

Consumer Protection Models and the Consumer Protection Act, 1986

- *Prof. Mrs. Sri Vidhya Jayakumar*

VPM's TMC Law College, Thane

'Protection' should ensure absence of problems and in the event of sufferings, redressal.¹ In today's complex market place- real and virtual, it is vital that we install a strong multipronged model to secure consumer justice. Constitutional mandate to ensure socio- economic justice is on the state.² Unless the state remains committed to the cause of the consumer, the state cannot keep alive the faith of the people in the efficacy of law and its instrumentalities.³ The people's active participation and cooperation is also necessary in the pursuit of consumer welfare. The business houses realize that consumer satisfaction is in the centre of any profitable business and they also chip in. 'State Intervention model', 'Self help Model' and 'Business Self Regulation Model' need to contribute.

This paper is an attempt to study through conceptual models the role of the big players – the state, the consumers and the business houses in the consumer movement and the mechanisms employed for consumer welfare. In recent times, United Nations Organization and European Economic Council also play an important role through resolutions and guidelines. International NGOs are also immensely contributing. This paper confines its study to the initiatives and developments at the national level with a special focus on Consumer Protection Act, 1986(COPRA).

The consumer problems are symptoms of fundamental disorders of the economic system⁴ and will have to be addressed effectively. Everyone is a consumer and consumer interest is public interest. Opening up of the economy has led to flooding of the market with goods and services and a higher level of expectation of quality by the consumers. Inflation is continuing to be harsh. Consumers need protection before, during and also after purchase of goods and services. No one model is adequate to secure consumer justice. A model of models will alone meet the challenge.

State Intervention Model

Welfare state can do little justice to its name if it does not improve the lot of the consumers. Provision of services and redistribution of goods is classified as a primary function of law.⁵ Every branch of the government has a role to play in the state intervention model. Government of India declares that the consumers are one of the most important resources of the country and that it is committed to guarantee their welfare and protect their rights.⁶

Administrative measures

Formulation of appropriate state policy is the first and foremost to ensure consumer protection. Both at the state and union level there is a ministry of consumer affairs.

'State monopoly' has been considered vital in some cases by ruling out the negative consequences of cut throat competition. Constitution of India was amended to allow state

monopoly as a reasonable restriction on the citizens' freedom of trade or business.⁷ There is a shift from this model. Although we still have state monopoly, it is minimized and 'privatization' is the new model. Globalized economy believes in better status for consumers by facilitating competition.

The government with its police force, inspectors under the Food Adulteration Act, 1954, Standards of Weights and Measures Act (Enforcement) 1985 etc., laboratories and other empowered officers for the enforcement of various laws should keep a 'vigil' and prevent exploitation of consumers.

Research studies are absolutely essential for bettering the policy, vigil and adding new measures including legislation. Developments in other countries, international arena, our markets and our society will have to be considered. Academic studies and researches should also reach the respective ministries.

Madhya Pradesh Consumer Protection Bill, 1984 proposed to establish councils at district, nagar, gram panchayat and even ward levels to collect information and statistics for the State Board with multifarious functions. The Bill also proposed a Consumer Ombudsman whose functions included recommendations on policy, conduction of research work, suggestions on laws and publications on safety standards.⁸ Now these functions are not specifically entrusted to any agency except that they are within the general function of consumer welfare of the ministry and councils under COPRA.

Special state agencies apart from the ministries are the Councils under COPRA. The Director of grievances of the Ministry of Consumer Affairs hears grievances of consumers and consumer organizations. Food Safety and Standards Authority of India looks into the quality of the processed and packaged food products. The department of consumer affairs of the government of India has online assistance facilities including a toll free phone number.

Statutory measures –General Laws and Special Laws

The state intervention is dominated by the statutory model as it paves way for enforcement and judicial activism. General laws also contribute towards protecting the consumer. Special laws have been enacted to support the consumer movement.

General laws and the Constitution

Unjustifiable harms to a consumer amounting to civil wrongs are redressed under Law of Torts. A leading role has been played by the tort of negligence. Actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes a duty of observing ordinary care and skill, by which neglect, by which the plaintiff has suffered injury to his person or property⁹. Consumer grievances regarding unsafe, unwholesome or defective products can be remedied by the product liability principle.¹⁰ Professional negligence, deceit, passing off and negligent mis-statement are note worthy in consumer protection.

Contract law has also evolved to do justice to the consuming public. Representations in advertisements have been seen as general offers giving rise to a binding contract and not just as promotional gimmicks.¹¹ Consumer transactions are contracts and remedies are available under the law. Indian Contract Act rules against unconscionable bargains and agreements in restraint of trade¹². The Sale of Goods Act, 1930 helps in dealing with the conditions and warranties in sales and the rights of buyers. Industries (Development and Regulation) Act,

1951 empowers Central government to control prices and distribution of some articles in public interest.

Notable provisions are found in the Indian Penal Code, 1860. Under Chapter XIII, making and selling, possessing fraudulent use of false weights and measures are punishable. Chapter XIV makes adulteration and sale of noxious food / drink and drugs as offences. Sale of spurious drugs is also punished¹³. Sections 479 to 489 deal with property and other marks. Whoever, being bound by a lawful contract to attend on or supply the wants of any person, who by reason of youth, or of unsoundness of mind, or of a disease or bodily weakness, is helpless or incapable of providing for his own safety or of supplying his own wants, voluntarily omits to do so, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both¹⁴.

Section 153 Of Criminal Procedure Code, 1972 empowers the police to search without warrant and seize false weights and measures.

The spirit of the Constitution of India upholds consumer justice. Commitment to social welfare and economic democracy makes the constitution consumer conscious. Preservation of public health, improving standard of living and nutritional level are mandates on the state. State shall endeavor to prohibit consumption of intoxicating drinks and of drugs except for medicinal purposes¹⁵. State's duty to educate the people will include the duty to enlighten the people of their rights and duties¹⁶. State has power to impose reasonable restrictions in the interests of general public on the freedom of citizens to profession, trade and business¹⁷. Fairness to consumers of justice is also envisioned by mandating the state to ensure access to justice to citizens of economic and other disabilities¹⁸. Socio-economic planning, banking, railways, price control etc listed as entries for legislation have a direct bearing on the consumers¹⁹.

Special Laws- preventive and remedial

A spate of legislations dealing with various aspects of consumer protection has been enacted. These legislations can be preventive and punitive. Legislations which empower the consumers by recognizing rights for them, or which impose duties on the traders, manufacturers and service providers, or which support or guide the consumers can be categorized as those for preventing wrongs for the consumers. Essential Commodities Act, Essential Services Act and Prevention of Black Marketing Act, 1980 which ensure availability of essential goods and services at fair prices to all, Standards of Weights and Measures Act, 1976 which establishes the standards as per international system, Bureau of Indian Standards Act, 1985 which standardizes and controls quality, Agricultural Produce Act, 1937 which grades and marks agricultural products for their quality, Insecticides Act, 1968 which seeks to prevent risk to human beings and animals by compulsory registration of manufacture and import and Infant Milk Substitutes, Feeding Bottles and Infant Foods Act, 1992 which seeks to advance the cause of breast feeding can be termed as legislations which belong to the preventive model. Competition Act 2002 promotes and sustains competition. Drugs and Magic Remedies Act seeks to curb and regulate advertisements relating to some drugs and remedies. NDPS Act controls operations relating to narcotic drugs etc. Many of the above legislations also impose penalties for violation. ISI, AGMARK, FPO and ECOMARK indicate quality and thus guide and support the consumers.

Provision of remedy to the consumers may be by punishing the wrong doer and/ or by compensating the aggrieved consumer. Administrative remedies are those non-judicial

remedies before the administrative agencies like the Pollution Control Board, Medical Council of India, Bar Council of India etc. The criminal laws aim at punishing viz. Food Adulteration Act, 1954, The Drugs and Magic Remedies Act, 1954, The Dangerous Drugs Act, 1930.

Monopolies and Restrictive Trade Practices Act and COPRA provide financial redress and other compensatory remedies to the consumers and consumer organizations.

Judicial activism

Adjudicatory bodies can safeguard consumer interests if they remain sensitive to their plight. Evolution of rules as to standard form contracts by the courts to protect the weak consumer has been classical²⁰. Supreme Court of India has done yeomen service to consumer movement by directing establishment of district fora and appointment of regular personnel for them²¹.

Public Interest Litigations on consumer matters have been entertained. Important directions have been given by the Supreme Court to improve railways²², emergency medical aid²³, blood banks²⁴, medical aid in government hospitals²⁵ and to deal with outdated drugs²⁶ and import of contaminated butter²⁷. Supreme Court also directed about telephone tapping and tele-marketing²⁸. High Courts issued mandates to the government to improve the sanitation services in cities²⁹. The expanded version of Article 21 addresses the essential needs of the consumer. "... right to live guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter..."³⁰

COPRA has been declared a benevolent legislation and held entitled to liberal construction.³¹ Government services have been held to be within the scope of COPRA³². Negligence per se has been applied under COPRA and damages awarded to wife of a patient who died against a homeopath for practicing allopath medicine³³. Supreme Court clarified that all medical and para medical services are services under COPRA³⁴. Supreme court held that complaints against municipal corporation for supply of contaminated water and consequent jaundice affecting 1550 people though in the nature of PIL can be made under COPRA and remanded the matter to the National Commission which there after issued directions along the lines of WHO guidelines³⁵.

Role of Media

Media as the fourth estate plays a meaningful role in the consumer movement. Awareness projects of the government and the consumer organizations get support from the media. Media reports on important measures of the government, land mark judgments upholding consumer rights and developments in the market place immensely contribute. Fear of adverse media reports can ensure fair consumer deals.

Self help Model

Consumer protection as a movement can be successful only if the consumers actively involve themselves and assert their rights. Self help is best by organizing. Consumers' International has claimed rights to basic needs and to healthy environment as rights of the consumers. Consumer organizations can bring about tremendous betterment by-

- (1) educating and sensitizing the general masses
- (2) taking up consumer matters before appropriate authorities

(3) lobbying in the legislatures for changes in law

(4) conducting researches and studies..

(5) inducing business initiatives.

Agencies and organizations engaged in consumer welfare activities are supported by Consumer Welfare Fund constituted in 1992 under Section 12C (1) of the Central Excises and Salts Act 1944.

Business Self Regulation (BSR) Model

Consumers are at the centre of all businesses. The regulation of an industry by its own members usually by means of a committee that issues guidelines and set standards that it then enforces is called BSR³⁶.

Methods devised to resolve issues of consumer dissatisfaction may be preventive and remedial. Quality control standards are preventive. Consumer grievances cell, customer service cell and lok adalats are remedial. Business houses may also have a consumer compensation fund. Research and Development could also focus on consumer interests.

BSR averts government regulation and therefore cuts costs which reflects in the price and thereby benefits the consumer. BSR can handle consumer grievances; litigation time and expenses are saved for both the consumers and the business concerns. Establishing good public relations can be rewarding for the business but media coverage on judgments against business houses can be very damaging.

Business ethics considers consumers as stakeholders and requires fair practices like quality, maintenance of accuracy in weights and measures and reasonable price and as well ensuring against discriminatory practices, adulteration, suppression of stocks and false claims about the products. Today with more vigilant consumers and competition in the market BSR and business ethics can be ignored by any business concern only at its own peril.

COPRA Models

COPRA, enacted to provide better protection of consumer interests, is basically a state intervention model. It is a special legislative measure to combine preventive, supportive and rights model. Consumer councils at the district, state and national levels are established to protect and promote rights of consumers. The councils are headed by the collector, State minister and Central Minister respectively³⁷. Section 6 enlists rights to safety, to information, to the benefits of competition, to be heard, to education, to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers.

Adopting the 'redressal model', COPRA enables less expensive and speedy redressal of grievances in respect of goods and services through a hierarchy of agencies. District Consumer Redressal Forum hears complaints whose claim values are not more than Rs. 20 lakhs. State Commission hears appeals, revisions, transfer applications from district fora and complaints whose values are above Rs 20 lakhs but below 1 crore. National Commission hears appeals, revisions, transfer applications from State Commissions and complaints whose claim value is Rs 1 crore and above. The Supreme Court of India hears appeals from the National Commission³⁸. COPRA provides for a time bound adjudication of the complaints³⁹. There is no fees payable for complainants below poverty line. Nominal fees starting from Rs 100/ to Rs 5000/ is charged⁴⁰.

Consumers, legal representative in case of death of consumer, registered voluntary consumer organizations, state government and central government can complain. A group of consumers having the same interest may also complain⁴¹. COPRA stipulates simple procedure. Laboratories are established to determine defect in goods. The redressal agencies include non-judicial members and women⁴²

Section 14 empowers the redressal agencies to award a range of remedies viz. removal of defects/deficiencies, replacement of goods, return of excess price charged, monetary compensation for injury suffered including punitive damages in deserving cases, discontinuance of unfair trade practices/restrictive trade practices, injunction from offering hazardous goods or services, withdrawal from offer the hazardous goods or services, cease and desist orders in respect of hazardous things, issuance of corrective advertisements and payment of costs In case of loss to unidentified number of consumers, payment of such sum not less than 5% of the value of defective goods/services provided may be ordered to be paid in favour of such person and utilized in such manner as prescribed. The remedies like cease and desist orders, corrective advertisements and withdrawal from market are effective as 'prevent model' as well.

Grievances in respect of all goods and services in the nature of consumer transactions for a price and not of commercial nature are within the scope and redressed.

COPRA has given a boost to the 'self help model' by encouraging the organizations of consumers to launch actions for remedies. Councils take up public interest matters for redressal. 'Preventive model' is automatically served by swift actions against wrong doers. Effective redressal mechanism will indirectly prevent things going wrong for the consumer. The ever increasing number of complaints with remarkable success rate has resulted in pressurizing the business concerns to adopt self regulation. COPRA deserves praise for instilling social responsibility in business. Strengthening the agencies under COPRA by increased infrastructural, personnel and funds support is the need of the day.

Declaration *This is an original and unpublished paper of the author.*

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