revolves round the consumer, and is designed to protect his interest. The Act provides for “business to business” disputes.

Mere provisions of the law are of no use unless the effective remedial measures are there. The Act provides for an effective policy making body, *i.e.*, Central Consumer Protection Council, State Consumer Protection Council to keep an eagle’s eye on whether the provisions are being implemented effectively or not. In 1987, the Consumer Protection Rules were framed to give effectiveness to the authorities.

The Minister in charge of the Department of Food and Civil Supplies in the Central Government, is the chairman of the Central Council and same is the case of State Councils. There are a total 150 members and their term is fixed for three years. The Constitution and functions are described from Sections 4 to 8 of the Act. This role is supervisory.

From Sections 9 to 24, the provisions for constitution and functions and jurisdiction of consumer disputes redressal agencies are narrated. These are as under:

1. *District Forums*: They are organised at the district level and a retired District Judge is nominated by the State Government to be its president. Two other members, one lady and one gents, is appointed by a committee consisting of the Chairman of State Commission, Secretary of Food and Civil Supplies and Secretary of Law Department. Their term is for five years, or upto the age of 65 years, whichever is earlier. Their jurisdiction is upto 5 lakh rupees. A complaint can be filed by the consumer himself, by a recognised consumer association, by one or more consumers, or by the Central or State Governments. The District Forum cannot grant interim relief. They can grant only the final relief. They also do not have the power to review their orders. Sections 10 to 15 deal with the composition, power and jurisdiction of the District Forum . The decisions of the District Forum can be challenged only according to the procedure prescribed in Act itself.

2. *State Commissions*: The composition of National Commission is given in Section 16 of the Act. The President of the commission shall be a retired High Court Judge and two other members. Its jurisdiction is laid down in Section 17 of the Act and it can dispose of the cases upto the value of Rs. 20 lakhs. It can hear the appeal from the District Forum and can also call for the records. Section 18 lays down the procedure, which is the same as is laid down in Sections 13 and 14 of the Act. Section 19 lays down the procedure for original jurisdiction which is limited to monetary value only.

3. *National Commission*: The composition of National Commission is provided in Section 20 of the Act. The President of the National Commission is a Supreme Court Judge, who is appointed by the President of India in consultation with the Chief Justice of India. Four other members are appointed. Original jurisdiction is limited to the case the value of which is more

that 20 lakhs and rest of the jurisdiction is appellate. From any decision of the National Commission and appeal lies to the Supreme Court. Thirty days time from the date of the order is allowed for the purpose. Where no appeal is made, the orders of the District Forum, State Commission and National Commission are considered and made final. The period of Limitation for filling complaints is two years from the date of cause of action. Delay, if any, can be condoned by the Forums. The orders of a District Forum, State Commission and those of National Commission are enforceable in the manner of an order or decree made by a court in a Civil Suit. From 26 to 31 Sections provisions are insignificant.

### Conclusion

The main purpose for which the Consumer Protection Act, 1986 was enacted, was to impart speedy and inexpensive justice to the consumer. However, with the passage of time these forums have also assumed the same character as is practised by the ordinary court. The delaying tactics, the engagements of lawyers and other legal battles have married the efficacy of the forums created by the Act. They have been losing their importance gradually, and the purpose for which the redressal agencies were created is slowly being frustrated. The cases are now lost in the pending files lying with the judges.

### Suggestions

In order to impart speedy and inexpensive justice only serving judges must be appointed. The retired persons have made it a resting place. No lawyers should be allowed to appear on behalf of the complaint and the time limit must be strictly adhered to. Moreover, since the mission of the Consumer Protection Act, 1986, is “consumers education”, concerted attempts should be made in this direction. Apart from Consumer Councils, Village Panchayats should be actively associated with the education process. Literature, in the local script, explaining consumers rights and remedies should also be distributed free of cost, at Fair Price Shops (PDS).

This is the age of consumer he can choose from the variety of products, he can buy in credit, he can reject, he can ask for replacement. He can show his resentment and if not satisfied by the response he can go to court of law. So, all manufacturers and Sellers and exchange and service organisation beware and satisfy the consumer. Consumer is Ist-consumer is last. He is not a liability. He is the one who keeps our business going so let us have more and more consumers. **Long Live The Consumer.**

### Questions

1. What is the need to protect the consumer?
2. Describe in brief the duties of manufacturers, sellers and other service agencies towards the consumers.
3. Describe in brief the Consumer Protection Act.