

# Consumerism *Vis-a-Vis* Unfair Trade Practice— A Legislative Viewpoint

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## Consumerism :

'Consumerism' unlike many 'isms' does not spell any philosophy nor is derogatory. Its purpose is primarily to educate consumers of their rights and in case of infringement of those rights, to help them get justice. A very simple but quite effective explanation of consumerism was offered by *Mrs. Virginia H. Knauer* as "Let the seller beware" in comparison to the age old '*Caveat emptor*' or "Let the buyer beware". Another useful and effective definition of consumerism is offered by *Cravens and Hills*. "Consumerism", they feel, "is a social force within the environment designed to aid and protect the consumer by exerting legal, moral, and economic pressure on business".

In general, Consumerism expresses itself in efforts to bring pressure on business firms as well as Government to correct business conduct thought unethical. Its main thrust encompasses a multitude of group activities concerned with such issues as consumer protection laws, the availability of product and price information, fraudulent and deceptive business practices and product safety.

When the world was younger and communities smaller, consumer resistance was virtually unnecessary to ensure fair trade practices. Unfair trade was almost impossible in the life style of those times. One could not comfortably, cheat someone in the market-place in the morning and break bread with him the same evening.

The industrial revolution and a shift in population from rural areas to town and the anonymity of urban living gave plenty of scope for malpractices. Consumption came to mean more than just eating and wearing clothes. It extended to cover the whole business of life and living.

Consumer education began with the realisation that hardly any goods or service in the world exist that some man cannot make a little worse and sell a little cheaper.

Unfair trade practices, over all these years, have not only multiplied but taken variety of forms. Though, probably universally practiced, their nature and extent in the Indian context have been more grave. The extent and such nature of unfair practices may be guessed in view of the following practices.

*Adulteration* : There have been reports of adulteration to the extent that may cause serious health problems. Black-pepper is mixed with papaya seeds, sawdust is coloured and sold as red chilli powder, small pebbles are mixed with rice and pulses, wood pieces are coloured and sold as turmeric. The recent case of mixing animal fat with vanaspati raised all-India concern.

Adulteration to the extent that it may even take the lives of consumers has not been uncommon. The following news item appearing in Hindustan Times of 17th August, 1983 amply proves the point in question :

“At least 56 cases of epidemic dropsy caused by adulterated mustard oil, have been identified at Jharera village and Palam Colony in South Delhi. Two deaths have been reported as a result of this crippling disease two days ago.”

*Spurious Products* : Some businessmen have gone to the extent of selling spurious products.

Glucose bottles either contain very little glucose or it is contaminated. Drugs rendered time-barred are sold by changing their labels. Even life saving medicines have not been spared. Sometimes plain water is found in life-saving injections.

*Duplicates* : Not only are duplicates found to be sold as imported items but popular brands of Indian products are also duplicated. Detergents, soft-drinks, ketchups, jams, squashes, oils and a host of other items are duplicated and sold under popular brand names.

*Injurious Products* : This is not a problem peculiar to India. Probably it is more widely practised in the developed countries. Products which have been proved to be health



hazards are manufactured and sold purely for commercial gains. Cigarettes, Charas, Marijuana, L.S.D., etc., are some of the examples.

*Deceptive Advertisements* : There has been all-round protest for using ladies as models for anything and everything-whether they use that product or not. Besides, highly pampered statements are used about the products. Consumers are tempted to buy on the basis of false advertisements. Many creams, which might actually spoil one's beauty, are propagated as beauty creams. Drinks, that may hardly contribute to one's health, are marketed as health drinks. Government is, in fact seriously considering banning infant foods being sold as weaning foods since the claims have been found to be spurious and traditional diet have been found to be more nourishing than such foods.

### **Unfair Trade Practices and the MRTP Act**

Unfair trade practices are those practices which tend to place consumers in an unfair position. In fact, all monopolistic, restrictive and illegal practices are unfair also. However, with the MRTP (Amendment) Act, 1984 (Effective from 1st August, 1984), unfair trade practices have assumed a specific meaning. Section 36-A, which is based on the recommendation of Sachar Committee, defines an 'Unfair Trade Practices' to mean a trade practice which for the purpose of promoting the sale, use or supply of any goods or for the provision of any services, adopts one or more of the specified practices and thereby causes loss or injury to the consumers of such goods or services, whether by eliminating or restricting competition or otherwise. The specified practices are ;

#### *1. Misleading Advertisement and False Representation*

These include :

- a) Falsely representing that the goods are of a particular standard, quality, grade, composition, style or model.
- b) Falsely representing that the services are of a particular standard, quality or goods.
- c) Falsely representing that the rebuilt, secondhand, renovated, reconditioned or old goods are new goods.
- d) Representing that goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits they do not have.
- e) Representing that the seller or the supplier has a sponsorship, approval or affiliation he does not have.

- f) Making false or misleading representation concerning the need for or the usefulness of any goods or services.
- g) Making a representation to the public in the form of a warranty or guarantee of the performance, efficacy or length of life of a product or of goods that is not based on an adequate proper test thereof, the proof of which lies upon the person making the representation.
- h) Making a representation to the public in a form that purports to be —
  - i) A warrantee or guarantee of a product or of goods or services; or
  - ii) A promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result.

If such form of purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that it will be carried out;

- i) Making a materially misleading representation to the public concerning the price at which a product or like products or goods have been, or are ordinarily sold.
- j) Making false or misleading representation of facts disparaging the goods, services or trade of another person.

## 2. *Bargain Sale, Bait and Switch Selling*

This includes advertising for supply, as a bargain price<sup>1</sup>, goods or services that are *not intended* to be offered for supply at the price, for a period that is, and in quantities that are reasonable.

## 3. *Offering Gifts or Prizes with the Intention of not Providing them and Conducting Promotional Contexts :*

This includes :

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### 1. Bargain price means

- a) A price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise, or
- b) A price that a person who reads, bears, or sees the advertisement, would reasonably understand to be a bargain price having regard to the price at which the product advertised or like products are ordinarily sold.



- a) Offering gifts, prizes or other items with the intention of not providing them as offered or creating the impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole.
- b) Conducting any contest, lottery, game of chance or skill, for the purpose of promoting directly, or indirectly, the sale of a product or any business interest.

#### 4. *Product Safety Standards :*

This includes supplying goods that are intended to be used or are of a kind likely to be used by consumers, being goods which do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, construction, finishing or packaging of goods as are necessary to prevent or reduce risk of injury to persons using the goods.

#### 5. *Hoarding or Destruction of Goods :*

This comprises hoarding or destruction of goods or refusal to sell the goods, or to make them available for sale if such hoarding or destruction or refusal raises or tends to raise or is intended to raise the cost of those or other similar goods.

#### **Inquiry into Unfair Trade Practices by Commission :**

The new section 36B to the MRTP Act empowers the MRTP commission to inquire into any unfair trade practices ;

- a) Upon receiving a complaint from any trade or consumers' association having a membership of not less than 25 persons or from 25 or more consumers; or
- b) Upon a reference made to it by the Central Govt. or a State Govt.
- c) Upon an application made to it by Director General.
- d) Upon its own knowledge or information.

Another new Section 36-D provides that if on inquiry into any unfair trade practice, the Commission is of the opinion that the practice is prejudicial to the public interest, or to the interest of any consumer or consumers generally, it may by order direct that-

- a) The practice shall be discontinued or shall not be repeated, and

- b) Any agreement relating to such unfair trade practice shall be void or shall stand modified in respect thereof in the manner specified.

Besides, under Section 12-B, the commission has been empowered to award compensation, in appropriate cases, for the loss or damage caused to government, trader or consumer on an application made by him in respect of an unfair trade practice.

Such an order for compensation shall be enforceable in the same manner as if it were a decree or order made by the court in a suit.

### **A Critical Evaluation**

The inclusion of provisions relating to unfair trade practices in the MRTP has certainly opened a new chapter in consumer protection legislation in India. If taken up seriously, it is likely to bring along awaited sigh of relief to the over-exploited consumer.

The MRTP Commission has been empowered to not only enquire into an unfair trade practice but has also been authorised to pass interim and final orders and also impose damages. It can even have its orders executed so far as unfair trade practices are concerned. This is a welcome decision on the part of the Govt. and is likely to protect the consumer more effectively.

Another welcome feature of the MRTP (Amendment) Act, 1984 is that claims can be filed on behalf of the group and the benefit of the Commission's order will be available to whole group. Thus even if a single case is solved by one consumer about a product, the benefit of it will be available to all the consumers of the same product. This will help to avoid the necessity of multifarious litigations which cannot be fought by the small consumer.<sup>1</sup>

However, the exemption of Government undertaking and co-operative societies from the purview of unfair trade practices has not been appreciated by the consumers organisations. It is felt that the consumer must get protection both from private as well as government undertakings. It is no argument to say that simply because the undertaking is owned by the government, the consumer is automatically protected.

Further, the addition of co-operative societies in the exempted list, it is felt, has made the position worse. It is well known that there are co-operative societies in the nature of super bazars and others which deal extensively with consumer articles. To keep them out of the reach of commission is to leave the consumer without any protection from a large chunk of products of daily use.

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1. Justice Sachar, "MRTP Act-Rationale behind Amendment Act 1984", Economic Times, 22 Nov., 1984.



## Other Measures

### Constitution of Consumer Protection Council

The recent constitution of a Consumer Protection Council in the Union Ministry of Food and Civil Supplies is an encouraging sign. The Council which is composed of representatives of the concerned ministries, state governments, consumer organisations, co-operative bodies and Indian Standards Institution, will advise the government on all matters concerning consumer interests and suggest executive measures related to various aspects of consumer protection. The Council is also empowered to administer schemes of financial assistance to consumer organisations for specific projects and action programmes that would further the cause of the consumer.

In Karnataka, the State Government has set up an 11-member Karnataka Consumer Protection Board to bid fair to consumer by fighting adulteration of foodstuffs, palming of sub-standard consumer goods and cheating by underweight and measures. The Board has also been empowered to prosecute those who indulge in cheating consumers.

In Delhi, the Metropolitan Council passed the Delhi Consumer (Purchase) Disputes Council Bill, 1984 on May, 16, 1984. The purpose of the said Bill is to deal directly with consumer-purchase disputes. The Bill provides that if a product is found defective, the consumer may *along with a fee of Rs. 5 file a petition before the Council*. In case the Council (comprising a chairman and 8 other members) comes to a final decision that quality of any article or goods is not according to standards represented by the seller and/or manufacturer or as claimed by the purchaser, it shall direct the seller/manufacturer to make good the same to the consumer.

The above mentioned measures, viz., MRTP (Amendment) Act, 1984, constitution of Consumer Protection Council, Karnataka Consumer Protection Board, Delhi Consumer (Purchase) Disputes Bill 1984, are new and their efficacy is yet to be tried.

It may be mentioned that a few attempts had been made on earlier occasions also to grant legal protection to the consumers in India but primarily because of slack administrative machinery, the desired results could not be achieved. However, with these new measures these legislations have not been rendered redundant. Their purpose is a continuous one. With the consumer organisations coming up, it may be hoped that these legislations shall also be invoked more effectively in order to get consumers their long-overdue protection from the unscrupulous trader, manufacturer, or producer. A few of these legislations may be mentioned here briefly.

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

The prevention of Food Adulteration Act, 1954 which came into operation on 1st June, 1955 was designed to replace the various legislations enacted by individual States in this regard.

### **The Act provides for :**

1. a Central Food Laboratory to which food samples can be referred for final opinion in disputed cases.
2. a Central Committee for Food Standards consisting of representatives of Central and State Governments to advise on matters arising from the administration of the Act, and
3. the vesting in Central Government of rule-making power regarding standards of quality for articles of food and certain other matters.

Further, the Act prohibits import of—

- a) any adulterated food;
- b) any mis-branded food;
- c) any article of food for the import of which a licence is prescribed, except in accordance with the conditions of the licence;
- d) any article of food in contravention of any other provision of this Act or of any rule made thereunder.

The Act provides that no person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute—

- i) any adulterated food,
- ii) any mis-branded food,
- iii) any article of food for the sale of which a licence is prescribed, except in accordance with the conditions of the licence.
- iv) any article of food the sale of which is for the time being prohibited by Food (Health) Authority in the interest of public health.
- v) any article of food in contravention of any other provisions of this Act or of any rule made thereunder.



## **Prevention of Black marketing and Maintenance of Supplies of Essential Commodities Act, 1980**

This Act became operative with retrospective effect from 5th October, 1979. The primary object of this Act, is to provide for detention in certain cases for the purposes of prevention of black marketing and maintenance of supplies of commodities essential to the community and for matters connected therewith.

Under the Act, the Central Government, State Government and specified Officials of the Government have been empowered to order detention of a person who is found to be acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community.

The maximum period for which any person may be detained in pursuance of any detention order cannot exceed 6 months from the date of detention.

However, the person detained has a right to know the grounds of his detention, vide Section 8, unless disclosure of the grounds is considered against the public interest in general.

Further, Section 16 grants protection to the authorities for having taken action in good faith. It provides that no suit or other legal proceeding shall lie against the Central Government or a State Government, and no suit, prosecution or other legal proceeding shall lie against any person, for anything in good faith done or intended to be done in pursuance of this Act.

## **Trade Marks and Merchandise Marks Act, 1958**

A 'trade mark' functions as an assurance to the customer that all goods bearing that 'trade mark' will always be of the same high quality that the customer has come to expect of goods bearing that trade mark.

The objects of the Act are :

1. to provide for more effective protection of trade marks;
2. to provide for better facilities for registration in the distant parts of the country;
3. to enlarge the field of registrability;
4. to combine the Patent Office and the Trade Mark Registry to secure better coordination of the administration of the different laws relating to industrial propriety;

5. to remove the uncertainties as to jurisdiction of High Courts;
6. to strengthen the law relating to trade marks of drugs and articles of food;
7. to consolidate the law relating to trade and merchandise marks in India; and
8. to prevent the use of fraudulent marks on merchandise.

### Sale of Goods Act, 1930

Although this legislation is meant to regulate the sale of goods thereby protecting the interests of both sellers and buyers, yet in essence it can well be said to be a legislation primarily in the interest of the buyers - the consumers.

Section 14 to 17 of the Act have been designed to protect the interests of the buyers in terms of granting them the remedy of avoiding the transaction, besides the claim for damages, in case certain conditions are not satisfied. The following conditions and warranties are deemed to be incorporated in every contract of sale of goods unless the terms of contract show a contrary intention :

1. *Condition as to title or ownership* : There is an implied condition on the part of the seller that in the case of a sale, he has a right to sell the goods and that in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass. As a consequence of this, if the title turns out to be defective, the buyer is entitled to reject the goods and claim refund of the price plus damages.

2. *Sale by description* : Where goods have been sold by description, there is an implied condition, that goods must correspond to description. In case sale is by sample as well as by description, the goods must not only correspond with the sample but also with description.

3. *Condition as to quality or fitness* : This condition offers exception to the rule of 'caveat emptor'—let the buyer beware. This condition becomes operative where the buyer makes his purpose known to the seller and depends on seller's choice who happens to be regular trading in the commodity.

4. *Conditions as to merchantability* : This condition protects a buyer against any latent or hidden defects in the goods.

5. *Goods to correspond to sample* : Where the sale is described as a sale by sample, this condition requires the 'bulk' to be in accordance with the sample.



6. *Warranties* : Sec. 14 (b) and 14 (c) contain provisions whereby a buyer is entitled to claim damages in case the right of quiet possession of a buyer is disturbed or the goods purchased turn out to have been charged against.

Besides, Secs. 57 to 59 entitle the buyer to exercise certain rights for non-delivery of goods or for any other breach of the contract. These rights include claim for damages, specific performance, etc.

### **The Standards of Weights and Measures Act, 1956**

The standards of weights and lengths were earlier laid down in the standards of Weights Act, 1932, and the Measures of Length Act, 1889, the standards being the seer, the pound, the yard and their multiples and sub-multiples. These standards, however, were not effectively enforced throughout the country with the result that different systems of weights and measures prevailed in different parts of the country. Moreover, the same term represented different units of weight in different areas and in different trades even within the same area. This state of chaos was thought to be hampering trade and provided opportunity for the exploitation of the masses. There was, therefore, felt the need for enforcing a uniform system of weights and measures throughout the country.

Under the Act, metre has been laid down as the primary unit of length and kilogram as the primary unit of mass. The present Act lays down standards not only for mass and length, but also for time, temperature, electric current and luminous intensity. The following table shows the units of weight and measurement in respect of each of the above :

	<i>Unit</i>
1. Length	Metre
2. Mass (Weight)	Kilogram
3. Time	Second
4. Electric current	Ampere
5. Temperature	Centigrade (now celsius)
6. Luminous intensity	Candela
7. Area	Square metre
8. Volume	Cubic metre
9. Capacity	Litre

### **Agricultural Products and Marketing Act, 1937**

Agricultural Products and Marketing Act, 1937 was enacted to provide for—

- (a) grading and standardisation of agricultural commodities.

- (b) regulation of markets and market practices,
- (c) market research and surveys, and
- (d) training of personnel in agricultural marketing.

The act provides for the establishment of a Directorate of Marketing and Inspection to look into the above objectives.

The main commodities graded are vegetable oil, ghee, creamery, butter, eggs, wheat flour, rice, cotton, potatoes, gur, maize, honey and ground spices. Laboratory facilities for fixing grade standards for new products and for the existing grade standards, when necessary, are provided by the Central Agmark Laboratory at Nagpur and sixteen regional Agmark Laboratories in Calcutta, Bombay, Madras, Kanpur, Cochin, Bangalore, Patna Rajkot, Guntur and other centres. Grading of agricultural produce at the farmer's level and that of 'kapas' at the producer's level are undertaken by different grading units and centres in different states. Compulsory grading is done before export in the case of 34 commodities. The graded goods are stamped with the seal of the Agricultural Marketing Department - AGMARK.

#### **Indian Standards Institution Certification Act, 1952.**

ISI scheme which started on a voluntary basis in 1946 was later brought under ISI Certification Act, 1952. The basic idea of the legislation has been to ensure good and standardised quality of the products. Defaulters attract penalty. The maximum fine in this regard is, however, limited to Rs. 10,000 which is proposed to be raised to Rs. 50,000.

According to Dr. A. K. Gupta, Director General of ISI, till August 31, 1983, 11,810 Indian standards were in force and 10,464 (90 percent) organisations had adopted these standards. Till that date, he said, 22,104 applications had been received for ISI certification and 12,312 licences issued.

Lately, standards have been developed for many essential things like fire-fighting equipment for high rise buildings, quality control of cement, power threshers and domestic gas stoves.