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A REVIEW OF STATUS OF CONSUMER PROTECTION LAW IN INDIA

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Abstract:

The paper attempts to present the state of consumer protection in India by way of analysing the present status with respect to the UN Guidelines for consumer protection. The paper throws light on the current scenario by giving some data and highlighting the problems. It observes that the legal and the policy framework in the country is fairly good to capture the measures suggested by the UN Guidelines but when it comes to implementation, the situation is not up to the mark. It concludes with some suggestions and recommendations that might further improve the consumer protection regime in the country.

KEYWORDS:

consumer protection, consumer rights, development, education, environment, implementation, information, sustainable consumption, UN Guidelines.

INTRODUCTION:

The process of development coupled with increasing liberalisation and globalisation across the country has enabled consumers to realise their increasingly important role in society and governance. However, concentration of the market power in the hands of a select few has affected consumers' behaviour over time. In a developing country like India where the incidence of poverty and unemployment is very high and the level of literacy is very low, the people face a volume of problems, particularly in the context of consumer related issues. Unlike in the developed world, consumers in these countries have not been able to play a greater role in the development process.

The purpose of economic planning is to allocate resources, as far as possible, for the maximum satisfaction of consumers' needs. Any goods or services produced in an economy are ultimately meant for consumers. There is a logical, moral and political force in the proposition that the consumers themselves should have the right to take decisions about the allocation of resources for their own needs.

Realising this need, the International Organisation of Consumer Unions, now known as Consumers International, took the initiative and under its consistent lobbying, the United Nations adopted a set of Guidelines for Consumer Protection on April 9, 1985 which were revised in 1999. The Guidelines address the interests and needs of consumers worldwide and provide a framework for Governments, particularly those of developing and newly independent countries, to use for elaborating and strengthening consumer protection policies and legislation.

The UN Guidelines have outlined the following eight areas for developing policies for consumer protection:

- A. Physical safety;
- B. Promotion and protection of consumers' economic interests;
- C. Standards for safety and quality of consumer goods and services;
- D. Distribution facilities for essential consumer goods and services;

- E.Measures enabling consumers to obtain redress;
- F.Education and information programmes;
- G.Promotion of sustainable consumption; and
- H.Measures relating to specific areas like water, food and pharmaceuticals.

These areas have been translated into the following eight consumer rights by the Consumers' International:

- 1)Right to Basic Needs;
- 2)Right to Safety;
- 3)Right to Choice;
- 4)Right to Information;
- 5)Right to Consumer Education;
- 6)Right to Redressal;
- 7)Right to Representation; and
- 8)Right to Healthy Environment

This paper attempts to analyse and take stock of the present situation in India vis- a-vis these rights and the situation is as mentioned below:

I.BASIC NEEDS

The right to food, clothing, shelter, health care, drinking water & sanitation, education, energy and transportation come under the ambit of basic needs. Without the fulfillment of these eight needs it would be impossible for any human being to live in a dignified manner. The UN Guidelines do not explicitly mention the right to basic needs, but expect Governments to take appropriate measures so that consumers can have easy access to “essential goods & services”.

- (a) In India, the instrument for ensuring food security (the right to food), particularly for the poorer sections of society, is through the public distribution system (PDS). Some field level studies show that on an average only about 25 per cent of the poor are availing the benefits of the PDS system. The micro aspects of the failure of the PDS relate to factors such as low margins of the Fair Price Shops owners, thereby leading to corruption, transportation bottlenecks, shops not being opened at convenient times, etc.
- (b) Clothing is a fundamental need and therefore it comes under the right to basic needs. One of the objectives of the Textile Policy, 1981, in India is strengthening and streamlining infrastructure for distribution of cloth to weaker sections of the population. The Textile Policy, 1985 and the Textile (Consumer Protection) Regulation, 1988 also address some of these issues. Another important measure has been the de-licensing of the sector in August 1991.
- (c) The Right to Health has been outlined in two policy statements: National Health Policy and the Drug Policy. Life expectancy at birth has more than doubled in the last fifty years. It increased from around 30 years in 1947 to over 60 years in 1992-96. The infant mortality rate declined from 134 infants per thousand live births in 1977 to 72 infants per thousand live births by 1998.
- (d) In 1998, the Government of India adopted the National Housing and Habitat Policy to ensure the right to shelter. This policy envisaged a major shift in the role of the Government from that of being a provider to that of a facilitator. Presently the housing scenario is such that between 25 to 50 percent of the urban population is living in makeshift shelters, squatter settlements or slums. In rural areas, 75 percent of the constructions are classified as that of a semi-permanent nature.
- (e)The Right to Education is mentioned in the Chapter of Directive Principles of State Policy in the Constitution of India. The 83rd Constitutional (Amendment) Act 2000 has made elementary education a fundamental right.
- (f) Under the Right to Energy, the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 have been amended to usher in a new legal, administrative, and financial environment. State Electricity Boards have been restructured and a Central Electricity Regulatory Commission and State Electricity Regulatory Commissions have been set up. However, the progress has been far from satisfactory. As per the 1991 Census, only about 42 per cent of households had access to electricity in their homes as against 26 percent in 1981. The rural-urban gap here is quite striking. In 1991, three-fourths of the urban households in the country had access to electricity, whereas only 30 percent of those living in rural areas had access to this facility.
- (g)In India, there is a definite need to adopt an integrated transport policy, taking both road and rail transport and also water transport into account. The road connectivity of villages with population less than 1000 was

under 50 percent at the national level in 1996-97.

II.SAFETY

The right to safety means the right to be protected against products, production processes and services, which are hazardous to health or life. The UN Guidelines consider two kinds of safety: Physical safety and Standards for the safety and quality of consumer goods and services.

In India there are constitutional, legislative and administrative provisions with respect to this right. Among the constitutional provisions, the most important one is the protection of life and personal liberty (Article 21). Two major legislations are the Prevention of Food Adulteration Act, 1954, and the Bureau of Indian Standards Act, 1986.

Despite making it mandatory for certain products to adhere to the Indian Standard Institution (ISI) norms, many products can be found in the markets without ISI specification/marks. Even the ISI marked products in certain cases are found not to be adhering to the specifications. Majority of the consumers are not aware of the existence of such rules/laws. They are also not aware of their rights and in case of any problems they are not sure whom they should approach. Besides, rampant corruption in the system makes the laws ineffective in many cases.

III.CHOICE

The right to choice deals with the issue of choosing between different alternatives. The UN Guidelines deal with the economic aspects only under its section on promotion and protection of consumers' economic interests.

In India there are several legislative and administrative measures which provide guidelines to consumers regarding the type of goods and the terms and conditions under which he/she should buy. These measures also spell out the various responsibilities and duties on the part of suppliers and the penalty/punishment for not adhering to the conditions stipulated. The major legislations are Monopolies and Restrictive Trade Practices Act (MRTP), 1969, Bureau of Indian Standards Act, 1986 and Weights and Measures Act. A new development in India is the formulation and adoption of independent regulatory mechanisms in the area of electricity, telecommunications, insurance etc. which has provided alternatives to the consumers. A new competition law, to replace the MRTP Act, is on the anvil.

However, these laws are implemented inadequately due to several factors like limited information about the products, absence of effective regulatory mechanisms and pre-conceived notions among people regarding the outcome of any decisions process.

IV. INFORMATION

Consumers should have the right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, so as to make the right decision and protect themselves against abusive practices. Besides this, consumers should also have the right to access information related to public affairs, which are dealt with by the government and its agencies.

Various interpretations of Article 19(2) of the Constitution of India, clearly state that there should be a definite policy or uniform guidelines on the part of the state to help consumers make an "informed choice". Furthermore, provisions regarding the right to information are there under the Consumer Protection Act, 1986; the Monopolies & Restrictive Trade Practices Act, 1969; the Standards of Weights and Measures Act, 1976; the Bureau of Indian Standards Act, 1986 etc. The Department of Consumer Affairs has taken certain steps to provide information to the public. The Freedom of Information Bill, 2000, to ensure the Right to Information is pending before Parliament for enactment.

The inter-play of many institutions/Ministries with little co-ordination is the major hindrance in the way of implementation of these laws. Without any comprehensive regulation or definite guidelines (covering all products and services), consumers are not able to make proper use of the information provided. Another major problem is the poor dissemination of information due to the lack of effective institutional mechanisms. This particularly affects the illiterate and disadvantaged consumers.

V.CONSUMER EDUCATION

The right to consumer education means the right to acquire the knowledge and skills to be an informed consumer.

At present there is no clear-cut policy in India with respect to consumer education. The Union and

State Governments have accepted the introduction of consumer education in school curriculum. However, mere legislation will not fulfil the objective of reaching out to the consumers at large and calls for implementation in a decentralized manner. The National Council of Educational Research and Training (NCERT) is working on developing a syllabus and textbooks on consumer education. The Indira Gandhi National Open University (IGNOU) has devised a syllabus for distant education on consumer protection. Furthermore, the Government of India, through the Consumer Welfare Fund, has made provisions to fund consumer education programmes undertaken by consumer groups or the state governments. Despite various measures taken by the Government and several consumer organisations, majority of consumers are still not fully aware of all the consumer protection legislations and its implementation mechanisms.

VI. REDRESSAL

This right includes the right to receive compensation for misrepresentation of shoddy goods or unsatisfactory services and the availability of acceptable forms of legal aid or redress for small claims wherever necessary.

In India, the Consumer Protection Act was enacted in 1996 with the specific purpose of protecting consumers' rights and providing a simple quasi-judicial dispute resolution system for resolution of complaints. Under COPRA, a three-tier quasi-judicial machinery at the National, State and District levels has been established.

This elaborate alternative redressal mechanism has provided several benefits to the consumers. Besides providing speedy redressal to the consumers' grievances, the clearly spelt out legislation has reduced the ambiguities in the procedural matters. Despite the existence of such a holistic law, the situation in India (with respect to consumers' redressal), is constrained with problems (like delays in judgement, non-compliance with orders etc.). However, the present situation is certainly a big improvement over the situation that was prevailing in the past.

Apart from COPRA, redressal mechanisms are incorporated under the MRTP Act, 1969, Indian Arbitration Act, 1940, and through voluntary complaint redressal mechanisms provided by various businesses.

VII. REPRESENTATION

The right to representation (to be heard) means the right to advocate consumers' interests with a view to receiving full and sympathetic consideration in the formulation and execution of economic and other policies, which affect consumers. The UN Guidelines suggest various measures with respect to the right to representation. Firstly, governments should facilitate the development of independent consumer groups. Secondly, opportunities are to be provided to consumer groups for presenting their views in the decision-making processes.

In India, the government has set up different Parliamentary Committees as well as representation mechanisms in various Departments. In addition, the Directorate of Public Grievances handles complaints that are addressed to the Central Government. Thirdly, any individual or association can seek remedies through representation by filing writ petitions in the Supreme Court or in the High Courts. The Freedom of Information Bill, 2000, has been introduced in the parliament to facilitate the process of representation. A major problem related to representation is because of the corruption in the system itself, which leads to unnecessary delays in obtaining justice. There is a lack of effective co-ordination between different consumer organisations to ensure proper representation. Apathy and lack of coordination between different administrative Departments also adds to the problem.

VIII. HEALTHY ENVIRONMENT

The rationale behind this right is that the resources used in the production and consumption of goods and services should be utilised in a healthy and ecologically sound manner. As per the Guidelines, Governments should adopt measures relating to use, production and storage of pesticides and chemicals. The Guidelines have now been revised to include guidelines for sustainable consumption. The elaborate mention of these in the Guidelines now lists out both the rights and responsibilities of the consumer. However, these are yet to be incorporated in government policy and/or legal measures.

The Environment Protection Act, 1986, provides the guidelines for the management of hazardous wastes etc., e.g. safety report, safety audit etc. The other main environmental legislations include regulation of pollution of water, air and soil.

The implementation of the above mentioned laws is quite ineffective. In fact, the multiplicity of

laws is the major reason for this, which in turn leads to a multiplicity of administrative mechanisms, corruption and lack of resources to implement the laws faithfully. Furthermore, lack of awareness on the part of consumers regarding the hazardous nature of pesticides and chemicals and ineffective training of the people responsible for ensuring a healthy environment, accentuate the problem.

In the context of sustainable consumption, government is promoting the same through indirect measures like recycling, etc. Furthermore, it has also established an eco-labelling scheme but there are no takers for the same. The government needs to take up cogent programmes to promote sustainable consumption.

The Biological Diversity Bill, 2000, has been introduced in the Parliament to secure the conservation, sustainable use of and equitable share in benefits arising out of the use of biological resources and the associated knowledge.

CONCLUDING REMARKS

From the foregoing discussion it is evident that in India it is not the legislative measures that are lacking in providing the consumer with the mechanism or the enabling environment for protecting the various rights, though in certain cases some kind of legislative measures are required. The challenge is in the strengthening of the administrative mechanisms in implementing such measures, with incentives for the enforcement officials so that they perform their duties without being influenced or handicapped due to lack of resources.

The government should necessarily revamp the entire public distribution system in the country. It should ensure that the poorest, i.e. below the poverty line (BPL) population gets the maximum benefit from the PDS system. Punishment to hoarders, black marketers and food adulterers of essential commodities should be made more severe and the penalty should be imposed in such deterrent amounts that it acts as a great disincentive for perpetrators.

In all other basic need issues like health, education, etc. the involvement of the community is a must. Unless people are empowered or motivated to take part in the development process, the government programmes are not likely to succeed. One of the most important issues regarding consumers is the right to consumer education. Though the Department of Consumer Affairs is taking some steps in this direction, the result is not very impressive. A strong consumer movement, which seems to be lacking, is necessary in the country for this purpose.

The existing consumer forums need to be strengthened to provide fair and speedy justice. There is a need to increase awareness and adopt publicity measures as the consumers are not sure as to whom they should approach in case the service providers or the suppliers of goods take them for a ride. Consumer forums are set up for speedy trials and all the members should be competent enough to deliver their judgement based on COPRA. Otherwise, the whole issue of providing fair and speedy justice will remain just on paper.

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