



Consumer Protection and Right to Information: A Constitutional Perspective

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Abstract: In the welfare state, it is the duty of the state to promote the welfare of the people by protecting a social order in which justice; social, economic and political shall be done to all the institutions of national life. It is in this back-ground and philosophy of welfare state that legislature of India enacted various legislations from time to time. The Consumer Protection Act, 1986 is also social welfare legislation and main purpose of the act is to control, eliminate and punish deceptive acts and practices of manufacturer, traders, and to protect the consumers from exploitation by unfair trade practice. Every member of the society, manufacturer or trader is a consumer. Consumer does not constitute a separate class. Everybody is included. Even then the consumer awareness is a distant goal to be achieved. Right to receive information acquires great significance in the context of consumers. The ignorance of the Indian consumer of their rights and remedies available is the single major obstacle in the growth of consumer movement. This paper is an attempt to analyse that how right to information can be used for consumer protection. Therefore, it is imperative to ensure constitutional provisions of the right to citizen to receive information so essential for consumer protection.

Keywords: Constitution, Consumer, Information, Protection,

Introduction

The phrase “Consumer Protection” in the larger context would refer to some kind of safeguard for the members of the society from all sorts of malpractices and exploitative deeds of market operators, the incidence of which in the final analysis affects adversely the individual in the society- the consumer. Under the social conditions in which the average Indian citizen survives, he needs and requires to be protected from the activities that are social evils like Corruption, bribery, maladministration, ill treatment, underpayment, and exploitation, unhealthy and unhygienic working conditions, adulteration, spurious and injurious manufacturing, black-marketing and price hike, overcharging, misguidance by false advertisements, misuse of trademarks and patents, non-labelling and mislabelling, duplications and similar other deceitful market practices. More pointedly referring to protection against duping of the consumer by the selling and distributing agencies in the market, consumer protection in its narrow import signifies remedy for and protection of the one who pays the price-

- (i) to ensure that the consumer gets what he has paid for in quality and in right measure, and

- (ii) to enforce his rights, if the consumer does not get the right thing in right measure, for which he has paid the money value¹.

Thus, in the narrow import, it is protection against the sale and supply of bad, substandard and duplicate consumer products in the market, non-supply and short supply of consumer goods; unwarranted and excessive pricing and the false and misleading advertisements camouflaging the truth. In the ordinary social terminology these activities of the market agencies are referred to by the twin terms adulteration and black marketing.

It is undeniable that the onus of protecting the individual and society in general is on the government of the day. Modern governments charged with the duties of a welfare state have no escape from pursuing policies both administrative and legislative for the common good and protecting the consumers from the undesirable activities of the Shylocks in trade and commerce. Thus, as the consumer protection movement gained momentum; every enlightened government rose to the occasion and legislated on the matter.

The principal legislative enactments which seek to protect the consumer are:-

- (i) Essential Commodities Act, 1955;
- (ii) The Sale of Goods Act, 1930;
- (iii) Drugs (control Act, 1950);
- (iv) Prevention of Food Adulteration Act, 1954;
- (v) Standards of Weights and Measures Act, 1976 and
- (vi) The Competition Act, 2002 etc.

Though the word consumer is not found in the Constitution but there are some of the provisions in the fundamental law of the country that are related directly or indirectly with the philosophy and mechanism for the protection of the interests, health and happiness of the consumers by legal control of immoral and antisocial policies of the unbridled, greedy unconscionable producers, workers and sellers. It was rightly observed in the past that the consumer was considered supreme and occupied a central position in the economy. However, with the advance of the economy, increasing liberalization and technological advancement, the focus of corporate philosophy has gradually shifted from the consumer to profit at any cost, reducing the concept of consumer sovereignty to a mere myth than reality².

The Constitutional provisions and the Consumers:-

➤ Preamble:

The Constitution of India laid certain objectives in the Preamble. One of the objectives of the Constitution in the Preamble is doing economic justice to all the people³. Justice in its simple, direct, widely and historically accepted meaning both conceptually and practically connotes the giving to every person what is due to him. Economic justice measures securing full reward materially, what is due to a person based on his work or constitution by performing a socially useful function or otherwise one is entitled for morally, socially and legally. Consumer justice implies securing to the consumer commodities or services equivalent to the payment made by

¹.Lucknow Development Authority v. M.K.Gupta, AIR 1994 SC 787.

².Rosy Kumar, "The Consumers Protection Act vis-à-vis the Monopolies and Restrictive Trade Practices Act: A Comparative Approach" "Consumer Protection and Trade Practice Journal, New Delhi, 1993 .p.9.

³.The Constitution of India.

him without violating legally or commercially prescribed or implied by agreed or understood quantity and standard.

➤ **Some Principles of Consumer Policy to be followed by the State:**

As Indian Constitution is socialist Constitution in which the instruments of production and the natural wealth of the country shall be either owned or controlled by the state as a trustee of the society for the benefit of the people. These objectives find clear expression in the Directive Principles of State Policy in Article 39 of the Constitution of India.

Article 39 (b) says that the ownership and control of material resources of the community are so distributed as best to sub serve the common good. It means that the Constitution keeps the consumer's interests as the pivot for which and around which the economy in all its dimensions has to move. Ownership, production and distribution must all be organized and regulated to serve the consumer⁴.

Article 39(c) enjoins a duty on the State to prevent concentration of wealth to the common detriment. The economic system should be organized in such a manner as to avoid concentration of wealth. Prevention of concentration of wealth by governmental action gives automatically protection to the consumer indirectly. It also directs the state to follow a policy by which the strength of the workers who constitute the bulk of the society be secured and maintained⁵.

Article 43 imposes an obligation on the state to endeavour to build an economic organization or to make suitable legislation to ensure a decent standard of life to all the workers -that is, the majority of the consumers. This is again possible if the worker's money gets its equivalent in consumer good sense services. This gives enough power to the state to protect the interest of the consumer. Similarly Article 47 imposes a duty on the state to raise the level of nutrition and the standard of living to implore public health. This is considered as a private duty of the state⁶.

➤ **Fundamental Rights:**

Though Article 19(1) (g) guarantees a right to all citizens to carry on any occupation, trade or business and Article 30 guarantees freedom of trade and commerce, they are subjected to reasonable restrictions under Article 19(6) and Article 304. Further the state is empowered to impose restrictions on monopoly to create a market in favour of the state excluding the private individuals in the interests of the consumer. In India, consumer justice is a part of social and economic justice as enunciated by the Constitution which can also be implied from the Articles like 21 and 19. As Article 21 provides "Protection of life and personal liberty" which implies right to safety also which is the first right provided under section 6 of Consumer Protection Act.

However, Right to information which is recognized under Article 19(1) (a) is clearly laid down under Sec. 6 of Consumer Protection Act which implies 'Right to be informed about the quality, quantity, potency, purity, standard, model, price of goods or services so as to protect himself against the restrictive and unfair trade about products and services so that they can make better consumption decisions.

⁴Article 39(b), Part IV-Directive principles of State Policy ,The Constitution of India.

⁵.Ibid.

⁶.Ibid.

In *Ozair Husain v. Union of India*⁷, the petitioner claims to be animal welfare volunteer and a member of several animal welfare organizations. He is also stated to be a conscientious objector to the consumption and use of animals and their derivatives for food, cosmetics, and drugs. It was urged that there should be complete disclosure of information about the ingredients of the products. The Supreme Court discussed the above contentions in relation to the provisions of Art.19 (1) (a), 21 and 25 of Indian Constitution. It was held that it is the fundamental right of the consumers to know whether the food products, cosmetics and drugs of non-vegetarian or vegetarian origin, as otherwise it will violate their fundamental rights under Art.19 (1) (a), 21 and 25 of the Indian Constitution. That the Hon'ble Supreme Court had along with other directions, mandated veg /Non-veg Symbol on the food products. Thus, package of food to carry a label, the name trade name, description of food, and the names of the ingredient's used in the products.

Similarly in *Consumer Protection Council v. National Dairy Development Board*⁸, it was held that the consumer had the right to know the information from the Dairy Board that in what way they were using the imported palmolein oil. This demonstrated a new direction to the kind of right to information.

People are using RTI to access a lot of consumer related information. Several enquiries are made about the food quality and standard. For instance in *Praveen Kumar Jindal v. Food & Supply Ministry*⁹, the applicant sought information regarding infrastructure of restaurant and hotels running on roadsides out of cities and information regarding officials responsible to issue license to these restaurants and hotels. Why there is dereliction in duty on part of responsible officer of concerned department, due to which the owners of these restaurants and hotels are working without any check from any official of government. It was held in the CIC decision that both restaurants and hotels do fall within the definition of trade practices serving consumer functions. Thus, officials are bound to disclose information.

In another important judgment, consumer related information about fair price shops and their functioning over pricing and BPL status are also enquired through RTI. In the same case on the role of the Central and State government in public distribution system the PIO to evade sharing of information vaguely replied that "It is pertinent to point out that public distribution system is jointly run by Central and State government. Central government is responsible for recovery, storage, transportation, and bulk supply. Its distribution under public distribution system is the responsibility of state government. Distribution within state, identifying persons below poverty line, issuing ration cards, inspection and monitoring of fair price shops and other related jobs is the responsibility of state government. To ensure supply and availability of essential commodities and its proper distribution, Public Distribution order, 2991 was issued on 31.8.2001". The Central Information Commissioner show caused the PIO for not providing proper information¹⁰.

⁷.A.I.R.2003 Delhi 103.

⁸.(1991)II CPJ,617 Guj.

⁹. Complaint no.CIC/WB/C/2006/00279 dated 16.12.2006.

¹⁰. MahipalSahu v. Department of Food , Supplies and Consumer affairs, Govt. of NCT of Delhi, File no.CIC/AD/A/2012/000664.

Interestingly, Right to information Act, 2005 has also been used to enhance the efficiency of the working of the Consumer Forums. For examples in *S C Sharma v. Mrs. Jyothi Seth PIO Department of Food Supplies and Consumer Affairs*¹¹, the applicant sought information on how many vacancies are there in Consumer Courts of Preceding Officers, Members and Lower Staff as on 1st December 2010 as the same was causing hardship to the public and the action taken or proposed to be taken to fill up these posts. Also, the applicant sought information or how many cases; awards are pending of the Consumer Courts after final hearing for (a) more than 1 years (c) more than 3 years. Further information regarding the steps taken by Government to expedite decisions by Consumer Court was also sought.

In another case, *Lakshya, A Relief Organization V. State Consumer Dispute Redressal Commission (SCDRC)*¹², an application was filed by Lakshya, an Non-Government Organisation, which sought the following information from the Public Information Officer, Consumer Dispute Redressal Forum: “We want to take detail of all consumer cases in all consumer district redressal forums of Delhi (nine forums) with the name, address, phone & mobile number of the complainants.” The Consumer Forum rejected the said application on two grounds. First, the Forum suspected the genuineness of the organisation and second the Forum replied the “there are more than 10,000 cases pending in 10 different District Forum situated in the jurisdiction of the respective Districts of Delhi, the nature of information being sought by the appellant is neither feasible nor available nor easily accessible under the law”. The Chief Information Commission held that an application by a Non-Government Organisation cannot be said to be an application by a citizen. A Non-Government Organisation is a legal person in the eye of law but not a citizen as per sec. 3 of the RTI Act. Hence, the office bearer of the Non-Government Organisation in their personal capacity can file and seek information but not the organisation itself. On the second ground the Chief Information Commission held that the concerned applicant has agreed to provide every assistance in accessing the information sought and it is open to that public authority to indicate to the applicant the cost of providing the information as determined by the Public Information Officer together with calculation made to arrive at that amount, requesting the applicant to deposit the fees. However, the information provided can only be that which is actually held by the public authority and applicant cannot demand the creation of information which is not already held by or under the control of the public authority. Finally, in such cases where voluminous information is sought the Chief Information Commission stated that the public authority can justifiably argue that the information sought would disproportionately divert its resources.²⁰

This case demonstrates that the ‘Consumer Forums’ are ‘public Authority’ as per Sec 2(h) of the RTI Act and hence are liable to provide information to the citizens and hence denial of information from the Consumer Forums can lead to adjudication from the Information Commissions. The result also ensures the implementation of the rule of transparency and accountability of the Consumer redressal agencies through the lens of RTI Act.

¹¹.CIC/SG/A/2011/000800/12607.

¹².Appeal no.CIC/WB/A?2006?0043: dated11.07.2006.

Present Scenario:

As in every moment of life, every individual is a consumer irrespective of his race, creed, religion, sex or age. Consumer Protection and right to information are now an integral part of the life of an individual and we all have made use of them at some or the other point of time in our daily routine. In the present era of Globalization, the role of consumer is very wide and relevant legislations should safeguard the interest of consumers. RTI which is recognised as a fundamental right as well as a legal right can play an important role in the protection of consumer rights, because we often come across many people who complain of having been supplied with inferior or adulterated goods for which they have paid full price. Similarly some people are seen grumbling that they have paid full fare but their bus and train seats were very uncomfortable. So many a times people do not get the full worth of their money. Don't they have a right to get the full value of their money spent for the goods and services they want to avail? Sometimes, people themselves are responsible for the inappropriate goods and services that are provided to them. Many a times, they do not know full details of the products or services they are interested in. Sometimes, they take the delivery of goods or avail the services without caring for their quality. Is it not their responsibility to give full details of the goods and services required by them?

Simply speaking a Consumer is a person who buys goods or services to be used or consumed by himself/herself or by someone else on behalf of the buyer. Goods may include both consumable items and durable consumer goods. While services paid for may be transport, electricity, film-shows and the like, a 'consumer' may also be defined as "anybody who chooses goods and services, spends money to obtain them and uses them to satisfy his or her own needs"¹³.

The Act envisages the promotion and protection of the rights of consumers¹⁴ namely

1. Right to Safety,
2. Right to be Informed,
3. Right to Choose,
4. Right to be Heard,
5. Right to Seek Redressal,
6. Right to Consumer Education.

The fundamental question is what is the difference in position of a consumer of goods and that of a consumer of services? Services that one buy for personal benefit may include transport service, like when one hires a taxi or auto-rickshaw, travel in a public bus or undertake rail journey to visit any place. If anyone has their own bicycle or scooter or motor-cycle, it may need repairs and taking it to a repairing shop. One has to pay for the service rendered by the person who does the repair job. Here the person who hires the services is a Consumer of the service. Electricity or telephones that one use every day either at home or at their workplace are also services that one consumes for which payments are made. A film-show seen for entertainment at cinema houses is also an example of service. The main difference between goods and services consumed is that quality of goods can be physically verified before buying but the reliability and regularity of services cannot be verified

¹³ .Rajeev Metal works v.MMTC of India,AIR 1996 SC 1083.

¹⁴ .AvtarSingh, Law of Consumer Protection, Principles and Practices(3rd Edn.2000),p.75.

beforehand. For example, while buying a television one can have a demonstration of its functioning, picture quality, sound, etc. but one cannot verify whether the voltage of electricity supplied will be stable all the time. One can taste a sample of food item and then buy it or see whether fruits are over-ripe before buying. But one cannot verify whether a scooter or taxi driver will be cautious enough to avoid accidents or whether the clarity of sound and picture of a movie will be maintained throughout the show. Besides, goods bought can be consumed instantly or over a period of time. One can store cereals for a week or month, and a refrigerator can be used for several years with necessary repairs from time to time. But one cannot do so with (say) transport services or repairs, electric supply or telephone service or a film show.

Today consumers face various problems on account of competition in the market, misleading advertisements, availability of inferior quality of goods and services, etc. Hence, protection of consumers' interest has become a matter of serious concern for the Governments as well as public bodies. It is to safeguard the interest of consumers that the government has recognized certain rights of consumers. In other words, if consumers are to protect themselves from being exploited or cheated, they have to be given certain rights so that they are in a position to ensure that sellers of goods and service providers are more careful in dealing with them.

As under the Consumer Protection Act¹⁵, one of the rights of consumers is the Right to be informed. It is the second right afforded to the consumers by the Act. Consumers have the right to be informed about the Quantity, quality, purity, standard or grade and price of the goods available so that they can make proper choice before buying any product or service. Also, where necessary, the consumer must be informed about the safety precautions to be taken while using the product to avoid loss or injury. Taking the example of gas cylinder, the supplier must inform the user to stop the flow of gas with the help of the regulator when it is not in use. This is similar to the right guaranteed under Article 19(1)(a) and right acknowledged under RTI Act,2005.

As consumerism refers to a movement by consumers so as to ensure fair and honest (ethical) practices on the part of manufacturers, traders, dealers and service providers in relation to consumers. In present day scenario, consumers were not evincing any interest to know about their Right to Information about the quality, quantity, potency, purity, standard and price of goods and services and their protection against unfair trade practices. For example, Good food is the cornerstone for survival, health and development for current and succeeding generations. Manufacturers are not often concerned about the quality of goods and services and their impact on the health of people and environment. Instead of the consumer guiding the producer about what should be produced, it is the producer who decides what the consumer should want. Now a days, Consumer is very much deprived of Right to Information. The food adulteration, unsafe food, genetically modified food and exaggeration of products lead to consumer as scapegoat due to non-exercise of his Right to Information.

¹⁵ .Section 6 of the Consumer Protection Act,1986.

In traditional societies, such as India, lifestyles were largely regulated by long-standing practices. Today's postmodern trends - increasing consumerism and affluence, individualism, demographic complexity, ideological diversity, global migration, and constant innovation in communications technology - have proliferated new social identities and deconstructed social identities imposed by the past. With rising fragmentation of joint families, greater urbanization, and employment related mobility across cities; the contemporary 'New Age' Urban Indian (NAUI) is increasingly de-linked from social identity in-groups and is constantly faced with an erosion of previously established norms and values. The process has been accentuated by what is popularly called as the 'BPO culture'. This 'culture' has put 'unprecedented money power' in the hands of youth who have been just out of college. With the advent of consumerism, the NAUI's enacted role as a 'consumer' is gaining far greater importance. Material possessions especially 'status goods' are contributing to the individual's definition of the 'self' - not just social but also the personal identity. As consumers in an increasingly free market, NAUI's can choose products to reflect the values they wish to portray. The supply side with proliferation of malls and supermarkets coupled with efficient distribution, down to the last mile, has been fuelling the rise in consumerism. With greater than ever disposable income, easy access to multiple data sources, and living in a consumer dominant environment, the NAUI is largely unconstrained by information, budget or supplier considerations for most consumption decisions. Given the ability and desire to purchase freely, the NAUI is also the recipient of a vast amount of information. For the NAUI, the motivation regarding cognitive information processing is not the issue. Neither is the problem related to lack of information. Growing awareness of consumer rights has resulted in little or no fine prints in most purchase terms. Online information is provided by marketers for almost all brands. Blogs of every type discuss experiences of consumers. The problem is surfeit of 'meaningless' information.

Combating such problems is the immediate requirement of every consumer in order to protect himself, his family and the society. A recent study, found that over 80 per cent of imported food products in our country are violating all our laws. For example, packaged soups don't declare ingredients, which is mandatory. A recent case is that of the Chinese chocolate that should have had a red dot because it is non-vegetarian, having used beef gelatine. But this had been superimposed with a label with a green dot. A common man thinks all chocolate is vegetarian, which is not true. Thus, this is like mission of the CCPC to provide to the people proper education in terms of their remedies under the Act. And, the remedies provided to the consumer under the existing law have now been covered under the Consumer Protection Act, 1986¹⁶.

During his speech President John F. Kennedy had remarked: "If a consumer is offered inferior products, if prices are exorbitant, if drugs are unsafe or worthless, if the consumer is unable to choose on an informed basis, then his dollar is wasted, his health and safety may be threatened, and national interest suffers."¹⁷

The more guidelines are required within a nation-state, national laws may prevent some of this harm, but once national boundaries are crossed, their effectiveness is

¹⁶. Subash Chand Ashok Kumar v. Anil Kumar, (1992) 1 CPJ 36.

¹⁷. 15th March 1962, Bill for Consumer Rights in the US Congress.

limited, and consumers can hope for very limited protection. The position of the consumers is much stronger in this era of globalization and privatization where the sudden unchecked advent of Multi-National Companies has to be balanced with the protection of the rights of the consumers by the legislature and the judiciary. Undoubtedly, Right to Information can play an important role. As a consumer, everyone has much concern about the money, choice, health and safety of their life. In last few years, the market is found to be influenced by the false, misleading advertisements or representations, bargaining, offering gifts, prizes, contests and hoardings attracting public for product or services.

Suggestions:-

1. Urgent need to educate our neighbours and consumers and ensure of cautiousness as majority of our population is illiterate, uneducated, and ignorant.
2. The consumer helpline number 1800-11-4000, where consumer can complain, seek information or counselling through BSNL and MTNL telephones. It must be made accessible through all telephones.
3. The consumer must know what they have been eating and have a choice in this matter. The reality is that they have been eating misbranded, adulterated, unsafe food all the time without their knowledge.
4. Labelling laws need to be drastically tightened to ensure people are aware of food that is genetically modified
5. Hopefully, the policymakers will use the moratorium window to strengthen the regulatory process. And provide consumer choice through mandatory labelling.
6. Politicians should serve the people of India, instead of serving the interests of biotech seed corporations.
7. It is necessary to eradicate consumer health care system which provides selective care through a multiplicity of schemes and programs, and discriminates on the basis of residence (rural-urban) in providing for entitlements for healthcare.
8. There may not be a positive common objective for the consumers except their desire for safe quality products, for reasonable price and a feeling of strong negative reactions against the products. In wake of large scale production and the variety and choice conferred on the consumers, a consumer needs guidance which can only be appropriately provided by Right to Information.
9. The advertisement bombarded on the consumers make them quite confused and hence again a need for consumer information arises.
10. The consumer forums must take expeditious steps to deal with the complaints filed before them and not keep them pending for years as real success of the consumer's forums depend upon the perceptions, ethos and interests of the persons working for these forums.