

PERFORMANCE APPRAISAL OF THE CONSUMER DISPUTES REDRESSAL MECHANISM: SOME OBSERVATIONS ON THE WORKING OF THE DISTRICT FORUMS IN THE STATE OF PUNJAB

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INTRODUCTION

The Consumer Protection Act,¹ 1986 was enacted with the sole aim of promoting and protecting consumers' interests and to bring justice to their door-steps. Its enactment has ushered in a new era of consumer protection in the country. The 1986 Act is a benevolent and beneficent piece of legislation and a milestone in the Indian history of law making. Prior to its enactment, a large number of laws were already there on the statute book that directly or indirectly protected consumers' interests.² However, seeking justice under those laws was a cumbersome, dilatory, and a cobwebish procedure that kept majority of consumers away from the process of litigation. As a result thereof, the age old doctrine of Caveat Emptor (let the buyer beware) held sway in the market place, thereby relegating consumers' interests and concerns to the background. The market place, all through, had been a sellers' place.

There is no denying the fact that since independence, a large number of laws were passed by the Indian Parliament with the sole aim to protect the consumers against their exploitation by unscrupulous traders and unethical businessmen. Prominent among these law were: The Prevention of Food Adulteration Act, 1954; the Monopolies and Restrictive Trade Practices Act, 1969; the Hire Purchase Act, 1972; The Standard of Weights and Measures Act, 1976; the Drugs and Magic Remedies (Objectionable) Advertisements Act, 1976; and the Prevention of Black Marketing Act, 1980.³ However, notwithstanding the availability of all these pieces of legislation, the situation had indeed been dismal and an average consumer had always been exploited in the market place. Illiteracy, ignorance, unequal bargaining power, insufficient product information, denial of after-sale service, and lack of awareness and assertiveness on the part of consumers about their rights and above all cumbersome laws and complicated legal procedure cumulatively led to their never-ending exploitation at the hands of unscrupulous traders, unethical

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1 Act No. 68 of 1986.

2 For a list of all these statutory enactments, see: Gurjeet Singh and Simmie G. Singh (1989): "Consumer Protection: The Socio-Legal Aspects." in Indian Socio-Legal Journal, Vol. 15, Nos. 1-2, pp. 77-86.

3 For a detailed study of the enactment of various laws relating to consumer protection in the post-independence era, see: Gurjeet Singh (1994): "The Problem of Consumer Protection in India: A Historical Perspective." In: Consumer Protection Reporter, Vol. 3, Pars 11-12 (November-December), pp. 704-19.

businessmen, and irresponsible service providers. Thus the consumers needed protection.⁴

All this continued till 1985 when the United Nations General Assembly laid down certain guidelines for consumer protection and desired the member states to abide by those guidelines. One of these guidelines enjoined upon the member states to enact full-fledged independent laws for the protection of consumers interest.⁵ Broadly speaking, it was in line with these guidelines that the Indian Parliament enacted the Consumer Protection Act, 1986 with the sole aim of promoting and protecting consumers' interests. Voluntary consumer organisations and various other social groups also lobbied heavily with the government for the enactment of a consumer-friendly legislation. However, the year 1986 can be called as the 'Year of Consumers' as, besides the enactment of the Consumer Protection Act, 1986, a number of other laws were also suitably amended with the sole aim of liberalising the locus standi and thereby allowing consumer organisations to litigate on behalf of the exploited consumers and take justice to their doorsteps.⁶

The Consumer Protection Act was passed in December 1986 and came to be known as a Code of Consumer Rights⁷ However, strictly speaking its effective implementation started in the year 1990 when the Consumer Disputes Redressal Agencies envisaged under the Act were by and large established throughout the country. It may be appropriate to mention here that it was due to the repeated intervention by the Supreme Court of India that these redressal agencies were ultimately established. Many states established these agencies when they were likely to face the contempt proceedings in the Supreme Court.⁸ This sadly shows the apathy on the part of the governments in welfare state to implement even a benevolent piece of legislation on their own.

Once these agencies were well in place, they started dispensing justice by way of entertaining and disposing of complaints against the supply of defective goods as well as against rendering of deficient services, inter alia, by airlines, banks, housing boards and corporations, insurance companies, medical

4 For further details, see: Gurjeet Singh (1994): "The Concept of 'Consumer' and the Rationale of Consumer Protection in the Contemporary World." in Consumer Protection and Trade Practices Journal, Vol. 2, No. 2 (February), pp. 29-38.

5 For further details about the UN Guidelines on Consumer Protection, see: Gurjeet Singh (1994): *Significance of International Coordination in the Arena of Consumer Protection: A Case Study of the United Nations Guidelines and the International Organisation of Consumer Unions.* in Consumer Protection Reporter, Vol. 2, Part 7 (August), pp. 562-68.

6 Prominent among these were: The Drugs and Magic Remedies (Amendment) Act, 1986; The Prevention of Food Adulteration (Amendment) Act, 1986; the Standard of Weights and Measures (Amendment) Act, 1986; and the Monopolies and Restrictive Trade Practices (Amendment) Act, 1986.

7 For details, see: Gurjeet Singh (1993): "Consumer Rights Under the Consumer Protection Act, 1986: A Critique." in The Indian Journal of Legal Studies, Vol. 13, pp. 132-38.

8 See: *Common Cause v. Union of India*, (1992) 1 SC 707.

profession, posts and telegraphs, railways, roadways, and telecommunications. As it normally happens, a number of terms defined in the Consumer Protection Act, 1986 had different and divergent interpretations.⁹ As a result thereof, at the initial stages, many of these services claimed complete immunity from their governance by the 1986 Act by way of advancing the arguments that each of them had their own regulatory law and in-house control mechanism. However, the 1986 Act being the one that is “in addition to and not in derogation of any other law for the time being in force”, Consumer Disputes Redressal Agencies brought all these services within the ambit and amplitude of the 1986 Act except for educational services, housing, legal and the medical profession in the first instance. However, a large number of cases particularly filed against the housing boards and corporations as well as against the medical profession before the different Consumer Disputes Redressal Agencies and the claiming of immunity by these two types of services from their governance by the 1986 Act, coupled with the equally strong arguments advanced by the consumer protagonists and their organisations for their inclusion and by the medical profession against their exclusion created a lot of controversy and led to heated debates on the issue.¹⁰

However, in a short span of time, even these two services were also brought within the ambit of this Act, thanks to the radical decision-making by the Supreme Court of India and pronouncement of some path-breaking judgements against housing services¹¹ as well as against the medical profession.¹² Notwithstanding the fact that the controversy relating to educational services¹³ and the legal profession¹⁴ is yet to be fully settled, there

9 For further details, see: Gurjeet Singh (1993): “*The Concept of Commercial Purpose Under the Consumer Protection Act, 1986.*” in Consumer Protection Reporter, Vol. 2, No. 10 (October), pp. 290-300. Gurjeet Singh (1994): “*The Concept of ‘Contract of Personal Service’ Under the Consumer Protection Act, 1986.*” In: Consumer Protection and Trade Practices Journal, Vol. 2, No. 3 (March), pp. 51-56.

10 For further details, see: Gurjeet Singh (1995): “*The Consumer Protection Act, 1986 and the Medical Profession in India: Conflicts and Controversies.*” in Journal of the Indian Law Institute, Vol. 37, No. 3 (July-September), pp. 324-63 and Gurjeet Singh (1997): “*Consumer Forums as Enforcers of Patients Rights - Applicability of the Consumer Protection Act, 1986 to the Medical Profession in India: Some New Developments.*” in Global Health Law Souvenir, New Delhi: Indian Law Institute, pp. 141-52.

11 See, for example: *Lucknow Development Authority v. M.K. Gupta*, 1993 CTJ 929 (SC).

12 See, for example: *Indian Medical Association v. V.P. Shantha*, 1995 CTJ 969 (SC).

13 For further details, see: Gurjeet Singh (1993): “*Increasing Ambit and Amplitude of the Consumer Protection Act, 1986: A Case Study of its Applicability to Educational Services.*” in Consumer Protection and Trade Practices Journal, Vol. 1, No. 9 (September), pp. 166-87. Also see: Gurjeet Singh (1995): “*Applicability of the Consumer Protection Act, 1986 to Educational Services: Need for a Final Word from the Supreme Court of India.*” in Consumer Protection and Trade Practices Journal, Vol. 3, No. 4 (April), pp. 57-60.

14 For further details, see: Gurjeet Singh (1997): “*The Consumer Protection Act, 1986 and the Legal Profession in India: Some New Developments.*” In: Consumer Protection and Trade Practices Journal, Vol. 5, No. 8 (August), pp. 129-36.

has not been any looking back for the redressal agencies and each decision pronounced by the National Consumer Disputes Redressal Commission as well as by some of the High Courts and above all by the Supreme Court of India has led to the crystallisation as well as to the consolidation of law on the subject thereby giving boost to the emerging consumer protection jurisprudence in the country.¹⁵

CONSUMER DISPUTES REDRESSAL MECHANISM UNDER THE CONSUMER PROTECTION ACT, 1986

The Consumer Protection Act, 1986 envisages a three-tier redressal mechanism for the redressal of consumers' grievances. At the lowest level, the institution of District Consumer Disputes Forum has been envisaged. At the state level, the institution of the State Consumer Disputes Redressal Commission has been envisaged and at the apex level, the institution of the National Consumer Disputes Redressal Commission has been envisaged. The State High Courts have not been given any locus standi to entertain complaints from consumers or appeals against the decision-making by any of the three redressal forums. The State High Courts can entertain cases only under their writ jurisdiction and the Supreme Court of India is to be the final appellate authority under the Consumer Protection Act, 1986.

Due to space constraints, it is not possible to discuss in detail the statutory provisions relating to powers, functions, and jurisdiction of each of the District Forum,¹⁶ State Commission,¹⁷ and the National Commission.¹⁸ In the following paragraphs, I would, however, like to discuss about the functioning of the institution of the District Consumer Disputes Redressal Forums especially in the State of Punjab. Even if it may sound little autobiographical, I would like to mention here that the observations made in the present paper are primarily based on the research conducted by the author with the help of some of his research scholars on the actual working of the Consumer Disputes Redressal Forums in the State of Punjab.

15 For further details, see: Gurjeet Singh (2000): "*Consumer Protection Law.*" in S.K. Verma and Kusam (eds.): *An Evaluation of the Role and Decision-Making of the Supreme Court of India: Its Grasp and Reach*, New Delhi: The Indian Law Institute and Oxford University Press, pp. 495-539.

16 For further details, see: Gurjeet Singh (1995): "*Consumer Disputes Redressal Mechanism Under the Consumer Protection Act, 1986: Critical Analysis and Observations on the District Forum.*" in *Consumer Protection and Trade Practices Journal*, Vol. 3, No. 7 (July), pp. 93-108.

17 For further details, see: Gurjeet Singh (1995): "*Consumer Disputes Redressal Mechanism Under the Consumer Protection Act, 1986: Critical Analysis and Observations on the State Commission.*" in *Consumer Protection and Trade Practices Journal*, Vol. 3, No. 8 (August), pp. 120-28.

18 For further details, see: Gurjeet Singh (1996): "*Consumer Disputes Redressal Mechanism Under the Consumer Protection Act, 1986: Critical Analysis and Observations on the National Commission.*" in *Consumer Protection and Trade Practices Journal*, Vol. 3, No. 1 (January), pp. 11-16.

WORKING OF THE DISTRICT CONSUMER DISPUTES REDRESSAL FORUMS IN THE STATE OF PUNJAB

As the information collected and gathered for the Research Project is yet at the stage of analysis, a part of this can be shared with the readers of this paper. However, I would not like to name as to which District Forum the information pertains to, but would only like to make a few general observations.

In the first place, it may be pointed out at the outset that unfortunately, the State of Punjab was also one of those erring states that did not establish the District Forums in the entire State by self-initiative. As mentioned above, it was only on the basis of the Supreme Court Decision in the case of *Common Cause v. Union of India* that the various erring states were given directions to establish the District Forums by a cut off date given by the Supreme Court failing which the contempt proceedings were to be initiated against those states. Thus even though some of the District Forums had been established in the State, but they were almost non-functional and everything got into its place after the radical and strong-worded judgement pronounced by the Supreme Court of India. Further, even if these forums were established, appointments could not be made in time and if made, they were controversial and the functioning of some of the District Forums could be started quite late.

Secondly, as regards the appointments to these Forums, whereas the appointments of the Hon'ble Presidents were concerned, these were more or less fair. There was no option either because only people with judicial background were to be appointed. Yes, of course, at most District Forums, Additional Sessions Judges were appointed. It is quite late that even retired District and Sessions Judges are now being appointed. However, as regards the appointment of other two Hon'ble Members is concerned, most of the times, these have been controversial. For instance, prior to the enactment of the Consumer Protection (Amendment) Act, 1993, the word 'Lady Social Worker' was used and no qualification, whatsoever, was laid down for the appointment of lady member to the District Forum. Therefore, majority of the appointments came in for criticism due to the fact that these were political appointments where nothing else was considered except the candidate's close proximity to the ruling political party. However, after the 1993 Amendment, situation has changed a bit. However, may be due to lack of availability of competent people or their unwillingness for this job has led to certain appointments those cannot be said to have been done on the merit basis.

Thirdly, as regards the relationship between the Hon'ble President and the other two members, in some of the Forums, some notes of discord have been noticed. The main reason behind this is that the Hon'ble President being

a person from the judicial background have been allegedly demonstrating their superiority, though in a very discrete manner. This fact is normally not acceptable to the non-judicial members especially when their appointment warrants them to be at par with the judicial officer and their role is equal in the decision-making in consumer complaints.

Fourthly, at some District Forums, there have been notes of discord between the Members of the Consumer Forum and the lawyers. The reason is obvious. The senior lawyers or advocates visit Consumer Forums as a last resort. They are busy in the Sessions Court as well as in other courts. And the work of the Consumer Forum suffers due to the non-availability of the advocate of one of the parties. Here even the role of the Bar Associations has not been very supportive.

Fifthly, the working in the District Consumer Forums sometimes starts quite late in the morning. Whereas the court work should normally start at sharp 10.A.M., it was observed that in some of the District Forums, the Presiding Officers do not sit up until 11.30 or even upto 12 noon and they rise from the court at 3. P.M. on the pretence of dictating judgements or reading complaints and files.

Another thing that came to our notice was until the Hon'ble President himself sits in the Consumer Forum, the judicial work does not normally start. It may be due to lack of understanding of law and legal provisions and / or lack of confidence that the other two members are just not ready to listen to the arguments of the advocates. So much so that even they are not ready to give adjournments to the parties or to their advocates. And if the Hon'ble President of the District Forum is on leave, the work of the Forum comes to a complete stand still.

About the infrastructure, the less said the better. There is shortage of staff, stationary, furniture and other day to day requirements. In some of the District Forums, it is a precedent that the complainant has not only to bring his own stationary, that is, envelop and stamps, but also has to pay a nominal fee to the Process Server and even have to accompany him to get the notice served to the opposite parties.

Further, in some of the cases, the Consumer Forums face the problems with regard to the enforcement of their orders. Many a times, police is not cooperating and many a times, the respondents have given wrong, false and fabricated addresses and it is difficult even to convey the order passed by the District Forum. Well these problems are not exclusively applicable to the Consumer Forums in the State of Punjab. These have been experienced in

almost all the districts.¹⁹

There were a couple of other day to day problems that we observed during our survey of the District Forums in the State of Punjab but due to space and time constraints, it is not possible to mention all those. These can be discussed later.

CONCLUSION

In conclusion, I would like to state that despite all these shortcomings mentioned above, Consumer Disputes Redressal Forums are certainly dispensing justice in the State of Punjab. Though it is possible to compare the functioning of one District Forum with the other, but it is not possible to compare the performance of District Forums in one state with those of the other. And that is why it is not possible to comment as to whether they are or are not functioning effectively and efficiently. There is no denying the fact that the defective appointments, intentional non-cooperation by the lawyers and infra-structural problems are some of the problems that afflict their decision-making as well as their day to day functioning, but with little farsightedness things can be improved. The ultimate responsibility lies with the consumers. They have not only to assertive about their rights, but must also be conversant with their duties also. During the survey, we found that many a times consumers file complaints and after two to three hearings, they do not follow up. This is indeed a negative attitude and an unhealthy trend that needs to be reversed.

In my personal opinion, the functioning of any institution, whether judicial or quasi-judicial, depends not solely on the administrators, that is, it is not only the Hon'ble President or the Members of the District Forum who are to run the Forum smoothly. Besides them, its functioning is also affected by the role and responsibilities performed by the clerical staff and their attitude towards the lawyers and the litigants. Lawyers appearing before the District Forums are also expected to play a very very important role. As a matter of fact, Consumer Forums are the reminiscent of the Family Courts where lawyers have a minimum role to play. However, since lawyers appear frequently in Consumer Forums, a lot is expected from them. The greatest thing that is expected from the lawyers is they should rarely ask for an adjournment, for seeking of repeated adjournments totally defeats the sole purpose of the enactment of the Consumer Protection Act that aims at providing quick justice to the consumers. Next comes the role of the litigant consumers. If we as consumers are aware of our rights that have been recognised in the Consumer

19 For further details, see: Gurjeet Singh (1993): "Enforcement of the Orders of the Consumer Disputes Redressal Agencies and Imposition of Penalties Under the Consumer Protection Act, 1986." in Consumer Protection and Trade Practices Journal, Vol. 1, No. 10 (October), pp. 194-201.

Protection Act, 1986 and are ready to assert them in the market place, we will not perhaps feel the need to approach the Consumer Forums because ever since the enactment of the Consumer Protection Act, 1986, business community has become well aware that in case they are not going to regulate themselves, the consumer are going to drag them to the Consumer Forums.²⁰ Consumers have to realise that the Consumer Forums have been established for protecting their interests and to provide redressal to their grievances. Therefore, once they approach the Consumer Forums, they have to pursue their remedy till end. If they do not pursue their complaint till end, the entire purpose of litigation gets defeated. Lastly, media should also play its part. If a District Forum is quick in disposal of complaints filed before it, its role must be reflected and highlighted positively in the media columns. That would encourage other litigant to approach that forum for the redressal of their genuine grievances and it will also encourage the other Consumer Forums to emulate the example highlighted in the media columns. Consumer Protection is a 'Collaborative Endeavour' wherein every player has to play its part. Proving access to justice is one thing; seeking justice is another. Both have to move in juxtaposition in the pursuit of establishment of a 'Consumer Friendly Society'.

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²⁰ Gurjeet Singh (1996): "*The Consumer Protection Act, 1986 and Self-Regulation of Business.*" in *Consumer Protection Reporter*, Vol. 3, Parts 11-12 (November-December), pp. 374-88.