

## **CHAPTER 2**

### **Review of Literature**

#### **2.1: Introduction**

The consumers and the producers comprise the entire economy of any nation. National government is the ultimate authority to look after the affairs of the national economy. In the current chapter we will make an in-depth review of the literature directly or indirectly related to our research work.

#### **2.2: The Review in Detail**

The Consumer protection Act, 1986 is a milestone in the history of Socio-economic legislation in India. The economic objective of the law is to provide simple, speedy and inspective redresses to the consumer's grievances. S.S. Kumar (2009) in his paper gives an unfortunate episode of heart patient admitted in the Post Graduate Institute of Medical Education and Research, Chandigarh (PGI on 19th March, 2005. He was asked to deposit Rs. 1, 57,0007/- for bypass surgery. It was duly deposited on 23<sup>rd</sup> March, 2005. The irony is that he waited for 15 months for his turn for an operation. He died on 19<sup>th</sup> June, 2006 due to severe heart attack. The unfortunate wife of the Patient filed a consumer complaint before the District Forum claiming a compensation of Rs. 18 lakh with a penal inters litigation cost of Rs. 10,000/- which, after hearing the parties, accepted the complaint and held the PGI and the doctors guilty of negligence. But the amount of compensation was fixed at Rs. 5, 80,000/- with 9 percent interest.

The PGI did not give honour the verdict and filed an appeal before the Stare Commission, Chandigarh. The State Commission again dismissed the appeal and it was again appealed before the National Commission at New Delhi. The National Commission advised the PDI to conduct an enquiry "if deemed fit" into the whole episode and fix the responsibility on the concerned doctors and other functionaries of the institute for their negligence and "recover full or part of this amount from the concerned persons". The National Commission could straightly direct the negligent doctors to pay the amount. The

author has expressed his dissatisfaction regarding the services provided to the patient, suffering from serious ailments by the governmental hospitals. In this Paper, comparison has been made between the services provided by the private hospitals and government run hospitals. Health Care in India is in such a miserable state, as the proper states, that while the private hospitals simply fleece the patients, the governments-run hospitals treat the patients only if they desire so.

Consumers purchase a commodity for a price and it is a common belief that the consumer purchases a commodity exactly when the marginal utility of money sacrificed by the consumer becomes equal to the marginal utility of the commodity purchased. Rosy Kumar (2009) in her paper has represented the builder's manipulation while selling an apartment to the person who booked it. A person booked a shop space measuring 49 sq. ft. but ultimately he was given possession of a shop measuring 18.6 sq. ft. Aggrieved at this, the person files a consumer complaint and Delhi State Commission ordered award of compensation to the consumer. The Commission observed that "it is beyond imagination and comprehension that super area of any commercial complex or residential complex would be more than the double or the main area i.e. covered area. Such a practice is highly uncalled for, unscrupulous and worst kind of trade practice". In this paper four more similar cases have been elaborately analyzed. In all the cases filed the builders were found guilty and were asked to give compensation to the allottees.

The growing interdependence among the trading countries of the world and the consumers' fascination toward goods and services provided by different countries of the world has contributed to the development of universal emphasis on consumer rights protection and promotion. S.S. Singh and Saine Chadah (no date was mentioned and it was downloaded on 20<sup>th</sup> July, 2009) in their paper have given a wider description of consumer protection in India. The paper states that in India consumerism is still in infancy stage and consumer awareness is low due to the apathy and lack of education among the masses. It also analyses that what consumerism lacks in India is education and information resources, testing facilities, competent leadership, price control mechanism, and adequate judicial machinery. Because of reluctance from the part of the providers of goods and services due consideration was not given to consumer interest protection. In this paper it is boldly stated that it is a collective consciousness on the part of consumers, businesses, government and

civil society to enhance consumers' satisfaction and social welfare which will in turn benefit all of them and finally make the society a better place to live in. An in-depth analysis has been made on consumer protection on international perspective. Some reflections have been given on Consumer Protection Act, 1986. While discussing this, the authors have expressed their dismay regarding the redressal of consumer disputes. They state that in spite of various Acts the Consumers do not have any effective mechanism or institutional arrangement for the speedy redressal of their grievances and also the lack of effective popular movement have isolated the consumer and his plight only has increased. It is also stated that the number of services would certainly increase in the future. This consumer forums and commissions established under the Consumer Protection Act, need to be given extra attention to ensure it efficient, effective, fair and inexpensive functioning.

Elaine Kempson (2008) has given a description of consumer protection regulation lessons from the United Kingdom. The paper reviews the US credit regulation that has been undergoing substantial reforms for the last few years and discusses how they take account of criticisms of previous regulatory regimes. It has made an attempt to draw out some of the strengths and weaknesses of regulation in the UK from the consumers' perspective. In doing so, there is a need to distinguish between mortgages and other forms of consumer credit as there are two quite different regulatory regimes for the conduct of business including consumer protection. The paper examines that legislation alone is not sufficient to ensure consumer protection; compliance needs to be monitored and enforced. Compliance monitoring by statutory regulators is, undoubtedly far more extensive for mortgages than it is for unsecured credit, where it has primarily been undertaken through self regulation. The paper does not cover prudential regulation it only restricts to retail markets. CUTS International ([www.cuts.international.org](http://www.cuts.international.org)) has described consumer rights and its expansion in detail. It has discussed about the basic rights of American consumers and President John Kennedy's remarks on consumers' rights protection. An analysis has been made on the Consumers International (CI), birth of consumers' day, birth of COPRA, right to boycott, and India's Global reputation.

P.S. Verma in his paper surveys the major developments in the field of consumer protection in India since 1984, when statutory provision for regulating unfair trade practices were incorporated for the first time. Among the developments described in the paper the

strengthening of provisions for consumer protection through amendments to the Act regulating restrictive and monopolistic trade practices (the MRTP Act). Public-sector undertakings and co-operative societies have been brought within the purview of the Act, and consumers have obtained the right to participate in inquiry proceedings before the MRTP Commission. Consumers and their associations have been given the right to seek redress of grievances arising out of the violation of certain pieces of legislation, including the Drugs and Cosmetics Act. The Consumer Protection Act, 1986, was enacted in order to provide speedy and inexpensive redress of consumers' grievances. Redress can now be sought before any consumer court also for negligence or deficiency in medical services. The Bureau of Indian Standards Act, 1986 has strengthened the measures for the standardization and quality control of manufactures. A Consumer Welfare Fund has been set up to provide financial assistance to voluntary consumer organizations and for the general development of consumer movement in the country. A part in voluntary consumer organizations in different parts of the country can also be observed. The paper also calls for the establishment of a separate Department of Consumer Affairs for quick redressal of consumer' grievances.

Kutin Breda (2005) in the paper evaluates the changes to consumer protection in the E.U. The author states that to evaluate the changes to consumer protection in the E.U. it is necessary to understand the environment of culture and value in new member states before political and economic changes took place. The new consumer protection structure put in place have largely been due to the new criteria. A consumer culture, it is stated, needs to develop and consumer protection can be strong only with a joint E.U. effort.

Julian Edwards (2006) discusses the role and legitimacy of nongovernmental organization in international policy making decision. Nongovernmental organizations are now almost expected to play a role in the development of Individual countries and also at the international political level. There has been a huge expansion of NGOs in the last 50 years, and their presence has over the last decade or so become possible in previously 'closed' countries. Today the United Nations not only accepts their role but listens to their voice with respect.

Jerome Rothenberg (Wikipedia: consumer) in his paper has first raised some issues connected with the scope of the concept of 'consumer' sovereignty'. In this context he has considered how changes in products and tastes affect the ethical status of the concept. The

conclusion is that consumers' sovereignty is incomplete and ambiguous. In order to make it operational, a series of highly controversial, partly normative decisions have to be made. He also goes on saying that the extent to which consumers can be truly sovereign is questionable. In view of this, the concept loses attractiveness. By contrast, as the paper suggests, a principle which is distinguished from consumers' sovereignty but which has often been treated indistinguishably - freedom of choice - gains attractiveness.

P.V.V. Satyanarayan Murthy (2006) in his book gives a detailed analysis of Consumer Protection Act, 1986 and the amendments made time to time. It analyses that after passing of the Act the benefit directly goes to the consumer. Prior the enactment of this Act there are more than 25 legislations which echo the spirit of consumerism. Because of some drawbacks of these laws the Government of India has providing consumer friendly ambience by removing hyper technicalities of judicial proceedings. For this purpose members who are not quite conversant with legal procedures are appointed as members. Thus a greater responsibility is cast on these other members to create an ambience in which the consumer can pursue his matter without any legal hassles. In order to overcome the problems and to acquire necessary skills to protect consumers the members should acquaint themselves on market situations prevailing, frauds in the market and assets of consumerism. The author says that consumer protection legislation alone cannot protect consumers unless the legal machinery is effective and the effectiveness of legal mechanism depends upon the performance of the members of consumer Disputes Redressal Agencies. The performance of members again depends on the interest the members evince in acquiring knowledge for proper adjudication of disputes to provide better protection to consumers.

The author has also explained in his book as to how to improve the writing skills to make an order complete and meaningful. In this book the author has tried to answer for many of the doubts relating to procedures, administrative functions, enforcement of orders, and penal provisions against the contemnors etc.

R. Kumar (2009) in his paper describes about security infrastructure pertaining to bank lockers. Everybody feels secure after keeping his valuables in a bank locker and does not bother for the rental amount to be given to the bank. The paper states that in 2004 sixteen lockers of Punjab National Bank, New Delhi were found to be broken open on 12<sup>th</sup> July, 2004 Mrs. Kapur found her locker empty and on 23<sup>rd</sup> July, 2004 Anamika Ghosh also

found that her jewellery and other precious metals were missing from the safe vault. Cases were filed by the customers and the consumer court has held the bank responsible in such cases. The paper suggests that instead of putting forward unsustainable defences, the banks and their association tone up their security infrastructure. It also suggests that in order to claim the contents lost from the locker, the onus to prove with convincing evidence as to what was kept in the locker is on the claimant and this is not that easy. It is, however, advisable for everyone who takes a bank locker to keep record of the contents which are placed in the locker and as far as possible the supporting material for the same should be preserved so as to make use of it in case a need arises. Summary of record of every operation of the locker, the author states, be also maintained. All this may not be a clinching piece of evidence but will be treated far better than the estimates based on conjectures and surmises.

Y. Bhave (2009) in his paper analyses the different phases of consumers sovereignty. This paper dwells upon some historical and international perspectives. The historical perspective of the consumer movement is that even during Kautilya's period references were given to protection of consumers against malpractices and exploitation by trade and industry. Kautilaya, in his book recognized the need for punishment for offences. In this article the author said that Mahatma Gandhi recognized the importance of keeping the consumer in sharp focus while undertaking economic actions. In the part of analysis of international perspective John F. Kenedy's recognition of four rights of the consumers has been described.

Kumar (2011) in his paper explains about the disposal of MRTP cases and fears that the disposal of such cases is not that easy as the procedure laid down in the MRTP Regulations. Not only this, the finalization takes much time.

It is true that some cases are getting final disposal every month but there are some cases which are taking much time due to complicacies inherent within the MRTP Regulations. As a result, the number of pending cases has been increasing continuously every year. In the MRTP Act, 1969 there was provision for the award of any compensation to the complaints. But in 1984 a new section 12-B was inserted in the Act. This in fact provided the award of compensation to the complainants. But more complaints by the complainants, the Supreme Court of India mentioned in a judgment, would not do unless

Enquiry Proceedings for indulgence of impugned practices were also filed and notices of Enquiry were duly and separately issued to the respondents” (Kumar 2011). Mr. Kumar in his paper has referred the matter of Saurabh Prakash vs. D.L.F. Universal (Supreme Court Verdict). In this case, the Supreme Court has held that two things are compulsory for considering compensation applications. These are:

- (i) enquiry proceedings for indulgence of impugned practices need to be filed, and
- (ii) notice of enquiry should be issued to the respondents. It was thus found that all the cases of compensation applications without the above-mentioned compulsions were dismissed. This ultimately makes complainants havoc loss because all the cases ultimately reach almost the final stage of disposal and have to restart afresh by filing civil suits. Huge amount of court fee is required to initiate the civil proceedings which are beyond the reach to many of the complainants.

M.D. Vaishnav (2011) in his paper states that Consumer Protection Act, 1986 is one that provides the faster effective remedy for execution of orders passed under this Act. If someone found guilty under this Act does not comply with any order passed by the Consumer Forum will be punishable with imprisonment or a fine up to ten thousand rupees. The problem starts when a party gets the justice because the accused party disobeys the order of the Consumer Forum. The author mentions that the provisions under Section 25 and 27 of the Act are not drafted well and thus need redrafting. Any order passed under Section 27 of 1986 Act by the District Consumer Court may be appealable to State Commission. In the similar manner any order passed by State Commission is appealable to the National Commission.

L N R Revelli (2009) in his paper described overzealous exercise of jurisdiction by the Consumer Forums in derogation of other law. This would, according to the author, certainly lead to anomalous and absurd situation doing no good to any party. He raises question about the definition of ‘consumer’ as defined in Section 2 (1) (d) of Consumer Protection Act, 1986. By definition of the Act, a person who purchases goods for his own personal need, exclusively for the purpose of earning money for his livelihood (as a self-employed person) is a ‘consumer’. The Supreme Court of India, Mr. Revelli points out to restrict the benefits of the Act to ordinary consumers buying goods or services for their own

purposes or for small means for making a living. To justify his argument the author has referred a case “Synco Textiles Private Limited vs. Greaves Cotton and Co. Ltd. I (1991) CPJ 499.” The main objective is to give boost to the genuine consumer and to restrict to eliminate the huge number of complaints from big business entities.

The Consumer Protection Act is a general law and after the enactment of this law the jurisdiction of other tribunals and courts is not excluded. This means that other laws are special laws and the CPA is a general law. The author mentions, “The tribunals and courts will enjoy the same jurisdiction that was conferred on them prior to the date of enactment of the Consumer Protection Act.” The Supreme Court, the author mentions, in a judgement, Punjab State Electricity Board vs. Ashwani Kumar, 2011 CTJ643 (SC) (CP) has stated that the CPA is infested with the ambiguous anomalous elements. In an another decision in General Manager, Telecom V.M. Krishnan and another, 2009 CTJ 1062 (SC) (CP), the Supreme Court held that being a general law the CPA should yield to the special law, i.e. Indian Telegraph Act, 1885.

Studying judgments relating to insurance litigation the author mentions that commercial insurance is given for life, fire, marine and accident. Businesses get non-life insurance but the individuals obtain life insurance covering risks on their lives. The National Commission, the author noted, passed two orders contradicting each other. It has been held that the insurance policy bought for commercial purposes is service but the policy bought for other purpose is not a service according to sections 2 (1) (d) and 2 (I) (0) of CPA, 1986 (Harsolia Motors v. National Insurance Company, 2005 CTJ141 (CP)).

All the functions as the Supreme Court ordered provided by the educational institutes such as the school board, college & University authorities do not care under the purview of the CPA. Conducting examination, evaluating answer-scripts, declaring results etc. will not be under the ambit of CPA. (See: Bihar School Examination Board v. Suresh Prasad Sinha, 2009 CTJ 1057 (SC) (CP). Citing a verdict in “Maharashi Dayananda University V. Surjit Kaur, 2010 CTJ (CP) wherein it was held that consumer court does not have the authority to entertain the complaints in regard to conducting of examination and its related activities. Recent judgment, the author mentions, encourage the parties to approach the other tribunals. The other tribunals may be the permanent Lok Adalat, Electricity, ESI, Special Tribunals.

The National Commission, as Mr. S.S. Kumar (2011) has described, has ignored the judgments of three High Courts, Madras High Court, Bombay High Court & Calcutta High Court. The author has referred to a judgment of the Madras High Court delivered on 18<sup>th</sup> October, 1996 in the matter of the Managing Director, Nadippisai Pulaver R.K. Ramaswamy Sugar Mills V.A. Fareed Bawa. The main content of the litigation was that Mr. Bawa intended to become the member of Nadppisai Pulavar K.R. Ramaswamy Sugar Mills through an agricultural cooperative bank. But he was not enrolled. Aggrieved at this, Mr. Bawa filed a case with the district Forum. The Mills produced the fact before the Forum stating that the application forms were not duly filled in. The District Forum ordered that the Sugar Mills could not be blamed for this. Again, Mr. Bawa, dissatisfied with the order, filed an appeal with the State Consumer Disputes Redressal Commission. Again it was found that the complainant “has not proved by acceptable evidence with regard to be suffered.” The Court ordered the Mills to pay “general damage” of Rs. 2,000/- to the complainant. The order was challenged before the Madras High Court by a Writ Petition under Article 227 of the Constitution of India. The Madras High Court observed that “the reading of the Section clearly shows that an appeal is provided to the National Commission only against the order made by the State Commission in exercise of its power conferred by sub-section (1) (a) of Section 17. Since there is no further appeal or revision which lies to National Commission against the impugned orders passed by the State Commission, hence the submission made by Mr. N. Joshi (the counsel for the petitioner) in this regard is well founded.”

The Bombay High Court on 4<sup>th</sup> May, 2010 interpreting Section 21(b) of the Consumer Protection Act, 1986, provided judgment of R.B. Upadhyay v. State Commission for Consumer Disputes, Mumbai, 2010 CTJ 734 (CP) in paragraph 10 of its judgment and stated about the scope of the revisional powers of the apex National Commission as “Thus from the clear and literal language of Section 21(b) the revisional jurisdiction can only be if a consumer dispute is pending before or has been decided by the State Commission. In other words, the National Commission would have no jurisdiction if the order is passed in exercise of the Appellate diction or revisional jurisdiction exercised by the State Commission under Section 17 (b). The power under Section 21 (b) is in respect of a complainant filed before the State Commission.”

The Bombay High Court categorically mentioned that if a complaint is tried by a district consumer Court and its decision is re-examined by the State Commission, then no provision can be entertained by the National Commission under the scheme of the Consumer Protection Act, 1986. The author says that all the revisions which are filed and dealt with emanate from the complaints filed before the District Forums and appealed before the appellate State Commission are not permissible.

Calcutta High Court, the author mentions, in *Ajay Bhadra v. State Consumer Disputes Redressal Commission, West Bengal*, 2002 CTJ 505 (CP) has mentioned that after passing the order by the District Forum which again attained finality after expiry of 30 days it cannot be reopened by way of a revision (Section 24 of the Consumer Protection Act, 1986). Studying the activities of the National Consumer Disputes Redressal Commission the author makes a comment that the National Commission has ignored the authoritative verdict of the Supreme Court which is not tenable as per Article 11 of the Constitution of India.

In his book *Marketing and Consumer Behaviour* (1983) Raghbir Singh studied the consumer awareness and in examining this he found that in Chandigarh (a Union Territory) 51.6 percent consumers were aware about the existence of District Consumer Forum in the Chandigarh city. It was also noticed that 28.1 percent consumers pointed out that they did not know about the existence of the district consumer court. The author found that the consumers who were aware of the consumer court amongst them 50 percent were the members of some consumer organisations. But the other half was not the member of any consumer organisations. While asking why they were not the members, they mentioned that it would be of no use to be the members and by being the members; it would not upgrade their economic conditions.

The General Assembly of the United Nations on 9<sup>th</sup> April, 1985, New York adopted a set of general guidelines for consumer protection. In these guidelines it was recognised that consumer should be given prime importance and consumer should be protected from all sorts of hazards. Guidelines relating to consumer protection are described as 'Charter of Human Rights'. In this charter it was categorically pointed out that all the consumer policy issues are no longer the local policy concern, rather these should be thought of in the international context.

Consumers in all the countries, and especially more in the developing countries face imbalance in all the spheres i.e. in economic terms, educational levels, bargaining power and consumers have the right to have the non-hazardous goods and have the right to promote their social, economic and sustainable development. The guidelines also call for a better market conditions wherein consumers would have wide and open choices for goods and services at a reasonable price. The guidelines also look at improving international cooperation in consumer protection affairs. Among others, the guidelines give attention to facilitate the development of independent consumer groups, to assist countries in curbing abusive trade practices by the enterprises nationally and internationally, to encourage maintaining ethical conduct those engaged in production and distribution activities.