

ABSTRACT

A consumer or a customer is a person who buys goods or hires services with money, i.e., a price is fixed on the purchase of a commodity or hiring a service for a service provider. Consumer pays a price for the commodity he buys or the service he receives. The problem arises when he finds that the good he gets in exchange of a price suffers from defects or it is a low quality product. This certainly makes him a loss—monetary as well as mental.

In order to understand the spirit of the legislation, one should necessarily study the objectives of Consumer Protection Act in India. While introducing Consumer Protection Bill into the Parliament the Parliament members of the Parliament were briefed about the intention of introducing the Bill, which is as follows. Indian market is dominated by the consumerism. It has been transformed from sellers' market into buyers' market. In this sort of market exercised choice by the consumers depends on their awareness level. Consumer rights could be protected in a competitive economy only when right standards for goods and services for which one makes payment are ensured by evolving a network of institutions and legal protection system. Ensuring consumer welfare is the responsibility of the Government as every citizen of the country is a consumer in one way or the other.

Consumers, clients or customers world over, are demanding value for money in the form of quality goods and better services. Modern technological developments have no doubt made a great impact on the quality, availability, and safety of goods and services. But the fact is that consumers are still victims of unscrupulous and exploitative practices. Exploitation of consumers takes different forms such as adulteration of food, spurious drugs, dubious hire purchase plans, high prices, poor quality, deficient services, defective advertisements, hazardous products, black marketing and many more. It has been realised that the consumer protection is a socio-economic programme to be pursued by the government as well as the business as the satisfaction of the consumers is in the interest of both. In this study we would like to investigate the government policies relating to protect the interest of the consumers and their rights. In this context, we would thoroughly analyse the policy measures, legal structure and administrative framework. We are also interested to

examine some of the case studies related to consumer disputes settled in the *Consumer Disputes Redressal Forums* under three-tier system.

Consumer protection is essential for all of us. This is because of the fact that even the manufacturers or the producers are the consumers. The producers purchase various factors of production for production purposes. Therefore they may also require legislative assistance if the inputs sold to them is bad. We purchase commodities to fulfill our utility of money or satisfaction. Therefore, we sacrifice the utility of money in order to receive the utility of commodity. Consumers require protection and that's why our national government has passed numerous legislations especially to protect their interest. This study covers the whole of India and it specifically deals with different aspects of consumer protection in India. The study is descriptive and analytical. Some case studies relating to consumer disputes redressal have been taken up for detailed analysis. For our purpose we have collected data from consumers who have filed cases of which some claimants are those who have got verdict in their favour, ten have got verdict in their favour and ten claimants whose cases are pending. Data thus collected will be tabulated and analyzed in detail. Secondary data sources are books, journals, government archives, government reports and documents, international agencies such as IMF, World Bank, ILO etc.

We have developed some hypotheses to be tested. Some of them may not be testable and in this context we will try to accommodate some new hypotheses relevant for our purpose. The hypotheses are as follows.

- (i) The current legislation is sufficient to protect the interest of the consumers.
- (ii) Consumer court at district level, state level and national level is quick in the redressal of consumer grievances.
- (iii) Consumer sovereignty has increased in the new globalised world.
- (iv) Consumer protection is a socio-economic programme perused by the Government.
- (v) Health insurance schemes are working well in favour of the insurers.

The study has been segregated into nine distinct chapters. The first chapter is about the brief introduction of the research inquiry, backdrop of consumer protection legislation, objective, research methodology, samples and data sources, research questions framed and

hypotheses formulated based on the objective and the research questions framed. A detailed and exhaustive review of existing literature has been done in chapter two. An analysis of consumer protection acts with the issue of globalisation and consumer protection, improving awareness through consumer groups and through technology and media have been elaborated in chapter three. Chapter four is about how to educate consumers about their rights. Consumer rights protection in West Bengal in the globalised world has been described in fifth chapter. Indian scenario of consumer disputes and their redressal has been put forth in chapter six. Chapter seven analyses, in detail, consumer disputes redressal in West Bengal. Some interesting case studies on consumer disputes redressal has been narrated in eighth chapter. Chapter nine concludes and recommends. Consumer's sovereignty is very much related to globalisation. This is because of the fact that consumer has alternative choices for goods and services available due to globalisation. Globalisation is highly competitive. In the globalised world, there is wide and open prevalence of commodities coming from different corners of the world. So consumer does have a choice for selecting a commodity. It is thus said that 'consumer is the king'. At the same time, consumer has to face a lot of problems while buying a commodity in relation to its quality. This calls for creating consumer awareness. Consumer protection was not thought of in India until its first Act came into being in 1986. Equally, developed nations did not think much of protecting consumer interest. It was in 1962 when the American President John F. Kennedy first presented the consumer Bill of rights. While presenting the Bill Mr. Kennedy mentioned about four specific rights of consumers, i.e., the right to safety, right to choose, right to be heard and right to information. After the execution of this Act in America almost all the countries of the world had to pass the consumer protection Act one after another. This area of investigation is complex and uncertain though extremely promising for which economics, psychology, sociology, marketing and industrial trade are involved in this research work for gaining a better understanding how consumer shall have to make decision to protect his interest but to some extent if the theoretical aspect with a few practical ones are examined for evaluation of the expected outcome of consumer decision to solve the present problems in the market and also in the redressal forums and to ventilate how Consumer Redressal system in our country is being ineffective and dysfunctional and loss of consumer confidence including inactive attitude of Consumer Association to protect consumer rights and till now consumer rights education and awareness movements are the

need of the hour though violation of consumer rights is rampant due to globalisation. So, vital question is how do consumers make their decisions and protect their rights and what the role of Forums in the present situation is. It is also pointed out that for promoting consumers' prosperity and well-being neither forums nor Consumer Associations has yet taken any such constructive movement to protect the consumers and there is no such law how to save the consumers from exploitation. It is not that we alone have been ventilating the above concern the others have vehemently started commenting about the poor functioning of the Forums day to day due to misguided approach of the Forums at all levels. It is a fact that consumer exploitation is primarily due to unawareness on the part of the consumers about their rights which is being taken full advantage by the manufacturers, trades and sellers by indulging dubious practices but unfortunate picture is no political party of India has taken any initiative to fight for their cause. This is no doubt an undemocratic approach that is one of the ground for exploitation of the consumers so a consumer movement is needed which is possible only if the consumer is an educated consumer. So, fact remains that the whole object as conceived by the lawmakers has been totally frustrated resulting in absolutely no tangible benefit to the public (consumers) at large what is evident further from the physical appearance of pending backlog cases and delay in disposal of cases and hapless result of execution cases of the Forums even after fully computerization of the Forums at all levels.

Consumer Affairs Department has been attempting hard to make the Act more vibrant, dynamic and functional to enable it to tackle the emerging challenges of a liberalized market economy while empowering the redressal authorities to render quick justice but chariot of redressal system is found not so strong and at the same time some corruption has been playing a great role in the official administration of the forum and same shall be controlled by the consumer offenders who are most powerful now in the office field of the forum but President and Members are not in a mood to control though boldness, dedication, punctuality, wisdom and removal of bureaucratic mentality and attitude are highly required for making consumer movement a grand success for establishing consumer right in true sense. It may be mentioned that European Law protects a consumer no matter where consumer is in the European Union or in our countries but situation is not such even at forums compound. Consumer is not sure what would be consumer fate and when he shall get the fruits of the decree. Another most pathetic picture for protection of rights of rural

consumer is pointed out that present redressal system is mostly confined to urban areas and for which there is no alternative for the rural consumers' rights prosperity and well-being should be core values of the Act but same is not present in the Consumer Act, 1986. In the present Act, in fact, there is no such provision to declare unfair contract as prohibited but in EU laws to protect the consumer from such sort of abuses, is also ventilated. In fact, due to globalisation and implementation of FDI now many consumer disputes arise but there is no provision to give proper redressal, if any, one shop across border through network from international market there is need for effective redress for cross border disputes. It is specifically studied the role of women, youths and children in market and also in the present changing structure of family in new types of shopping environment and high degree of sophistication across different segments when large part of consumers depends on advertising and everyday patterns of consumer behaviour and that is knowledge of this author after gaining knowledge required for this work and studying relevant authenticated books to interpret the theoretical concept the sources of influence on consumer. Similarly, the study also reflects that the legal procedure to fight exploitation is highly expensive complicated and time factor which is against spirit of the Consumer Act, 1986 and similarly sincerity and honesty of the purpose on the part of business may make a strong Consumer Protection and build a mutual trust and confidence when consumer is the creator of an opportunity to perform an economic activity for the prosperity of the value but sellers do not hold themselves responsible for the quality of what they sell, what is true in India but even then no effective coordination from any corner is visible against unethical trade practices and various acts of protecting consumers are found toothless. In the present work, considering the opening of single and multi-brand retailing as per FDI policy of India it is proposed to set up an uniform regulatory structure with respect to taxes and duties as regards modern retail sector and national policy to that effect should be for mutated to regulate fiscal and social aspects to allow Indian consumers' access to foreign brands and foreign investors may make a genuine contribution to the development of Indian continent. Government's effort, plan and programme to bring prosperity in the lives of rural people are there to increase purchasing capacity and remove the imbalance in between rural and urban people but all national programmes are not properly implemented for lack of wider participation of different stakeholders and effective management programmes and further no industry linkage machinery to create demand based technology market for rural people

(consumer) though rural development in India is of the most challenging aspect for the growth of Indian economy but people's participation is very vital otherwise poverty alleviation is impossible. Our research investigation point out several factors of consumer disputes redressal mechanism, consumer movement in India and abroad, consumer protection acts during the British regime and at present. We have also discussed consumer protection that existed in ancient and Mughal India. We have analysed state-wise cases filed and settled on consumer disputes. Also the performance of district consumer forums, State Commission and National Commission has been exhibited with supportive quantitative data. The main findings of our research endeavor are shown below in short.

- i. We have found that it takes longer period to settle the dispute in the district consumer courts. This is due to frequent adjournments. This should be stopped unless justified.
- ii. Due to complex and technical procedure of consumer dispute settling mechanism, the disposal of cases becomes so slow in the district forums.
- iii. Vacancy of judges in the districts barely remains vacant. All the district forums are whole time. The staff position in all the district forums is not uniform. Some forums have adequate number of staff while the others do not. It is required to maintain a uniform staff in the district forums of West Bengal.
- iv. Our data analysis shows that consumers are not satisfied with their grievances in terms of settlement of complaints filed in the district forums.
- v. The filing of cases in the district forums becomes time consuming, complex and expensive. All these go against the Consumer Right Act. It becomes more complex task to the complainants who are illiterate or less-educated, many of whom live in the remote rural area.
- vi. Our research findings show that more than 80 percent consumers lodge complaints before the consume court with the help of advocate. The opposite parties also take help of advocate. This makes the system more complex and expensive.
- vii. The settlement of cases is really a time consuming in the district forums. As a result, only a few cases are settled within stipulated time.

- viii. Many of the consumers are not aware about the consumer protection rights or act. Only a few have just general awareness about it. This is because of illiteracy and lack of information about consumer protection legislation. State agencies, print and electronic media and voluntary consumer agencies have a major role to play in educating consumers about the rights. This needs to improve general knowledge/ awareness among the consumers through concerted efforts from all the concerned sections associated with consumer movement.
- ix. It is a fact that the lot of average consumer in India is most deplorable and for ages he has remained helpless and dumb victim of those who are involved in the channels of production and distribution of goods and services and he is made to pay exorbitant prices of essential goods by unscrupulous manufacturers as well as middlemen for whom profit making seems to be sole motive and the sovereignty of the consumer in the market is no more than a myth at least in Indian situation and he is king in name without any power and privilege and sellers do not hold himself responsible for the quality of what he sells.
- x. Our study shows that smaller rank of c.v is more consistent than the higher one. According to ranking as shown in tables-7.23 and 7.24 regarding cases filed and disposed during 2002-2013, Howrah district is better than other districts. This may perhaps be due to better infrastructural facilities available in Howrah district and in some other district(s).

On the basis of our analysis and the conclusions drawn on consumer Redressal mechanisms we put forward the following recommendations.

- (i) Like all other countries Indian consumers have access over goods and services available due to the impact of liberalization, privatization and globalization (LPG). Our consumers have wide and open access to variety of goods because of internet facilities. They can buy a good produced by a company from any country of the world. Consumers can avail the opportunity of buying a commodity at a price fixed by the producer and also can buy it at a discount rate. Not only this, consumer can get the feedback about the quality of the product through the interact. In many a case the purchase is held through e-commerce, e-shop, e-business, e-stores, e-banking etc. There is no problem in buying goods and

services through the Internet systems. Problem crops up when it is found that the goods/services bought from West Bengal, for example, by a person but his residence is not in West Bengal. In that case, if the quality of good or service is found not up to the satisfaction, then the buyer's complaint will not be entertained by the respective consumer forum. This is because of the fact that according to the section 11 of Consumer Protection Act, 1986 (Section 11(2a), a consumer may file a complaint if the Opposite Parties (OPs) actually and voluntarily reside and carry on business in a particular address and if the address is written the jurisdiction of a particular forum. In that case, the forum after thorough scrutiny and obeying the relevant Act considers that the complaint may not be possible to maintain in a proper way and is thus being rejected by the State Commission or by the forum. In this context, it is necessary to change the section 11 of Consumer Protection Act, 1986 and suitably a provision needs to be included in this section to the effect that the case may be filed by the said consumer who is the user of the service on his house which is written the jurisdiction of the State Commission or District Consumer Court. We thus plead for amending this section (Section 11 (a) in such a form that a complainant may invariably lodge complaint even if the opposite party's residence is outside the jurisdiction.

- (ii) There is also a problem with the Section-24 of the Consumer Protection Act, 1986. This Section states that the opposite party can appeal against any judgment. In that case, the judgement of lower forum is not final. Therefore, any execution case filed by the decree holder shall be infructuous. At the same time appeals are being admitted before the State Commission in a very casual manner without taking any scrutiny from the judgment debtor. Moreover, no condition is imposed for passing any stay order against the judgment debtor. We can see that under such a situation the judgment debtor gets the benefit to linger the appeal before the State Commission. Thus, the spirit of the consumer Protection Act, 1986 is being followed properly and unnecessarily the appeal hearing is delayed without valid and legal reason. Thus for proper protection and safeguard of the decree holder the Section-24 of the Act needs to be amended.
- (iii) Section 27A (2) of Consumer Protection Act, 1986, needs to be amended in order to protect the interest of decree of consumer complaint. This section empowers the

consumer fora to start proceeding against the judgment debtor and if the judgment debtor is convicted and sentenced to fine or imprisonment only in that case appeal may be filed by the judgment debtor. In most of the cases the execution cases are being stayed by the State Commission without directing the judgment debtor to deposit at least 50 percent of the decretal amount. Naturally, the judgment debtor gets liberal order from the respective forum. This also goes against the spirit of the consumer Protection Act, 1986. Considering the whole purpose of social legislation it needs a suitable amendment of Section-27 A (2) of Consumer Protection 1986.

- (iv) All the consumer forums starting from the district level up to the National Commission have been formed with the help of retired judges and justices. Due to shortage of members and presidents there has been huge piling up of unsettled/pending cases with different consumer courts. This gives rise to sufferings of consumers waiting for the redressal of long pending cases.
- (v) Indian consumers have experienced about 29 years of the impact of enactment of three-tier consumer law. Since globalization the market has become a global concept. It has crossed the local, regional and national boundary. As a result, the Consumer Protection Act, 1986 is not fully equipped to combat exploiters. Naturally, the radius of this Act should be expanded in order to attract large number of items within the definition of service and also to make the execution provision more effective and punitive in nature. Because of globalization there has been a change in the industrial society. This in fact has caused a change in the legal system. It is a fact that law is an agent of modernization and social change. In this context, a new dimension in the field of consumer act is highly felt when the major challenge is to save the consumers from the heads of dishonest traders and businesses. Considering all these the Section-25 of Consumer Act, 1986 was amended in 1993. But there were a number of lacunas in this amendment. Naturally, again in 2003 (Vide Act 62 of 2002) further amendment was made. But the force of attachment order is restricted for a period of three months. If the order of the fora is not complied the said restriction of three months should be deleted. In place of that restriction of three months, till the full satisfaction of the decree should be substituted to give full relief to the consumers. But as per Section-25 (3)

of the Consumer Protection Act, 1986, if any consumer is directed to go to the certificate officer for recovery of decretal amount the consumer shall invariably be sent to an uncertain future to get the decretal amount. For a proper protection of the consumers and save them from harassment all the executing power, civil and criminal, should be exclusively given to the fora. If it is not done then almost majority of cases should remain unsettled. We thus plead for the amendment of Section-25 by the Parliament.

- (vi) The Consumer Protection Act, 1986 defines 'Consumer' a person who buys a commodity or service for his own consumption or for his family consumption. It does not include a person who purchases the goods for resale or for commercial purpose. What would happen if a product is bought by a person and used for commercial purpose to maintain the family? It needs a clear cut definition of the term 'Consumer'. The National Consumer Dispute Redressal Commission in *Sapna Photostat v. Excel Marketing Corpn. and Anr.* dealt with a case where the person who had a complaint was an old lady who was engaged in a Photostat work for her livelihood in her home in Shimla, Himachal Pradesh. She bought a Photostat copier which was defective. She immediately lodged a complaint before the State Commission against the company for selling the defective machine (CTJ Journal, P-85, Vol.19, No. VI, June, 2011). But her complaint was rejected because of the fact that she was not a 'Consumer' but a service provider, a petty trader. But the National Commission on revision gave a judgment on 7.04.2011 (reported at 2011 CTJ 620(CP)) stating that if a person indulges in commercial activity for the purpose of his livelihood through self employment then he continues to be a 'Consumer'. Obviously he can lodge a complaint as a consumer. It needs a clear-cut definition of the term 'Consumer' and for this purpose an amendment is required to be met. This would save the consumers who are the petty traders or like that who run small business activity for maintaining their livelihood.
- (vii) It is a fact that most of the states have not put consumer affairs on priority. The ministry that holds charge on consumer affairs also looks after public distribution and civil supplies. States give priority on public distribution and civil supplies and thus consumer affairs get least priority. State Commissions suffer from funding

which is distributed by the Centre as well as the respective state government. The centre provides periodic grants, to states. In most of cases centre provides a per court amount. When special schemes are run, additional funds are disbursed to the National Commission. Many critics say that Centre can use the Consumer Welfare Fund to help in paying salary. This fund, it is said, remains underutilised.

- (viii) There are various initiatives under way to strengthen consumer rights and make companies more accountable. But the fact is that they do not have statutory powers. The National Consumer Helpline (NCH) is one such instance. This organization records consumer complaints and forwards them to companies. Also there are the Consumer Councils that work to protect the rights of the consumers. They also create awareness among the consumers through organising seminars, symposia, workshops, awareness campaigns etc. But since these initiatives do not have legal powers they cannot put their efforts in full strength.
- (ix) Judging the number of cases filed, cases settled, and the number of judges and members appointed in the district consumer Courts we see that consumer Courts do not have enough benches to hear case. Not only this, the existing ones are not occupied right now. 'Appointments' are low priority for the Status. Despite recommendations of the P.D. Shenoy Committee in 2008, the Members are poorly paid. But Judges are better paid. Respective state governments should take care of all these issues and let the consumer courts perform better.
- (x) Judges in consumer Courts who are mostly the retired district judges or lawyers eligible to be district judges approach cases with a legal mindset. They don't put serious thought on consumer issues or a consumer state of mind. Lawyers from the company's side very often prolong the case by taking adjournments on flimsy ground complicating issues. Also due to leave taken by the Judges verdict cannot be given in due course of time.