

## **Awareness of Consumer Rights and Responsibilities in India: Prospects and Challenges**

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### **I. Introduction**

The consumer still remains as a ‘marginal group’ in today’s dominant market economy of the world. In the present socio economic scenario we find that the consumer is a victim of many unfair and unethical tactics adopted in the market place. The untrained consumer is no match for the businessman marketing goods and services on an organized basis and by trained professionals. He is very often cheated in the quality, quantity and price of the goods or services. The consumer who was once the “king of the market” has become the victim of it. The modern economic, industrial, and social developments have made the notion of “freedom of contract” largely a matter of fiction and an empty slogan so far as many consumers are concerned.<sup>2</sup>

The need for empowerment of consumers as a class cannot be overemphasized and is already well recognized all over the world. In recent years, there has been a greater public concern over the consumer protection issues. The level of awareness of the consumer can be taken as an indicator of the progress of a country. Be it medicines, electronic goods, fast moving consumer goods or even services rendered – each of these demand that consumers become aware of their rights. Taking into account the interest and needs of the consumers in all countries, particularly those in developing countries, the consumer protection measures should essentially be concerned with – (i) the protection from hazards to health and safety; (ii) the promotion and protection of economic interests; (iii) access to adequate information; (iv) control on misleading advertisements and deceptive representation; (v) consumer education and (vi) effective consumer redress. However, in order to safeguard consumer interest, six consumer rights were initially envisioned by consumer rights activists of the West, namely: Right to Safety, Right to information, Right to Choice, Right to Heard, Right to

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<sup>2</sup>Dr. V.K.Agarwal, *Consumer Protection Law and Practice: A Commentary on the Consumer Protection Act, 1986*, 6th Ed., New Delhi: B.L.H Publishes.

Redress and Right to Consumer Education. In time, two more important rights were added viz.: Right to Basic Needs and the Right to a Healthy and Sustained environment.<sup>3</sup> These two rights are very closely linked with the realities of developing countries where environment plays a very vital role as a resource and support –structure for the people.

India has a vast magnitude of middle class population in the world and is the second fastest growing economy after China with an 8% plus average GDP growth rate for the last few years. Revolution in the field of manufactured goods coupled with opening up the economy to the globalised market forces, has led to the influx of various consumer goods into the Indian market to cater to the needs of consumers and a variety of services such as banking, financing, insurance, transport, housing construction, entertainment are being made available to consumers. However, At the same time, the consumers are also assured of adulterated food, lack of clean and potable drinking water, primary health care and adequate and well constructed housing and minimum clothing. The consumers are confronted invariably with the non- availability of effective and speedy machinery for redressal of their grievances in the marketplace. It is imperative to consider consumers' problems and their scope and nature of grievances. The consumer often experiences in the market place frustration and sometimes humiliation too, due to the arrogant behavior of the sellers, which is the product of the prevailing scarcity conditions of articles and cancerous tendency of hoarding in India. The consumer's problems are created in the market place from range of frauds and deception to outright rejection of their just protest and right to information about goods. Whatever the remedies which are available in India for the protection of the consumers in the marketplace are by no means sufficient and the consumer find themselves helpless due to ineffective legal machinery for redressal of grievances.<sup>4</sup> If a consumer experiences that he has been cheated owing to the high pressure sales pitch or by scarcity of commodities or reductive advertisement techniques, or any other commercial means of exploitation, he may still remain passive suffer in spite of knowing that he has not received the value of his money for the commodity he paid. So to say, the consumer is powerless to assert his rights and to compel a solution of his

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<sup>3</sup> See the United Nations Guidelines for Consumer Protection (UNGCP).

<sup>4</sup>Rajendra Kumar Nayak, *Consumer Protection Law in India: An Eco- Legal Treatise on Consumer Justice*, New Delhi: The Indian Law Institute, 1991).

grievances in the marketplace.<sup>5</sup>The inherent profit motive in mass production and sales also offers the opportunity to many manufacturers and dealers to exploit consumers. Each day, unscrupulous market practices are finding their way into consumer homes, violating consumer rights and jeopardizing their safety. Some of the relevant issues concerning the consumers are: high prices, high cost of distribution, shoddy or unsafe products, product safety, harmful and low benefit products, planned obsolescence, and poor service to the disadvantaged. Thus, need was felt to legally protect consumers from excessive consumerism. There is no doubt that the legal system in India provides some remedies for the consumers' problems. The position today that except for law suit in which substantial amounts of money are involved, the law courts have not proved to be an effective or even feasible mechanism geared to serve the needs of harassed and troubled consumers.<sup>6</sup>

We can trace the Indian tradition of protecting consumer interest from its historical past. We can find the references of consumer protection against exploitation by the trade and industry, short weighing and measures, adulteration etc, and punishment for these offences in Kautilya's Arthashastra.<sup>7</sup>Today, there are many provisions and Acts available to protect the consumers in India.

## **II. The Constitutional Mandate**

The Constitution of India incorporates the philosophy of consumerism in the provisions relating to Directive Principles of State Policies. In Articles 38, 39, 42, 43, 46 and 47 provides that the state shall strive to secure a social order for the promotion of welfare of the people; it shall direct its policies in such a way that operation of economic system does not result in the concentration of wealth and means of production to the common detriment, it shall make provision for securing just and humane conditions of work and for maternity relief; it should endeavor to build an economic organization or to make suitable legislation to ensure a decent standard of life to all the workers who constitute the bulk of the consumers; it should promote educational and economic interests of schedule castes, scheduled

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<sup>5</sup> Ministry of Consumer Affairs (2003) *Creating Confident Consumers- The Role of the Ministry of Consumer Affairs in a Dynamic Modern Economy*, May 2003.

<sup>6</sup> Avtar Singh, *Law of Consumer Protection (Principles and Practices)* ( 4th edition, Eastern Book Company).

<sup>7</sup> Arthashastra, <http://en.wikipedia.org/wiki/Arthashastra>.

tribes and other weaker sections and it shall also raise the level of nutrition and standard of living and to improve public health. Article 46 of the Indian constitution provides that state shall endeavor to protect the economic interest of the weaker section of its population and also protect them from social injustice and all forms of exploitation which means all kinds of harassments and frauds in the market place. This also includes people should be entitled to unadulterated stuff injurious to public health and safety. This principle amply reflects the inclusion of the philosophy of the concept of consumerism in article 47 of the Indian Constitution.

### **III. Legal Provisions**

#### **The Indian Penal Code, 1860**

It is the foremost penal law of the country which contains the substantive law of crime. It caters to the needs of the consumer in some manner. However, sections 264 to 267 of the Indian penal code relate to fraudulent use of false instrument for weighing, fraudulent use of false weight and measures, anyone in possession of false weight or measure respectively. The penal code further provides sections 269 to 271 on spreading of infections and in sections 272 to 276 on adulteration of food or drink, adulteration of drugs, sale of adulterated drugs and sale of drugs as a different drug or preparation are punishable with imprisonment or with both.<sup>8</sup>

#### **The Dangerous Drugs Act, 1930**

In the area of drugs control the Dangerous drugs Act, 1930 is an important central legislation which empowers the central government to control certain operations relating to dangerous drugs. It further empowers to increase and render uniform penalties for offences relating to operations of dangerous act.<sup>9</sup>

#### **The Sale of Goods Act, 1930**

Some spirit of concept of consumerism is also evident in the Sale of Goods Act, 1930.<sup>10</sup> The contains the spirit of the concept of consumer protection in

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<sup>8</sup>see the following web link,  
<http://www.mediawatchindia.in/actsrules/Indian%20Penal%20Code%20Relevant%20Provisions.htm>.

<sup>9</sup>See at <http://hansard.millbanksystems.com/acts/dangerous-drugs-act-1965>.

<sup>10</sup>See at <http://www.vakilno1.com/bareacts/saleofgoods/saleofgoods.htm>.

several provisions in several provisions which include contract of sale, conditions and warranties in the sale, transfer of property between seller and buyer, duties of seller and buyers, right of unpaid sellers against the goods and suits for the breach of the contracts.

#### **The Drugs and Cosmetics Act, 1940**

In order to defend the cause of consumer in the area of drugs and cosmetic industries in India, Drugs and cosmetic act of 1940 was enacted so as to regulate the airport, distribution and sale of drugs.<sup>11</sup>In pursuance to the recommendations the pharmaceutical enquiry committee appointed by the Government of India, the drugs and cosmetics act, 1940 empowers the central government to control the manufacture of drugs, to appoint inspectors for inspecting manufacturing premises and taking samples of drugs, to appoint government analysts to whom samples drawn by such inspectors could be sent for analysis and to issue the state government for carrying into any of the provisions of the Act.<sup>12</sup>

#### **The Drugs (Control) Act, 1950**

In 1950 the Drugs (Control) Act was passed which provides for the control of the sale, supply and distribution of drugs. This Act briefly provides for fixing of maximum prices and maximum quantities which may be held or sold, general limitation on quantity which may be possessed at any one time, duty to declare possession of excess stocks, marking of prices and exhibiting list of prices and stocks.<sup>13</sup>

#### **The Industries (Development and Regulation) Act, 1951**

Industries (Development and Regulation) Act, 1951 is another example on the part of the union government to make some attempts in implementing the objectives of consumerism. The act provides for the development and regulations of certain industries. The Act specifically deals with the central government's power to control supply, distributing price etc of certain articles.<sup>14</sup>

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<sup>11</sup>Drugs and cosmetics Act, 1940, <http://cdsco.nic.in/html/Copy%20of%201.%20D&CAct121>.

<sup>12</sup>See Statement of Objects and Reasons, The Drugs and Cosmetics Act, 1940, [6 A.I.R Manual 2(4th ed. 1979).

<sup>13</sup>See at [http://www.legalhelpindia.com/bareacts/THE%20DRUGS%20\(CONTROL\)%20ACT,%201950.doc](http://www.legalhelpindia.com/bareacts/THE%20DRUGS%20(CONTROL)%20ACT,%201950.doc).

<sup>14</sup>See at <http://www.vakilno1.com/bareacts/industriesdevact/industriesdevact.htm>.

### **The Indian Standards Institutions (Certification Marks) Act, 1952**

The Act provides for the standardization and marking of goods which is a prerequisite to the establishment of a healthy trade and to compare favorably with the established makes of foreign products. The Act has been amended in 1961 and 1976 to make more effective in order to achieve its objectives.<sup>15</sup>

### **The Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954**

The Act in brief provides for prohibition of advertisement of certain drugs for treatment of certain diseases and disorders. It further imposes curb on misleading advertisements relating to drugs, magic remedies for treatment and regulation of certain advertisements of Indian imports and exports. There is also provision for punishment for those guilty of contravention of the law.

### **The Prevention of Food Adulteration Act, 1954**

The Act, keeping in view the menace of adulteration to the society and to make the machinery provided under it more effective to curb the increasing tendencies in adulteration, was amended in 1964. The amendment provides that for the proper enforcement of the provision of the Act that the central government also should have power to appoint food inspectors.<sup>16</sup>

### **The Monopolies and Restrictive Trade Practices Act, 1969**

The one of the most important steps taken by central government to protect the interest of consuming public is the enactment of the monopolies and restrictive Trade practices Act of 1969. the object of this Act is to provide that the operation of economic system does not result in the concentration of economic power to common detriment. It also provides for controlling

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<sup>15</sup>See The Indian Standards Institutions (Certification Marks) Act, 1952 at [http://www.bis.org.in/org/Officemanual\\_I.pdf](http://www.bis.org.in/org/Officemanual_I.pdf).

<sup>16</sup>See Prevention of food adulteration act, 1954 at [http://www.medindia.net/indian\\_health\\_act/The\\_Prevention\\_of\\_Food\\_Adulteration\\_Act\\_1954/list-of-acts.htm](http://www.medindia.net/indian_health_act/The_Prevention_of_Food_Adulteration_Act_1954/list-of-acts.htm).

the monopolies and prohibition of monopolistic and restrictive trade practices.<sup>17</sup>

#### **The Code of Criminal Procedure, 1973**

Section 153 of the code empowers a station- house officer of a police station without warrant to enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures or instruments for weighing, used or kept and whenever there is reason to believe that in such place weights, measures or instruments for weighing or false.

#### **IV.The Consumer Protection Act, 1986**

Accepting consumer welfare as the responsibility of the government, Consumer Protection Act, 1986, was introduced to provide legal protection to consumers from fraud and deceit during the process of consumerism. Unlike existing laws which are punitive or preventive in nature, the provisions of this Act are compensatory in nature. The Act is also intended to provide simple, speedy and inexpensive redresses to the consumers' grievances by extending relief of a specific nature and award of compensation wherever appropriate.<sup>18</sup> The Act applies to all goods and services. It extends to the whole of India except the state of Jammu and Kashmir [sec 1 (2)]. The provision of chapter 1, 2, and 4 came in to force on April 15, 1987 and of chapter 3 on July 10 1987.The Act was amended by the consumer protection (amendment) Act, 2002. The amendment act came into the force with effect from 15th march 2003.<sup>19</sup>

#### **IV.I.Salient Features of the Act**

The Act aims to ensure right standards for the goods and services for which one makes a payment. The Act defines the consumer as one “who purchases goods and services for his/her use. The user of such goods and service with the permission of the buyer is also a consumer. Hence the Act covers all “product and services.”The products are those which are manufactured or produced and sold to consumers through wholesalers and retailers. The services are transport, telephones, electricity, constructions, banking,

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<sup>17</sup>See Statement of Objects and Reasons, 25 A.I.R Manual 806 (4th ed.1979), Also see A. Ramaiya, *The Monopolies and Restrictive Trade Practices Act* (Notes and Comments)(1970)

<sup>18</sup>Rajendra Kumar Nayak, *Consumer Protection Law in India: An Eco- Legal Treatise on Consumer Justice*, New Delhi: The Indian Law Institute, 1991.

<sup>19</sup>See [http://ncdrc.nic.in/1\\_1.html](http://ncdrc.nic.in/1_1.html).

insurance, medical treatment, education etc. The service also includes those services provided by professionals such as doctors, engineers, architects, lawyers etc.<sup>20</sup>

The Act has been amended in 1993 both to extend its coverage and scope and to enhance the powers of the redressal machinery. On July 24, 1991 the Government of India in its Statement on New Industrial Policy observed – with the growing complexity of industrial structure and the need for achieving economies of scale for ensuring higher productivity and competitive advantage in the international market, the interference of the government through the Monopolies and Restrictive Trade Practices Act in investment decision of large companies has become deleterious in its effects of Indian Industrial growth. The pre entry scrutiny of investment decisions by so called monopolies and restrictive trade practices companies will no longer be required. Instead, emphasis will be on controlling and regulating monopolistic, restrictive and unfair trade practices rather than making it necessary for the monopoly houses to obtain prior approval of the central government for expansion, establishment of new undertakings, merger, amalgamation and take over and appointment of certain directors.<sup>21</sup> The thrust of the policy will be more on controlling unfair or restrictive business practices. The newly empowered MRTP Commission will be encouraged to require investigation *suo moto* or on complaints received from individuals' consumers or classes of consumers.

Despite these positive improvements, the Act failed to fulfill the expectations of consumer activists as it ignored the important recommendation that some services like health services in hospitals run by government and local bodies and the services provided on mandatory basis by local bodies should be brought within the purview of the act as they affect the lives of the citizens.

The Act postulates establishment of Central Consumer Protection Council and the State Consumer Protection Council for purpose of spreading consumer awareness. Central Council is headed by Minister-in-charge of the consumer Affairs in the Central Government and in the State it is the

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<sup>20</sup>Consumer Protection Act 1986 of India, West Bengal Government. See <http://wbconsumers.nic.in/cpa-detail.htm>.

<sup>21</sup>Presented in Parliament on 24-7-1991. For the text of the policy, see (1991)2comp LJ97.

Minister-in-charge of the Consumer Affairs in the State Government who heads the State Council. A separate Department of Consumer Affairs was also created in the central and State Governments to exclusively focus on ensuring the rights of consumers as enshrined in the Act.

#### **IV.II.Nature of Consumer Rights:**

**1. Right to Safety:** This consumer right is defined as the ‘right to be protected against marketing of goods and services which are hazardous to life and property. The purchased goods and services availed should not only meet their immediate needs, but also fulfill long term interests.’<sup>22</sup> Specifically significant in areas such as healthcare, food processing and pharmaceuticals, this right spans across any domain that could have a serious impact on the consumers’ health or well being such as Automobiles, Travel, Domestic Appliances, Housing etc. Violation of this right is almost always the cause of medical malpractice law suits in India. Every year, it is estimated that thousands, if not, millions of Indian citizens are killed or severely hurt by unscrupulous practices by hospitals, doctors, pharmacies and the automobile industry.

**2. Right to Information:**

This consumer right is defined as the ‘the right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be so as to protect the consumer against unfair trade practices. The key aspects are:

- The right to be given the facts needed to make an informed choice, to be protected against misleading advertising or labeling.
- The responsibility to search out and use available information.
- To read and follow labels and research before purchase.

Consumer should insist on getting all the information about the product or service before making a choice or a decision. This will enable him to act wisely and responsibly and also to desist from falling prey to high-pressure selling techniques. Without information on quality, quantity, potency, purity, standard and price of goods and services, consumers would not be able make the right decisions and protect themselves from abusive practices. Various

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<sup>22</sup>See Consumer Bill of rights at <http://www.cuts-international.org/safety-watch.htm>.

interpretations of Article 19 (2) of fundamental rights clearly state that there should be a definite policy or uniform guidelines on the part of the state to help consumers make “informed choice”.<sup>23</sup>

### **3. Right to Choose:**

The Act defines this right as ‘the right to be assured, wherever possible, to have access to a variety of goods and services at competitive prices’. Competition, invariably, is the best regulator of a market place. Existence of oligopolies, cartels and monopolies are counterproductive to consumerism. In case of monopolies, it means right to be assured of satisfactory quality and service at a fair price. It also includes right to basic goods and services. This right can be better exercised in a competitive market where a variety of goods are available at competitive prices. The key elements of this right are:

- The right to choose products and services at competitive prices with an assurance of satisfactory quality.
- The responsibility to make informed and responsible choices.

In spite of a fair amount of legislation and other safeguards, the right to choice of the Indian consumer is far from realized.<sup>25</sup> At the micro level, the individual is duped each and every day by dishonest traders, forced to buy items s/he does not require as part of tied- selling, and cheated by wrong weights and poor quality. Consumers in many parts of the country are deprived of supply of electricity, good roads, proper transport and other public services and utilities.<sup>24</sup>

### **4. Right to be Heard:**

The right to be heard and to be assured that consumer's interests will receive due consideration at appropriate forums’ is referred to as the right to be heard. This right is supposed to empower Indian

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<sup>23</sup>Frank Floyd Tiongson Reporter, „Prospects and Challenges in Task of Protecting Consumers’ at <http://www.yehey.com/news/article.aspx?id=224512>.

<sup>24</sup>“Consumer Rights and its Expansion Rights and Responsibilities” at <http://www.cuts-international.org/Consumer-Rights.htm>. Also see “India” at <http://www.cuts-ccier.org/pdf/ConsumerProtectionRegime-India.pdf>.

consumers to fearlessly voice their complaints and concerns against products and companies to ensure their issues are handled efficiently and expeditiously. It also includes right to be represented in various forums formed to consider the consumer's welfare. The main aspects of the right are:

- The right to express consumer interests in the making of decisions.
- The responsibility to make opinions known.
- To join an association such as the Consumer Council to make their voice heard and to encourage others to participate.

Effective consumer representation ensures that the needs of all people are taken into consideration in policy formulation that directly affects their lives. By magnifying the voice of the individual, representation contributes to good governance and the achievement of social justice. It affords better and more durable decisions.

However, despite the existence of a number of administrative as well as organizational tools, the implementation of consumer's right to representation faces several drawbacks. The consumer movement in the country has not developed to the size and reach, which is required to serve the vast country and its huge population. Furthermore, a majority of consumer organizations are mostly confined to cities and urban areas. They are not being able to penetrate deep into society where the majority of poor, low-income and disadvantaged consumers' live.<sup>25</sup> However, to date the Government of India has not created a single outlet for the consumers to be heard or their opinions to be voiced.

##### **5. Right to Seek Redressal:**

This right seeks to redress consumers against unfair trade practices or restrictive trade practices or unscrupulous exploitation. It also includes right to fair settlement of the genuine grievances of the consumer. The key aspects are:

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<sup>25</sup>See "Consumer Rights" at [http://en.wikipedia.org/wiki/Consumer\\_Bill\\_of\\_Rights](http://en.wikipedia.org/wiki/Consumer_Bill_of_Rights).

- The right to be compensated for misrepresentation, shoddy goods or unsatisfactory services.
- The responsibility to fight for the quality that should be provided.
  - To complaint effectively and refusing to accept shoddy workmanship.

The Indian Government has been slightly more successful with respect to this right. The Act has come as a panacea for consumers all over the country and has assumed the shape of practically the most important legislation enacted in the country during the last few years. It has become the vehicle for enabling people to secure speedy and in-expensive redressal of their grievances.

#### **6. Right to Education:**

This right simply ensures that the consumers in India have access to informational programs and materials that would enable them to make better purchasing decisions.

This right contains the provision to acquire knowledge and skills needed to make informed, confident choices about goods and services, while being aware of basic consumer rights and responsibilities and how to act on them. The main aspects are:

- The right to acquire the knowledge and skills necessary to be an informed consumer.
- The responsibility to take advantage of consumer opportunities. Take action by attending seminars and workshops.

Consumer awareness and education is meant to ensure that the consumers have easy access to the knowledge and skills to be an informed consumer. Thus, the right to consumer education envisages the right to knowledge and skills needed for taking actions to influence factors, which affect consumers' decisions. Consumer education may mean both formal education through school and college curriculums and also consumer awareness campaigns run by both governmental and non governmental agencies

#### **7. Right to Basic Needs**

All consumers have the right to basic goods and services such as adequate food, drinking water, shelter, clothing, health care, electricity and education. These rights lay a foundation to lead a life

with dignity and, therefore, give a meaning to citizen's rights. The key aspects are as follows:

- The right to basic goods and services, which guarantee survival.
- The responsibility to use these goods and services appropriately.
- To take action to ensure that basic needs are available.

The following eight needs constitute the inalienable right to basic needs: food; clothing; healthcare; drinking water and sanitation; shelter; education; energy; and transportation. Basic needs are important for everyone's survival and access to a decent standard of life. This is more important for a country like India, which has a history of the systematic denial of access to basic needs and services to the majority of its people.<sup>26</sup>

### **8. Right to a Healthy Environment**

This right means the right to live and work in an environment, which is non-threatening to the well-being of present and future generations. The right contains the following elements:

- The right to live and work in an environment that is neither threatening nor dangerous and which permits a life of dignity and well-being.
- The responsibility to minimize environmental damage through careful choice and use of consumer goods and services.
- To reduce waste, reuse products and to recycle whenever possible.

The United Nations' Guidelines contain governments, which in partnership with business and relevant organisations of civil society, should develop and implement strategies to promote sustainable consumption through a mix of policies that could include regulations; economic and social instruments; sectoral policies in such areas as land use, transport, energy and housing; information programmes to raise awareness of the impact of consumption patterns; removal of subsidies that promote unsustainable patterns of consumption and production; and promotion of sector-specific environmental- management best practices.<sup>27</sup>

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<sup>26</sup>See "Reviling India Statistically" at [www.indiastat.com](http://www.indiastat.com).

<sup>27</sup>See „Poverty in India", *Economy Watch* at <http://www.economywatch.com/indianeconomy/poverty-in-india.html>.

As far as the issue of a healthy environment is concerned, Article 21 of the Indian Constitution requires the State, inter alia, to protect life, which is construed as including the right to a healthy and safe environment. A healthy and safe environment is inalienably linked with sustainability and promotion of sustainable consumption. Moreover, the Directive Principles of State Policy direct the state to endeavor to protect and improve the environment, forests and wild life. Consumer protection in India thus has dual dimensions. It first has to ensure availability and access to basic needs of life to one section of the society; on the other hand, those with the purchasing power need to be protected against violation of their other rights. The consumer policy should strive to cover and address the interests of both the have-nots and haves.<sup>28</sup>

#### **IV.III.Consumer Redressal Forums**

To provide cheap, speedy and simple redressal to consumer disputes, quasi-judicial machinery is set up at each District, State and National levels called District Forums, State Consumer Disputes Redressal Commission and National Consumer Disputes Redressal Commission respectively. There are 604 District Forums, 35 State Commission in States and Union territories and a apex body of National Consumer Disputes Redressal Commission (NCDRC) having its office at Janpath Bhawan, A Wing, 5th Floor, Janpath, New Delhi. The National Commission was constituted in 1988. It is headed by Sitting Retired Judge of Supreme Court and other members chosen by Government in consultation with Chairperson. At least one member should be a Woman. Similarly, while State Commission is headed by a setting retired High Court Judge and at least 3 members, one woman. Similarly, District Consumer Fourm is headed by District Court Judge and at least 3 other members and one of them should be a woman.

Although the Consumer Dispute Redressal Agencies established under the Consumer Protection Act, 1986 have to a considerable extent, served the purpose for which they were created, the disposal of cases has not been fast enough. Several bottlenecks and shortcomings have also come to light in the implementations of various provisions of the act. With the view to achieving quicker disposal of consumer complaints by the consumer disputes redressal agencies, securing effective implementation of their

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<sup>28</sup>See Consumer Protection Act, 1986, West Bengal Government at <http://wbconsumers.nic.in/cpa-detail.htm>.

orders, widening the scope of some of the provisions of the act to make it more effective, removing various lacunae in the act and streamlining the procedure, several amendments have been made in the act by the Consumer Protection (amendment) Act 2002.<sup>29</sup> Act No.62 of 2002 seeks to substitute section 25 to provide for attachment by the District Forums, State Commission or National Commission, as the case may be, of the property of the person of a person not complying with an interim order.<sup>30</sup> It also seeks to provide that on application from any person entitled to receive any amount from another person under an order made by a District Forum, State Commission and National Commission which remains due, the District Forum, State Commission and National Commission as the case may be, may issue a certificate to the collector for recovery of the amount as arrears of land revenue.

#### **IV.IV.Redressal Mechanisms**

A written complaint, as amended by Consumer Protection (Amendment) Act, 2002, can be filed before the District Consumer Forum (Value up to Rupees twenty lakhs), State Commission (Value up to One Crore), National Commission (Value above Rupees One crore) in relation to a product or in respect of a service, but does not include rendering of any service free of cost or under a contract of personal service. Under the Act there are consumer courts at the District, State and National level. The Act lays down the type of practices against which consumers can seek relief. These courts have played a very important role in ensuring that the rights of the consumers are protected. Proceedings are summary in nature and endeavor is made to grant relief to the parties in the quickest possible time keeping in mind the spirit of the Act which provides for disposal of the cases within possible time schedule prescribed under the Act, preferable within 90-150 days. If a consumer is not satisfied by the decision of the District Forum, he can challenge the same before the State Commission within 30 days and against the order of the State Commission a consumer can come to the National Commission.

#### **V. Issues in the Implementation of the Act**

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<sup>29</sup>See Consumer Protection Act 1986 at <http://www.legalhelpindia.com/consumer-protection-act.html>.

<sup>30</sup>Laxmi Engineering Works v. P.S.G Industrial Institute, (1995) 3 SCC 583, the adjudicatory bodies are like quasi-judicial tribunals and not courts, intended to supplement the existing judicial system.

The first and the foremost problem is that most state governments do not evince requisite enthusiasm and attention in promptly implementing the provisions of the Act by establishing properly functioning District Forums and State Commission. Secondly, the consumer forums are becoming like civil courts with presidents (judicial members) asking for a more formal approach. Sometimes, these forums have asked complainants to engage lawyers, even when it is not really required. Such systemic problems are resulting in inordinate delays. In the past, members were appointed on the basis of their connections rather than merit. Now the system has improved substantially due to an amendment in the law requiring a selection committee to appoint them. However, there is a lackadaisical approach in selecting people for such positions.<sup>31</sup>

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 Consumer Protection Amendment Act is an effort towards efficiency and does away with many lacunae in the law. It also leaves ample scope for the courts to interpret and add meaning. What worries us is the enforcement. Some of the issues are:

Will the judges be eager to give reasoned orders for adjournment or will they, in the spirit of the Act refuse to be lenient?

How far will the consumers claim their rights and be informed of them?

Will the voluntary organizations jump into the fray and become more proactive than before? Much depends on the individual and collective agencies of society. Here are few real examples about how companies are involved in unfair practices in order to attract consumers. Following are the few emerging issues related to the Act 1986;

#### **Unfair trade Practices:**

Sec (2) (r) it means a trade practice which a trader for the purpose of promoting the sales, use or supply of any goods or for the provision of any services, adopts unfair method or unfair or deceptive practices.

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<sup>31</sup>See Cathy Goodwin, "Privacy: Recognition of Consumer Rights" at <http://www.jstor.org/pss/30000257>.

**Spurious Goods:**

There are few companies copy a design, color and outlook of the original brand and they sale it in rural market with little variation in brand name/product name.

**Misleading advertisements:**

Ads are the major channel of communication in order to create awareness about goods and services through print media, TV media, radio, etc. for example the ad of Axe it guides customers that if the men puts it on his body girls will fall behind him for its fragrance, but in real life it's impossible. It clearly misguiding to customers. It's clear that ad agencies have ignored the consideration of Consumer protection.

**Warranty and Guaranty:**

Mr Rajesh of Karnataka purchased an electric choke which had a warranty for one year. After 3 months the equipment went out of order and when he took it to the dealer for replacement, he told that there was no guarantee and no replacement is possible. As Rajesh doesn't know about the difference about the warranty and guarantee. Here shop person has not educated customer about the difference of it. Warranty means the promise given by the vendor regarding the due performance of the article sold. Guarantee means a promise of a surety to discharge the liability of the principle debtor in case of default.

**Pricing:**

Price means in simple term a value given for a particular goods and services for which a customer has to pay to avail/purchase a goods and services by the seller. Most of the customers at rural and urban are less aware about the concept of star (\*) which means "conditions Apply". Usually companies put a low price tags in advertisements for a particular product in order to attract customers for example if product is advertised as price offer of Rs 999\* which means product is not available to that price instead there will be more price than that or else there may be some other conditions. Usually companies like Insurance, Automobiles, Electric etc., adopt this strategy just to drag customers. But its like an unethical practice according to the consumer protection act 1986.

**Renovated Goods:**

More population and Globalization has lead many companies to involve in selling of renovated goods/ Second hand goods of which there will be no guarantee and warranty to the end users. It has taken place in the areas of Mobile batteries, Televisions, Refrigerators, motor Bikes etc. most of the companies purchase renovated goods from customers at urban cities and they recondition its features and they again resale with new brands in Rural markets in which the customers are less educated.

**Fake Tele-Marketing:**

Most of the tele-marketing companies they offer bundles of benefits for a particular purchase at lesser price. Customers who are price conscious they come forward to make purchase of it, they just order purchase through the telephones/mobiles. Once they receive the orders they find less benefit which was mentioned at the time of tele conversation by a sales executive of the company. Usually this has taken place mobile companies who may give an advertisement of getting many accessories free for the purchase of mobile, but ultimately there will be nothing=g as mentioned by them at the time of order received by customers.

**E-Banking:**

As we know there are many hackers available in the globe. Customers do transactions through online in which money is involved. There are plenty of examples in India who have lost their money while doing online transactions. There are many hidden fake companies who cheat people.

**VI. Problem of Consumer Education**

Modern business is described as consumer oriented and business-men study the needs and preferences of consumer to produce and supply goods according to their changing demands. Yet the consumer finds himself subjected to all kinds of exploitation. Consumers are constantly afflicted by shortages of essential items, adulterated products, manifold problems associated with a public utility services and variety of deceptive practices adopted by our business. However, they do not find voices rising in protest but continue to suffer in silence. Hence a heavy responsibility rests on the government on one side and Industry on the other. The industry and business circles should realize that consumer preferences are already appearing on the horizon in many of the metropolitan areas and it may not

be very far into the future before consumer bodies in India gain the same level of strength as in other countries, to control the quality, reliability and durability of the various products in the market.<sup>32</sup>

### **VII. Exploitation of Rural Consumers.**

With the growth in rural markets and due to poor knowledge about their rights and also to lack of skills to take a rational decision based on information about the product or services, the rural consumer in India is exploited in many ways. The rural consumer has been made to endure sub standard products and services, adulterated foods, short weights and measures, spurious and hazardous drugs, exorbitant process, endemic shortages leading to black marketing and profiteering, unfulfilled manufacturing guarantees and host of other ills. The rural consumers who generally depend on weekly markets to purchase essential things are often cheated due to lack of choice. The rural consumers in India are generally ignorant and they are also unorganized. Thus, they are exploited by the manufacturers, traders and the service providers in different ways. The rural consumers are not only scattered but also diverse and heterogeneous. As a result of globalization and liberalization the rural market in India is the largest potential market in the world. Thus there are vast opportunities for rural marketing. The manufactures and the traders take advantage of the condition of the rural consumers is deplorable because that are largely exploited in the rural markets on account of lack of competition among the sellers. The rural consumers face various problems like adulteration, short weighing and measuring, lack of safety and quality control in appliances and equipments, electrical and mechanical, unfair warranties and guarantees, imitation, sales gimmicks and unreasonable pricing.

### **VIII. Need for Education and Empowerment**

The most important step in consumer education is awareness of consumer rights. In the emerging scenario it is necessary to protect the consumers by educating them about their rights and empowering them to make decisions based on information about the goods and services. Consumer rights awareness is now an integral part of our lives like a consumerist way of life. However, consumer education is incomplete without the responsibilities

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<sup>32</sup>Dr. Divya Hiran, „Awareness of Consumers Regarding their Rights, Responsibilities and Consumer Protection Act, 1986“ at <http://pbr.co.in/view.php?id=268>.

and duties of consumers, and this influences individual behaviour to a great extent.

With an enormous population along with high levels of poverty, unemployment and poor literacy levels, consumer rights awareness continues to remain low in India, particularly among the rural consumers. So far the consumer movement has largely been confined to the urban centers, and with the expanding rural markets now the focus has to shift to protect the rural consumer. However the task is gigantic and therefore it is time to involve the Panchayati Raj Institutions to reach the rural consumers. The meetings of the Gram Sabah's can be utilized as a forum to educate the consumers about their rights and obligations and enhance their knowledge about fake and spurious products. An integrated approach is needed to empower the rural consumers. As the largest consumer base is in the rural areas, protecting the rural consumer has to be a priority in any strategy to protect the consumers.

#### **IX. The Future Consumer Dilemmas**

Probably, with the expansion of electronic and digital world the “haves” of the future will be controlled by digital economies and “have notes”, will be those who are forced to stay offline. Future consumers will have to make sense of varied phenomena such as increasingly subliminal advertising, social networks, free-economy and technological as well as scientific advances, we will also witness the rise of ‘consumerism’ to counter citizen-centric priorities; and the rise of brandocracies, over and above the current sway of bureaucracies. Increasingly the companies, brands and corporations will have to submit to rating according to their ethical, social and environmental credentials rather than their abilities to generate profits. A radically different world from our own awaits future consumers, where they will require different tools and techniques to work enjoy leisure time and find success and happiness. Therefore, a safe and healthy lifestyle can be provided for future consumers, by today's consumers, policy makers and markets. Any serious plans for ‘greening’ the future require all stakes – holders to rebuild a sustainable relationship with environmental resources so that not only are the needs of the present met but also those of the future generations. It is becoming increasingly clear that ‘Green’ lifestyles must combine an access to traditional or cultural knowledge, an understanding of current issues, and use of science and technology. Besides which the core

proposition of the product, service and experience these create will simultaneously have to protect the environment and benefit the consumer.<sup>33</sup>

## **X. Challenges Ahead**

The Consumer Protection Act has aroused enormous expectation amongst the masses for redressal of their grievances. These expectations can be realised only when the redressal machinery laid down in the Act is made functional. However, the pace of establishment of redressal machinery under the Act has been slow. District Forum is the fulcrum of the entire Consumer Disputes Redressal Machinery because a large number of cases are to be covered within the jurisdiction for the District forum. The working of the State Commissions and the National Commission will remain diluted unless the District Forums are set up in all the Districts as envisaged in the Act. These delays and defaults on the part of the State Government brought to the attention of the Supreme Court in a *Common Cause v. Union of India*, where the Court issued directions that all States and Union Territories to constitute all the District Forums and the State Commissions within six weeks.<sup>34</sup> Following are some of the major challenges in the way of consumer protection.

- It's a challenging task for all the governmental bodies involved in the protection of consumers by avoiding and reducing the unfair trade practices.
- It's a difficult task for the central consumer protection council, District Forums, and state consumer protection councils to identify the unfair practices and punishing to those companies who are involved in unethical trade practices.
- Corruption weakens the government bodies to protect consumers from unfair trade practices.
- Quick decisions are greater challenge for all councils and agencies in order to protect consumers.
- It's a greater challenge for the agencies and councils to create an awareness among customers about the present issues of unfair

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<sup>33</sup>International Journal of Latest Trends in Engineering and Technology (IJLTET) Vol. 2 Issue 1 January 2013 275 ISSN: 2278-621X.

<sup>34</sup>Common Cause v. Union Of India,(1991)II CPR 523(SC),

trade practices. It will be their responsibility to educate customers in the society.

#### **XI.Recommendations and Suggestions**

- (i) Strengthening of the existing redressal mechanism to make it more efficient for delivering speedier justice
- (ii) Supplement the existing redressal system with an active ADR Mechanism.
- (iii) Building a strong consumer information and advisory system.
- (iv) Integrate State Consumer Helplines and Consumer Advice Centre to facilitate mediation
- (v) Review of Consumer Protection Act 1986 and take adequate measures to plug loopholes with a view to reduced delays and enhance its reach to new areas of consumer issues.
- (vi) National Consumer Protection Agency.
- (vii) Information Technology tools for better delivery of service
- (viii) The unfair trade practice adopted by the large house must be included in the act and consumers may have a choice between the forum and councils for complaint.
- (xi) The compensation must be clearly specified in the Act. The compensation should be based on the gravity of the offence and its ill effects on the consumers.
- (x) The right of healthy environment must be included for better environment of our beautiful world.
- (xi)The consumer education must be vigorously developed in urban as well as rural areas of the society.
- (xii) The government must take strong step towards businessmen, manufacturers, and traders who are involved in the mass media and they should be debarred from all government assistance.

(xiii) The government should give financial support to registered consumer associations for better consumer movement.

## **XII. Conclusion**

It may be concluded that despite the existing laws meant to protect consumers, unfair trade practices, false and misleading advertisements etc, are continued to exploit them. It is the demand of the days to enact/modify laws in keeping with the times, and to provide better enforcement mechanisms, corrective advertisements practices, better self-regulations by industry, and independent regulator to regulate health and children - related advertisements. Outdated laws, poor enforcement of them are some of the lacunas in order to control advertising. Procedural simplicity and speedy and inexpensive redressal of consumer grievances as contained in the Consumer Protection Act are really unique and have few parallels in the world. **It** is unique in coverage and compensatory in nature. But, the success of the new legislation would however depends on removing the lacunae in the act and considering the wealthy suggestions and ultimately on its effective implementation by the central and state government. Implementation of the Act reveals that interests of consumers are better protected than ever before. However, consumer awareness through consumer education and actions by the government, consumer activists, and associations are needed the most to make consumer protection movement a success in the country. Positively, TV programmes have begun to discuss the problems of consumer protection and consumer's movement and a separate cell for consumer protection has been formed in the Ministry of Food and Supplies.