

CONSUMER JURISPRUDENCE

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The contemporary world under the aegis of liberalisation, free-market and open trade has led to limitless industrial development turning the whole world into a global village-market. This has contributed to manifold linkages in the political, ideological, economic, social, health and industrial spheres whereby no nation, no community and no individual can remain an island by himself. The goals of Development for all, Wealth for all, Health for all, clean Environment for all and Consumer Justice for all - which were rather an Eldorado seem to become a near possibility in the twenty - first century. This has been possible on account a number external and internal ideological, political, social and economic factors necessary for human survival as well as mastery of man over Nature culminating in revolutionary progress in scientific and technological fields opening new vistas, opportunities and challenges to man in all spheres. However such extraordinary developments have also caused some imponderable problems for mankind as how to survive against the mighty new hazards unleashed by liberalisation and new free market economy. As unbridled development has led to environmental pollution the free market system has led to manifold un-ethical and unfair trade practices resulting in the exploitation of the entire segment of consumers both in the developed and the developing world. The consumers are continually subjected to manipulated and non-manipulated unfair trade practices such as monopoly situation, cut-throat competition, sub-standard quality, misrepresentation etc. to garner benefits by extortious, illegal and immoral means detrimental to public interest in general and the consumer interest in particular. Consequently the notion of Consumer Sovereignty is merely a populist slogan having no or little bearing in the market place and the business world which is propelled by laissez faire overtones like demand-supply, profits, sub-standard quality, high price wherein the buyer is generally at the receiving end.

Some such consumer hazards adversely affect human health, safety, quality, purity, standard of consumer goods. The absence of fair price, weak bargaining, lack of business ethic etc. the consumers for whom goods are produced become a usual casualty in the hub-bub of the market place. The lure of profits and incomes induces enterprises in collusive practices and behave in a way which is contrary to overall interests of the consumers. Consequently a spate of consumer laws have been passed especially in the latter half of the twentieth century for consumer protection against adulteration of foods, drugs cosmetics for information in

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regard to quality of consumer products, product safety, price warranty of goods and so forth fixing accountability and strict liability on the seller-cum-manufacturer rather than the buyer which has paved the way in the emergency of a new jurisprudence concerning consumer interests, claims and needs.

Nature and Meaning of Consumerism

With the rising revolution in human expectations, hopes and desires towards consumerism has led to state regulation and protection of consumer interests in harmony with opposing interests and goals of industry and manufacturers. It has accordingly resulted in a plethora¹ of consumer laws regulations, practices, judicial principles, formal and informal norms for orderly regulation, protection and control of the respective interest of the parties in the over all interest of consumer justice of the consumer community. Consumer jurisprudence, therefore, is that body of law concerning market-place whereby varying interests of the predominant groups of sellers and consumers are reconciled, adjusted and balanced on the matrix of business morality and well-being of the consumers by protecting them against abuses, impurities and misrepresentation of consumer goods. It is a study of such legal principles, precepts and judicial decisions which regulate control and protect the interests of the consumers in the effective realisation and administration of consumer justice. It inheres a bundle of duties and obligations of the business world, which is obligatory for it to observe and follow in the interest of consumer goals without shifting its legitimate business goals and profits. Such obligations of the sellers-cum-manufacturers are generally in the form of do's and dont's, which they ought to observe in the interest of consumer justice e.g. prevention of the food... adulteration, drug abuse, smoking law etc. Consumer jurisprudence has also become a variant of human rights jurisprudence encompassing some basic rights of man like right to live and life, right to health, right to information and other due-processual rights in this new age of liberalisation and laissez-faire conducive to generation of more entrepreneurial freedom of trade and business within the framework of business ethic concerning consumer justice. Of course consumer jurisprudence is not merely a modern development as its traces can be found in ancient India, China, Rome, Greece, Egypt etc. In India the Ayurveda and its texts like Charka Samhita and later on Kautilya's Arthasastra contain manifold references, evidences and documentation on the entire gamut of unfair and unjust trade practices, abuse of health and purity related rules, control and prevention of injurious drugs and alcoholic beverages

1 'Our four decades of legislation, the Government has spawned law after all, 30 in all promising fair play to consumer. But the Indian market knows but "few curbs only". Times of India, June 1, 1987 (Jaipur, ed.).

etc. which can be said to be the consumer code of the ancient Indians.

The Consumer Protection Act, 1986-New Horizons

The Consumer Protection Act, 1986 had its birth-pangs from the days of Kennedy's Consumer Message 1962 and other metamorphic changes in the consumer world and free-market economy both within and outside India. Accordingly consumer awareness, consumer literacy has received quantum jumps in India during the last decade of this century. This has been possible due to vast expanse in Indian markets as well as consumerism as a result of adoption of liberalisation, decontrols and freeing of Indian economy from the cobwebs of socialist controls and socialist ownership of industry. It is not only a constitutional obligation but a new tryst of the government² to vast array of consuming public assuring and guaranteeing basic consumer rights which were non-existent prior to 1986 shall inform all consumer institutions-administrative, business and judicial. It is interesting to understand that all human beings are consumers whether they are young or old, rich or poor literate or illiterate require legal protection against consumer hazards. Consequently the Act envisages³ the need of disseminating consumer awareness and education in furtherance of the protection of consumer rights through the instrumentality of consumer protection councils constituted at the district, state and central levels. These are namely, (a) the right to be protected against products which are hazardous to life and property; (b) the right to be informed of the quality, quantity, purity, price etc. so as to protect the consumer from unfair trade practices... and access to goods at competitive price; (c) the right to be heard and grievances and complaints redressed as a matter of right at the appropriate forums to save the consumer from exploitation by unscrupulous sellers or producers; and (d) the right to consumer education to sensitise the consumers on all problems and issues concerning consumerism. In short both from the point of view of its coverage, applicability, voluntary democratic and participatory mechanism with a hierarchy of consumer justice delivery forums the Act creates in-built linkage with the victims of consumer wrongs. It embodies the principle of natural justice-the right to hear or an opportunity to both sides of being heard-(audi alteram partem) and provides effective, inexpensive and speedy disputes redressal mechanism commensurate to right to life and a healthy living free from the dangers of modern consumeristic hazards. In this way the Consumers protection Act has given a new Copernican turn of Indian consumer jurisprudence giving enough scope to judiciary to spin consumer jurisprudence

2 The Act is applicable to government, cooperative society or any other sector and all services like transport, railways, telephones communication etc.

3 Sections 5, 6 and 7.

around constitutional values of equality, liberty and right to life. Inevitably judiciary being a part of this national consumer ethos has responded⁴ to the need of consumer justice which in turn has generated consumer awareness. On a complaint filed before the Supreme Court that implementation of the Consumer Protection Act being sluggish as the machinery for redress of the grievances at the base level is the District Forums had not been set up in the country the Court issued directions for the establishment of independent District forums for securing the implementation of the Act. In this context Justice Ahmadi, as then he was, observed.

‘Considerable time, almost over sixteen years, have now elapsed since the provisions of the Act were brought into force and we should have expected the regular forum in position in every district by now. It is conceivable that the consumer protection movement is gaining ground in other countries because of strong consumer bodies having succeeded in organising the consumers; such powerful bodies are far and few in this country and they are unable to exert sufficient pressure on the powers that be as compared to the pressure brought by vested interests because the consumers in this country are not organised as one would like them to be.’

Position of Consumerism

(A) Position in England:

In its true meaning and content consumerism is a reaction and revolt against the vagaries of commercialism and industrialism which exploited the consuming community contrary to elementary principles of business morality and ethic and endangering the life, health safety and well-being of the common people who were basically their product-buyers. This is because there was absence of government regulation and intervention between sellers and consumers to protect the latter from the deterring consequences of adulterated or unsafe goods, drugs and foods. Even Adam Smith, the high priest of capitalistic free market economy had eulogised ‘consumer sovereignty’ as an important factor which determined the quality and nature of economic activity yet manufacturers had been taking consumer for granted and produced commodities some of which were not safe or of good standard quality etc. As Adam Smith remarked ‘Consumption is the sale end and purpose of all production, and the interest of the producer ought to be attended to only as far as it is necessary for promoting that of the consumer’. As such in free market economy theoretically consumer sovereignty should have been the principal

4 *Common Cause, A Registered Society v. Union of India*, AIR 1993 SC 1403.

parameter of production which was merely a means to satisfy consumer choice. However in reality consumer did not remain the primary end wherein profit acquired as a priority end of production. In traditional common law too consumer ceased to be a king as the principle of Caveat Emptor ruled and governed the consumer philosophy, this rule stipulated 'Let the Buyer be aware' for he ought not be ignorant of what they are when he buys the goods or thing from the seller. The purchaser-consumer was left with no remedy in the free market economy. In England it is the House of Lords which in post-World War I gave an impetus to the emergence of consumer jurisprudence. Lord Atkin's landmark decision in *Donoghue v. Stevenson*⁵ is a water shed in the growth and development of consumer jurisprudence. Lord Atkin observed :

'I do not think so HC of our jurisprudence as to suppose that its principles are so remote from the ordinary needs of civilised society and the ordinary claims it makes upon its members as to deny a legal remedy where there is so obviously a social wrong.'

His Lordship reiterated the proposition of English law that '... a manufacturer of products which he sells in such a form as to show that he intends them to reach the ultimate consumer in the form in which they left him with no reasonable possibility of intermediate examination, and with the knowledge that absence of reasonable care in the preparation of putting up of the products will result in an injury to the consumer's life and property, owes a duty to the consumer to take that reasonable care.' The Donoghue rule of 'Love thy neighbour' herein the consumer swayed the consumer jurisprudence for over three decades in England and other common law countries. Consequently the onus as to defects, deficiencies of the products goods shifted from the buyer to seller under the rule of Caveat Venditor (Let the Seller be aware). The consumerism received a quantum thrust in England in pursuant to entry of England in the European Economic Community and the numerous directive which England implemented in this regard. In 1961 the Parliament enacted the Consumer Protection Act, 1961. But the major step forward in regard to consumer protection heralded on the recommendation of the Molony Committee which led to a series of amendments in the said Act in 1971, 1976 and 1978 including a White Paper in 1984 which led to the passing of the said law in a consolidated form - the Consumer Protection Act, 1987. Subsequent thereto another significant measure enacted is the Food Safety Act, 1990 relates to consumer food safety, labeling, advertising in order to prohibit and prevent food adulteration.

5 (1932) AC 562.

(B) Position in USA :

USA traditionally is a land of free-market economy where during the age of golden *laissez faire* capitalism sustained by social Darwinism 'the survival of the fittest principle' business and industry had its own way until federal government had to intervene due to business abuses of the market. The Big Business Houses and Corporations who were called by some 'robber barons' were neither responsible neither towards society nor to government and the general public remained at their mercy for the cost and quality of consumer goods. This paved the way for anti-monopoly legislation⁶ and regulatory agencies⁷ to eliminate unfair business practices. In retrospect when the Civil War 1861-63 was over industries instead of producing war materials began to profligate market-places with consumer goods of mass consumption and started taking consumers on their terms or silence their protest against high prices, poor quality, unsafe and unhealthy products etc. Since consumer remained an exploited lot despite his fictional 'consumer sovereignty' it is during 1870 to 1930 covering World War I and the Great Depression a number of governmental agencies-came into existence for consumer protection. The New Deal era witnessed the emergence of Consumer Union which became a catalytic agent in the dissemination of consumer information to ignorant consumers about the unsafe, unhealthy consumer goods like spurious drugs, medicines, cosmetics, soaps, meat, dairy products machines, automobiles etc. It is Ralph Nader who greatly aroused American public opinion for consumer protection despite stiff opposition of giant corporations. The waves of popular indignation, identity of interest between unorganised and organised consumer groups led to special governmental protection for consumers protection against adulteration, misrepresentation of foods, drugs, cosmetics, labeling of consumer goods, product safety etc. between 1962 to 1975.

(C) Position in India:

In India consumer protection is not wholly a modern phenomena. However it was during the British rule that India became a sellers market with less production, high prices and inferior quality flooding the consumer market plagued by hoarding, black marketeering and profiteering. Yet the consumers remained neglected left at the mercy of sellers. The colonial rulers after the

6 The Sherman Anti - Trust Act, 1890, the Clayton Act, 1914, The Federal Trade Commission Act, 1914, the Interstate Commerce Act, 1887.

7 Federal Trade Commission, the Interstate Commerce Commission, the National Bureau of Standards, the Marketing Agencies of the Department of Agriculture, the Securities Exchange Commission, Civil Aeronautic Board.

passing of the Indian Penal Code⁸ 1860 did enact some measures⁹ on consumer protection but these laws were seldom enforced. Likewise after Independence during 1947-1986 the consumerism did not make much strides¹⁰ largely due to lack of consumer awareness, absence of legislative and administrative will and a weak consumer movement. The general principles underlying *Caveat Emptor*; *Rylands v. Fletcher* and *Donoghue v. Stevenson* borrowed from England were pro-sellers which seldom enforced the claims of the consumers. The Constitution of India too indirectly and in remote fashion appear to include consumer justice in its Preamble and the Directive Principles¹¹ of State Policy. There was a lack of drive and initiative in the protection of helpless consumers. The government viewed problems poverty, unemployment under-development and illiteracy more challenging and urgent than consumer protection. The traditional cultural lag and the Gandhian psyche of simple living too acted as a negative factor in consumer awareness. In short the pre-1986 legislation protected the consumer at the ring level only. However it is after 1986 the government took a positive and bold step to confer basic consumer rights through the consumer protection law by providing simple, speedy and inexpensive redressal mechanism including the right to compensation for any loss or injury sustained on account of defect or deficiency in the product.

Judiciary and Consumerism

Much before the passing of the Consumer Protection Act 1986 in India the judiciary has been expounding new principles on consumer rights¹² to prevent the menace of food and drug adulteration etc. which are a threat to health of the consumers causing diseases, premature deaths, pecuniary losses and social adverse effects on the entire society. In early 1970s and especially during the internal emergency of 1975 the judiciary innovated new techniques, doctrines and principles to strengthen the basic fabric of consumer philosophy echoing the identical principles underlying the Consumer Message of President John F. Kennedy to meet the challenges of health hazards and exploitation like food and drug adulteration¹³ etc. The judiciary adopted a stiff attitude towards such anti-social acts and justified the use of extreme weapon of detaining a trade under the Maintenance of Internal Security Act, 1971 to deter like-minded persons from continuing food adulteration activities. Extreme action of detention

8 Indian Penal Code 1860 – section 267 preventing fraudulent use of false instruments for weighing, section 269-271 relating to adulteration of food, drugs etc.

9 The Dangerous Drugs Act, 1930; the Sale of Goods Act, 1930; the Drugs Cosmetics Act, 1940.

10 The Drugs Control Act, 1950.

11 Articles 39 and 47

12 *United India Insurance Co Ltd v. M/s Rising Entrepreneurs* AIR 1996 J & K 8

13 *Jagdish Prasad v. State of Bihar*, AIR 1974 SC 911.

was justified against such anti-social elements who engage themselves in the racket in 'a big way that throws out of gear even the tempo of life' However it is Palghat Municipality¹⁴ that Justice Narayan Pillai expounded the theory of social engineering for establishing a relationship between the duties of the businessman and the rights of the consumer who is always the victim in consumer offences. He gave a new slant to consumer jurisprudence commensurate with rule of law when he observed¹⁵:

'There are several rights such as right to safety, right to be heard the right to know, right to choose and the right to fair agreement involved in consumerism.... The most important right in consumerism is the right to safety and in our country it was recognised in the Prevention of Food Adulteration Act...'

The Supreme Court gradually invented new legal devices, doctrines and principles for the protection of the rights of the consumers. To fasten culpability the judiciary adopted the doctrine of strict liability in matters pertaining to consumer wrongs and the dilution of the to meet such challenges affecting public health and life.

14 *Palghat Municipality v. S.R & O Mills* (1975) GLJ 479 (Ker).

15 *Ibid* 492.