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## Consumer Protection Law In India: An Eco-Legal Treatise

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insurance services. He also describes the change that has come in the recent past as a result of the untiring efforts of consumer organisations, including filing of complaints against these monopolies. However, he still pleads for redefining the status, power, immunities, and methods of operation of public sector undertakings to ensure improvement in their performance.

Besides discussing the contract-based and tort-based remedies for defective consumer products, Saraf has made an in-depth study of the remedies available to consumers under the M.R.T.P. Act, 1984 and the Consumer Act, 1986. The chapter on the Consumer Protection Act (pp. 130-68) carries a section-wise commentary. Saraf frequently expresses his views on the language of the Act itself by criticising some of the provisions. There is an elaborate discussion of the case law filed by the CERC, including many cases which the author has himself argued as a representative of the CERC and other consumer organisations. At many places he expresses opinions different from those given in the judicial pronouncements. He boldly comments that certain decisions by consumer forums have "sounded the death knell of the emerging consumer jurisprudence in the country." (p. 137). The chapter is full of the author's own observations, criticisms, and even suggestions for amendment of the statute. The chapter on criminal law and consumer protection also makes good reading.

In the chapter on 'Framework of Consumer Protection' (pp. 205-35), the author attempts to suggest better mechanisms for consumer protection in India and highlights the role of the State agencies, self-regulation of business, both public and private, role of voluntary agencies, consumer education, and consumer advocacy which includes use of media, lobbying, demonstration and boycotts and public interest litigation. On the international front he has mentioned in detail the role of the IOCU and the UN Guidelines on Consumer Protection.

The author emphasises the activities and achievements of Ralph Nader in America under the two heads of consumer advocacy and lobbying (pp. 203-310). The American consumer movement owes a great deal to Nader's single man crusade against the mighty automobile industry. It must be submitted that India, too, needs dedicated activists like Nader to bring about radical changes with regard to consumer protection in the Indian society.

Saraf has brought the skill of his legal workmanship and practical experience to bear on this useful work and has been successful in putting across his views on the subject. The book will be found of much use to practitioners.

**5. CONSUMER PROTECTION LAW IN INDIA: AN ECO-LEGAL TREATISE  
by R.K. Nayak, 1991, Indian Law Institute, Delhi, Price Rs.350/-**

This is also one of the recent works on the subject. The author's starting point is that consumerism is a social movement to safeguard the rights and

powers of the consumers at large in relation to sellers (p. 15). " Under this concept sellers are at liberty to produce any commodity in any manner and style and to push them into the marketplace if they are not injurious to public health and safety" (p. 15). Similarly the buyers have the traditional right to purchase or not to purchase any product offered to them or available in the market. Nayak, however, laments that consumers are always at the mercy of businessmen in the marketplace and they have to purchase the goods, usually out of necessity.

Nayak argues that one of the main objectives of consumer protection is to defend consumers from unfair and deceptive trade practices. He does not accept the argument, advanced by the producers and sellers, of developing voluntary codes of conduct to defend consumer rights. He says that this argument cannot be accepted within the fold of the philosophy of consumerism. He sees the consumer himself as guardian of his own rights but also criticises the behaviour of Indian consumers, holding them responsible for their exploitation. The frequent destruction of receipts, lack of assertiveness for one's rights, and the feeling of alienation have prevented consumers from counteracting deceptive, unfair and misleading trade practices.

On the legal front Nayak notes pessimistically that whatever legislation we have in India to protect the interests of consumers is not enforced properly so as to control and eliminate deceptive acts and practices of sellers. He argues that the legislative enactments aimed at protecting the consumer interest are yet to become instruments of positive action in redressing consumer grievances. The consumers also need to be educated and informed to defend their rights.

His conclusion, therefore, is that the most effective method of safeguarding the interests of consumers is not greater intervention by the State, but the active participation of voluntary consumer protection agencies and consumers themselves in the free market. He cautions that often governmental regulation is not effective enough. He, therefore, pleads for a new mechanism wherein the Central and State Governments, voluntary agencies, co-operative consumer societies and other organisations committed to the cause of consumer protection can play a vital role.

The author argues that consumerism in India is yet to take birth to become a people's movement. Throughout the work he expresses dissatisfaction with the state of affairs of Indian consumer protection. However, on the basis of more recent evidence, some of the statements must be questioned. Happily, today consumerism has already taken birth in India. Though still in its infancy, it is fast becoming an effective movement. If the volume and nature of case law coming before the agencies envisaged and established under the Consumer Protection Act, 1986, i.e. the District, State and National Commissions is any indication, then it can safely be observed that a new consumer jurisprudence is now rapidly developing in India. The movement may still be largely confined to

urban areas, but with dedicated efforts of voluntary consumer organisations and consumer activists the day is not far off when more people from rural areas will start approaching the consumer courts. My own recent survey of the case law before consumer courts shows a healthy trend. Matters like inflated telephone bills, delayed insurance claims, inadequate roadways and railway services and airline crashes are being debated before these agencies. Social action litigation is steadily gaining impetus in this field. In many cases voluntary consumer organisations and activists have been able to obtain relief for consumers. However, there is still an urgent need for a flexible approach to be employed on the part of the institutions under the Act while entertaining and disposing of complaints from consumers, and that too in minimum possible time. Consumer Forums should also encourage the complainants to approach them without the assistance of lawyers to prevent judicialisation of the whole process, a trend against which consumer activists have been warning.<sup>11</sup> It is also incumbent on the Forums/Commissions to see the post-decisional enforcement of their orders. Spreading awareness among others and encouraging them to approach the courts in the event of any type of exploitation are equally legitimate expectations from consumers. The author argues that if every enlightened consumer starts informing his fellow beings, awareness shall spread quickly, leading to rapid improvements in the position of consumers. Only then consumerism as a movement shall be successful in its entirety.

Professor Nayak has dealt with the problem of consumers from a historical perspective, tracing the history of the movement and of the legislative measures undertaken in India. The merits of the work include systematic and in-depth analysis of the topic from various angles. Nayak has also discussed the role of government in consumer protection and has examined issues like implied warranty and merchantable quality, misleading advertising and its control, food adulteration, identification of unfair trade practices and civil and criminal protection of consumers. Simplicity of language and relevant comparisons with the position in the countries of the world are further plus points of this work. The author also makes useful suggestions like the establishment of a Consumer Ombudsman and a separate Ministry of Consumer Affairs in India.

However, the chief drawback of this work is the near absence of any discussion on the Consumer Protection Act of 1986 itself. The author explains, in fact, that many chapters of the book were printed much before 1986. Similarly the recent case law on the subject before the Consumer Forums is also not included in this book. Still this book will be useful to many practitioners, as it contains purposeful discussions of the provisions of many other statutes concerning Consumer Protection.

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11 See, Arun Kumar Bhat, "Prevent Judicialisation: Interview with Prof. Manubhai Shah." *Frontline*, Vol. 8, No. 24 (6 December), 88-89 (1991).

In summing up it may be submitted that though there are now a number of substantial studies on Consumer Protection which cover angles of the problem, there will be a need for legal scholarship and constant updating of the literature in this rapidly developing field of Indian consumer protection jurisprudence. It is hoped that the present article shall increase awareness among legal practitioners about the need to be upto date in this particular field and that the sharing of information from various parts of India may be improved.