

THE CONSUMER MOVEMENT AND LEGISLATION IN INDIA

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By

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The Consumer Movement was for the first time initiated in the 20s in the United States of America and was later followed in other countries like Sweden, United Kingdom, Hongkong, Japan, Israel, Philippines, Malaysia, and some other countries in Europe and Asia including India. It gradually gained momentum and became a powerful weapon in the hands of consumers in some countries like U.S.A. and U.K. while in others it just staggered until it gathered strength to become an effective voice of the Consumer. One of the most distinguished Presidents of U.S.A., Kennedy in 1963, while addressing the U.S. Congress, specially mentioned the necessity of having a strong Consumer Movement and said :

"The basic rights of consumers' must be protected in the U.S.A.". And these basic rights are —

1. **The right to safety** — meaning that the consumer must be protected against the goods hazardous to health and life.

- The author is a former Executive Director of the Council for Fair Business Practices, Bombay. The text is reproduced with kind permission of the Council.

"Free Enterprise was born with man and shall survive as long as man survives."

—A. D. Shroff

1899-1965

Founder-President
Forum of Free Enterprise

2. **The right to be informed** — meaning that the consumer must be protected against the fraudulent practices and misleading information, wrong advertising and labelling or other sharp practices of the nature.
3. **The right to choose** — meaning that the consumer must be assured wherever possible of access to various projects and services of competitive prices — i.e. assurance of satisfactory quality of goods and services at fair prices.
4. **The right to be heard** — meaning that the consumer has to be assured that his interest will receive full and sympathetic consideration in the formulation of Government policies and fair and expeditious treatment in their administration."

The responsibilities and duties of the consumer can be summarised as under :

1. Rights do not exist independently. Like a coin which has two sides, the front and reverse, the consumer rights too have equal responsibilities.
2. Complaints made by the consumer should not be vague. They should be specific with supporting information, proof and evidence.
3. The customer should also try to understand the viewpoint of a seller, manufacturer, supplier, authority, undertaking agency and the government before making a complaint.

4. The consumer ought to, as a rule, make a complaint against a system, authority, agency, manufacturing company or seller, but not against individuals by way of personal attack against them.
5. The demand for consumer protection should be fair, legitimate, genuine, reasonable, lawful and constitutional as also constructive and not destructive.

Mahatma Gandhi attached very great importance to what he described as "poor consumer" who according to him should be the principal beneficiary of the consumer movement. His views in this context deserve to be quoted. He said: "A customer is the most important visitor on our premises. He is not dependent on us, we are on him. He is not an interruption to our work; he is the purpose of it. We are not doing a favour to a consumer by giving him an opportunity. He is doing us a favour by giving an opportunity to serve him." . . . Unless we create an absolute awareness about Consumer Protectionism, unfair practices will continue, which we ought to have checked.

The saddest thing in the business world, and for that matter in India — is that a customer is either taken for granted or taken for a ride. Fleecing the customer has become so widespread that no sphere remains untouched by this insidious malady. There has been an overall erosion of moral and ethical values and this covers people in every walk of life — the

administrators, the politicians, businessmen and professionals, the working class, trade unionist and those who render different services for wage or profit. Everywhere and in all spheres of activities the spirit of service to the people with even minimum sacrifice is conspicuous by its absence. The interest of the public whom we serve or the interest of the nation of which we are an integral part — has become now a weak motivating force. The fate of Consumer protectionism or Consumer movement is therefore doomed unless positive steps are taken to reverse this trend.

The Government in its anxiety to check and arrest this trend has been enacting legislation after legislation but to no material effect. In order to protect the interest of the consumers, the Parliament of India has passed various consumer protection laws. So have the various State Assemblies in the country. Some of these Consumer Protection Laws are :

1. The Essential Commodities Act, 1955.
2. The Monopolies and Restrictive Trade Practices Act, 1979.
3. The Prevention of Food Adulteration Act, 1954.
4. The Sale of Goods Act, 1930.
5. The Trade and Merchandise Marks Act, 1958.
6. The Hire Purchase Act, 1972.
7. The Packaged Commodities Regulation Order, 1975.

8. The Drugs and Cosmetics Act, 1940.
9. The Dangerous Drugs Act.
10. The Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954.
11. The Household Electrical Appliances (Quality Control) Order.
12. The Agricultural Produce (Grading and Marketing) Act, 1937.
13. The Fruit Products Order, 1955.
14. The Bombay Weights & Measures (Enforcement) Act, 1958.
15. The Maharashtra Scheduled Articles Order, 1969.
16. The Standard of Weights and Measures (Packaged Commodities) Rules, 1977.
17. The Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980.
18. The Paper (Production and Regulation) Control Order, 1979.
19. The Indian Contract Act, 1972.
20. The Indian Standards Institution (Certification of Marks) Act, 1956.
21. The Standards of Weights and Measures Act, 1956.

22. The Maharashtra Prevention of Food Adulteration Rules, 1962.
23. The Maharashtra Food Grains Rationing (Second) Regulation, 1966.
24. The Bombay Drugs (Control) Act, 1959.

RECENT AMENDMENTS: Taking note of the complaints of consumers in general, the Government has given new direction and put more teeth in some of the above legislation to make the provisions more effective and punishments for the breach thereof more stringent and for their implementation has statutorily sought the co-operation of individual consumers, their recognised organisations, so that all these, by a joint endeavour, may march forward to the goal of full fledged consumer-protectionism.

These amendments have been made in the following form of legislations:

- (a) The Essential Commodities (Second Amendment) Bill.
- (b) The Standards of Weights and Measures (Enforcement) Amendment Bill.
- (c) The Food Adulteration (Amendment) Bill.
- (d) The Agricultural Produce (Grading and Marketing) Amendment Bill, and
- (e) The Monopolies and Restrictive Trade Practices (Amendment) Bill.

1. The amendments have been brought about mainly to check adulteration of foodstuffs and essential commodities as well as to provide strict punishment for short-weighing and short-measuring the articles sold and for not maintaining the quality of agricultural products.

2. They are aimed at conferring rights on the aggrieved consumers and/or their accredited organisations to file complaints in the courts of law.

3. The amendments have been passed with a view to promoting a voluntary consumer movement and ensuring involvement of consumers as well as recognised consumer associations for the enforcement of the Acts.

4. Recognised Consumer associations and voluntary Consumer associations have been defined as those registered under the Companies Act, 1956.

5. The amendments in the Prevention of Food Adulteration Bill, for the first time, introduces and confers power and right on the consumer associations to draw samples of food-stuffs for analysis and to initiate legal action if an article is found to be adulterated.

6. The amendment in the Standards of Weights and Measures (Enforcement) Bill also seeks to give more teeth to the 1976 Act by conferring, for the first time, rights on the aggrieved consumer or any recognised consumer organisation to file a complaint in the courts against the violation of the Act.

7. The Agricultural Produce (Grading and Marketing) Amendment Bill gives more powers and provides for stricter punishment for not following the requirements of the 1937 Act under which the Agmark Quality sign is allotted to manufacturers of agricultural products with a view to preventing misgrading of articles. A misgraded article has been defined as one not of quality prescribed for the grade designation with which it is marked. Enhanced punishment has been prescribed for unauthorised or improper marking and counterfeiting grade designation mark. The penalty has been raised from Rs. 500/- to Rs. 5000/- and imprisonment from six months upto 2 years in the former types of cases and a penalty upto Rs. 5000/- and imprisonment upto 3 years in the latter.

8. The Monopolies and Restrictive Trade Practices Act has already defined the unfair trade practices. The purpose behind specifying these practices was that the consumer, the manufacturer, supplier, trader and other persons in the market can conveniently identify the practices which are prohibited. The recent amendment in this Act too seeks to confer, for the first time, the important right to the individual consumer and voluntary and recognised consumer association to file a complaint before the M.R.T.P. Commission and being heard by it. On receipt of a complaint on their behalf the Commission is required to institute regular enquiry into every restrictive or unfair trade practice alleged in the complaint.

UNFAIR TRADE PRACTICES AS DEFINED:

The unfair trade practices have been defined under this Act which need to be reproduced here for clear understanding of the far reaching implications.

So far as Unfair Trade Practices are concerned, they have been defined in the Monopolies and Restrictive Trade Practices Act as under:—

"Unfair trade practice" means 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 following practices and thereby causes loss or injury to the consumer of such goods or services, whether by eliminating or restricting competition or otherwise — namely —

The practice of making any statement, whether orally or in writing or by visible representation which —

1. falsely represent that the goods are of a particular standard, quality, grade, composition, style or model;
2. falsely represents that the services are of a particular standard or grade;
3. falsely represents any rebuilt, secondhand, renovated, reconditioned or old goods as new goods;

4. represents that; the goods or services have sponsorship, approval, performance, characteristic, accessories, uses or benefits which such goods or services do not have;
5. represents that the seller or the supplier has a sponsorship or approval or affiliation which such a seller or supplier does not have;
6. makes a false or misleading representation concerning the need for, or the usefulness of any goods or services;
7. gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof, provided that where a defence is raised that such warranty, or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence.
8. makes to the public a representation in a form that purports to be
 - (a) a warranty or guarantee of a product or of any goods or services; or
 - (b) 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 purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;

9. materially misleads the public concerning the price at which a product or like products or goods or services, have been or are ordinarily sold or provided, and for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made.
10. give false or misleading facts disparaging the goods, services or trade of another person.

Explanation — 1. For the purposes of clause (1), a statement that is —

- (a) expressed on an article offered or displayed for sale, or its wrapper or container, or
- (b) expressed on anything attached to, inserted in or accompanying an article offered or displayed for sale or on anything on which the article is mounted for display or sale, or
- (c) contained in or anything that is sold, sent, delivered, transmitted or in any other manner

whatsoever made available to a member of the public shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained.

2. Permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price; of goods or services, that are not intended to be offered for sale or supply at the bargain price; or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.

Explanation — For the purpose of clause (2), 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, hears, or sees the advertisement would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold.

3. Permits —

- (a) the offering of 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) the conduct of any contest, lottery, games, of chance or skill, for the purpose of promoting, directly or indirectly the sale, use or supply of any product or any business interest.

4. Permits the sale or supply of goods intended to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing or packing as are necessary to prevent or reduce the risk of injury to the person using the goods.

5. Permits the hoarding or destruction of goods or refuses to sell the goods or to make them available for sale, or to provide any service, if such hoarding, destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services.

CONSUMER PROTECTION BILL — 1986: These very definitions of Unfair Trade Practices along with their explanations have been incorporated under the new legislation that has been passed by the Parliament in December 1986 separately along with the amendments in the above mentioned exist-

ing Consumer Protection laws. While the rules under the law are still to be framed the implications of this Consumer Protection Act are supposed to have profound and far-reaching impact in the years to come. According to interpretations so far available, the new Act provides for the creation of a new machinery to redress public grievances against unfair practices adopted in sale or supply of goods and services by private sector and some of public utility service organisations, e.g., if a manufacturer refuses to exchange or replace a defective television, if a trader adulterates, short weighs or short measures or hoards stocks more in quantity than that is permitted by law, publishes misleading advertisements, about articles sold, if telephone bills are wrong, if bad seeds ruin the crop, if a doctor is negligent — the range of jurisdiction is infinite. Any consumer can make a complaint or be represented by a voluntary but registered consumer organisation. So far, no legislation conferred any right on the aggrieved consumer or even recognised consumer organisations for filing complaints to be taken cognizance of by any court.

There will be a three-member District Forum with powers of a Civil Court in each of the country's over 400 districts. It will entertain complaints if the value of goods and services or the compensation sought is under Rs. 1 lakh. A three member State Commission will take on appeals from the districts or deal with cases where the money involved is between Rs. 1 lakh and Rs. 10 lakhs. A five-member national Commission

will be the next step and after that an appeal will lie with the Supreme Court. Failure to comply with the orders of any of these bodies would mean a fine of upto Rs. 10,000/- or three years in jail. These quasi-judicial bodies have been given adequate powers — the Consumer Disputes Redressal Forums will have the same powers as Civil Courts under the Code of Civil Procedure in dealing with disputes. The State Commission will be presided over by High Court Judges and the National Commission by a Supreme Court Judge. The Act also seeks to set up Consumer Protection Councils at the Central and State levels to protect Consumer rights by creating a higher level of awareness among them. It may be mentioned here that, with a view to dealing with complaints directly to be lodged with the M.R.T.P. Commission, the new amendment in the relevant Act also seeks to set up Commission benches, to begin with, at Delhi, Bombay, Calcutta and Madras to give real protection to the consumer and to obviate the necessity for consumers to travel all the way to Delhi to pursue their complaints and participate in the proceedings at Delhi. The strength of the Commission is also being raised from existing three to full eight, besides the Chairman. An additional expenditure of Rs. 51 lakhs has also been provided for the purpose.

Given the deluge of substandard and adulterated commodities and foodstuffs in the market and the generally scandalous state of the services, there can be no two opinions on the needs for such a compre-

hensive cover. But, however it is still not a panacea of all ills. The ills are deeper in their roots and much wider in range needing larger net of coverage and deeper probe into the root causes. There is a specific mention of some public utility services included but conspicuously the Bill is silent on the inclusion of goods manufactured, supplied or distributed by the public enterprises. It seems a reference to them has been carefully avoided. The question should not have been left for a controversy or an exercise of interpretation by the courts of law. This seems to be a snag or a flaw in the law in question and apparently indicates an apprehension in the minds of the law-makers that the inclusion of public enterprises in specific terms would lead to accusations that the Government is guilty of the same crimes which it does not want others to commit.

However, the amendments in the existing laws and the new Consumer Protection Bill show the will, determination and earnestness of the Government to see that the consumer movement is not allowed to suffer for want of a joint effort of the Government, consumers and business community. So far, if the laws have not been properly implemented, it is because the burden of doing so has rested entirely on a lethargic and corrupt, bureaucracy. Its power to solely decide which trader or manufacturer to prosecute is sought to be curtailed by the new legislations. Multiplicity of Acts and enforcement agencies which

created a jungle in which an aggrieved consumer simply dared not to step in has also been sought to be eliminated to ensure that consumer protection no longer remains the preserve of the bureaucracy alone. The Consumer Protection Act seems to be like a one-window-clearance. Earlier, under each of the multiple consumer protection laws, only a Government officer could prosecute an offender. But now this position stands completely altered entitling any consumer to knock at the doors of justice. As it looks from a cursory glance over the various provisions of the Consumer Protection Bill, not only traders or professionals but even public utility organisations in certain fields of activities, which are grossly inefficient — such as transport, telephones, electricity and civil distribution will have to be defended in compensation cases. However, a lot will even now depend on the interest to be shown by the State Government. It may also take a long time before the Courts and a proper machinery start functioning smoothly.

It is felt that these Consumer Protection laws would again be ineffective if the consumers for whose benefit they are passed, do not become aware or knowledgeable about them and organise themselves into strong consumer bodies who may be able to assist the law enforcing agencies in a healthy and constructive manner. There is also a fear that, with this seeming generosity of the Government in giving recognition, power and authority to individual consumers and their organisations, there will be a mush-

rooming of such organisations who may misuse them to a greater embarrassment and harassment for the business community in their day-to-day dealings.

Decidedly the rigours and the major brunt of the enactment is going to fall on the private sector. It has either to rise from the shambles or grovel in the dust. Clearly this is the writing on the wall and a challenge that the business community has to face now. The remedy lies only in self-regulation, which if not taken as an alternative, can be accepted and practised as a supporting and supplementing force. The task is stupendous and difficult in our country where manufacturers and traders are in lakhs and unscrupulousness is found at every level of business. The harassment and oppression that lies ahead with possible wrong, malicious and misdirected implementation of the enactment at the hands of vested interests will have to be met with all strength, courage and determination.

The first thing that has to be done is to educate the business community about the implications of the law. Fortunately the business community is not so disorganised as is the case of the consumers. They have their own organisations from the lowest to highest level. These organisations can and must take up this responsibility with all seriousness and sincerity at their command and direct their resources to build up a strong movement of self-regulation and self-discipline. The situation that is taking shape

today was foreseen by some eminent leaders of business twenty years back and they launched a movement of this nature with the name and style of Fair Trade Practices Association now being called the Council for Fair Business Practices, with the sole objective of improving the general image of the business community, which was going down fast. It was an attempt to establish as a standard, those principles that always guided the good business houses, but which some were losing sight of in the frenzy of making quick money. This was a unique effort because, it was the only organisation and even now it is so, devoted to promotion of fair business practices by self-regulation and self-discipline and bring all those businessmen on a common platform who believed in this principle and practised it and thereby to stop and avert the then increasing trend of Government legislations.

In the light of the provisions of the new enactments, if we examine the code of conduct evolved by the Council for Fair Business Practices we will find that a sincere adherence of its nine directives will save the business community from the vagaries of the law as it stands today. The Code consists of the following fundamental obligations —

1. They charge only fair and reasonable prices and take every possible step to ensure that prices to be charged to the consumer are brought to his notice.

2. To take every possible step to ensure that the agents or dealers appointed by him do not charge prices higher than what are fixed.
3. In times of scarcity, not to withhold or suppress stocks of goods with a view to hoarding and/or profiteering.
4. Not to produce or trade in spurious goods or goods of standards lower than specified.
5. Not to adulterate goods supplied.
6. Not to publish misleading advertisements.
7. To invoice goods exported or imported at their correct prices.
8. To maintain accuracy in weights and measures of goods offered for sale.
9. Not to deal knowingly in smuggled goods.

The views expressed in this booklet are not necessarily the views of the Forum of Free Enterprise.

"People must come to accept private enterprise not as a necessary evil, but as an affirmative good."

—Eugene Black

FORUM OF FREE ENTERPRISE

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The Forum of Free Enterprise is a non-political and non-partisan organisation started in 1956, to educate public opinion in India on free enterprise and its close relationship with the democratic way of life. The Forum seeks to stimulate public thinking on vital economic problems of the day through booklets and leaflets, meetings, essay competitions, and other means as befit a democratic society.

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