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Vinati Kastia

Yamini Pande

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The New Economic Policy and Consumer Protection

Vinati K. Kastia and Yamini Pande*

The growth of industrialisation led to the production of a variety of consumer goods. Driven by the motive of maximizing profits, producers indulged in consumer exploitation, and impersonalized consumer-producer relations. Gradually, there was an awareness among the consumers of their vulnerability and this led to the emergence of the consumer movement.

In India, the government initiated a step in the right direction in response to the call of the consumer movement by enacting the Consumer Protection Act, 1986¹. The Act brings justice a step closer to the common man by informalizing the legal process. The machinery in the consumer forums is far more approachable due to the inclusion of non-judicial members. The fact that no court fees need be paid and that all disputes have to be settled within a period of 90 days speak volumes for the positive aspects of the Act.²

The consumer movement has assumed greater significance in the prevailing economic scenario. The New Economic Policy with its aims of globalization, liberalization and privatisation, attempts to bring about changes that will have a profound impact on the consumers and consequently, the consumer movement.

Privatization is probably the best way of increasing efficiency and production without sacrificing quality. The open market system encourages healthy competition, and in a survival-of-the-fittest situation, industries will ensure that their products are upto the mark. Privatization would also contribute greatly towards lightening the burden of consumers vis-a-vis public sector utilities and services. Presently, the public sector utilities fail miserably in living upto the consumers' expectations. This can be gauged from the fact that there are a number of cases pending against the Life Insurance Corporation, the Telecommunications Department, Indian Airlines and other organisations where bureaucracy breeds corruption.³ The only way to break the bonds of red-tapism is to hand over their entire functioning to private individuals or bodies who would ensure their smooth working. This is chiefly because the private sector has recognized that efficiency is the key to profit maximization.

With the advent of the New Economic Policy, the Act needs to be examined to determine whether it can be as effective an instrument in present times as it was yesterday. A Working Group highlighted the loopholes in the Act, and made a series of recommendations with a view to make the Act more effective and better equipped to serve the consumer.⁴

*II B.A., LL.B. (Hons.), NLSIU.

1. Hereinafter the Act.

2. Rules framed under Sub-Section (1) of Section 30 of the Act.

3. According to research carried out at Consumer Education Research Centre, Ahmedabad; hereinafter CERC.

4. See Report of the Working Group constituted in 1990 to suggest suitable amendments to the Consumer Protection Act, 1986 and the Monopolies and Restrictive Trade Practices Act, 1969. The Report focussed mainly on the Act in view of the amendment to the MRTP Act by the 1991 Ordinance.

Recommendations of the Working Group

The first recommendation given by the Group in its report was on the scope of the word "complaint" under section 2(1)(c) of the Act. It recommended that the scope should be enlarged to cover restrictive practices such as tie-up sales, service agreements, warranties, conditions of contracts and trade practices which place the consumer at a disadvantage by either stipulating conditions prejudicial to consumer interest or by imposing unjustified costs on the consumer.

Secondly, consumer organisations should be encouraged to file class action complaints in cases involving larger interest in the appropriate consumer forum, as is being done in the developed countries. Further, the Consumer Dispute Redressal Agencies should be empowered to initiate *suo moto* proceedings when a case of public importance comes to their notice.

Their third recommendation concerned various definitions in the Act. The definition of "consumer" under the Act excludes persons who purchase goods for commercial purposes, or hire services without consideration. Thus, persons who purchase goods for self-employment to earn their livelihood and persons who avail of services from government hospitals, local bodies and other agencies are not covered by the Act. This provision causes genuine difficulties to persons who buy goods for self-employment and indeed, for survival, such as a poor widow buying a sewing machine or a rickshaw puller purchasing a rickshaw. The exclusion of purchasers of goods for commercial purposes has to continue to prevent large scale businesses from taking advantage of the provisions of the Act as otherwise the consumer forums would get involved in unnecessary inter-business wrangles. However, it is essential to safeguard the interests of small consumers who buy goods for self-employment to earn their livelihood. Therefore, an exception for such people, who possess a genuine need, is mandated.

Services such as health services in hospitals run by the government or local bodies, and services provided on a mandatory basis by the latter, should also be brought under the purview of the Act.⁵ An exception to the general rule that services without consideration are excluded from the Act should be made explicit. Housing schemes also need to be brought within the purview of the Act, as they affect the lives of citizens. Section 2(1)(d) should be amended to incorporate these changes.

With regard to the machinery under the Act, the Group recommended that additional powers should be conferred on the National Commission/State Commission/District Forum, to provide adequate relief to aggrieved consumers. The power to issue, cease and desist orders, to grant appropriate interim relief; to give directions for recall of defective and unsafe goods, hazardous to health and safety, to direct issue of corrective advertisements by advertising agencies are some of the additional powers that need to be conferred. On the question of jurisdiction, the Group recommended that the monetary jurisdiction of the District Forum should be increased from Rupees one lakh to Rupees five lakh and that the State and National Commissions should have unlimited monetary jurisdiction. The National Commission should continue to have original and appellate jurisdiction. However,

5. *Ram Kali v. Delhi Administration I* (1991) CPJ 309. The Court held that persons availing themselves of the facilities of Government hospitals where service was subsidised out of Government funds could not be treated as consumers under the Act.

when a case before the National Commission pertains only to a particular State, the National Commission should have the power to transfer it to the State Commission of that State. The State Commission should also have jurisdiction outside the State for the enforcement of orders intended to have operation inside the State. This, however should not be extended to entertain complaints beyond the territorial jurisdiction laid down in the Act.

The Group also recommended that the rights of consumers as laid down in Section 6⁶ of the Act should be contained in a separate chapter. This is essential as there is no other legislation guaranteeing these rights.

Prior approval of the central government for the establishment of State Commissions and District Forums should be dispensed with. Moreover, the area of selection of the Presidents of these forums should be enlarged, by making officials who are experienced in administering law or who have been members of quasi-judicial boards or tribunals eligible. This is essential because at present, the state government is finding it difficult to fill up these posts. There should also be a selection Committee at the National and State levels consisting of representatives of the government, the judiciary and consumer organisations to select the non-official members.

Since the consumer forums are not intended to have elaborate proceedings, the Group recommended that the opposite party may be allowed to avail the services of a lawyer only under certain circumstances, such as, if the complainant or if the National Commission, State Commission or District Forum desires their appearance due to legal complexities in the case, for reasons to be recorded in writing and with the permission of the complainant.

In order to avoid unnecessary delay and inconvenience to the aggrieved consumer, the Group recommended that the decisions of the National Commission, State Commission and District Forum be brought under Article 323A⁷ of the Constitution to exclude the jurisdiction of the High Court.

The Working Group also made recommendations regarding the MRTP Act, 1969, with a view to realising the objectives of the New Economic Policy. The (Amendment) Ordinance of 1991 has deleted the chapter of the MRTP Act which required companies to obtain prior approval from the Central Government in matters relating to expansion, establishment of new undertakings, mergers, amalgamations and takeovers. The changes brought about by this Ordinance led to the realization of the Working Group that no elaborate changes were necessary. However, the Group suggested that as restrictive trade practices work against the interest of the consumer, it is necessary that any proposal for amalgamation or merger of any two undertakings which may restrict market competition should require the prior permission of the Monopolies and Restrictive Trade Practices Commission.

The Group also recommended that certain restrictive trade practices such as tie-up sales, service guarantees, conditions of contract and trade practices which prejudicially affect the interest of the consumer, should be within the jurisdiction of the consumer forums. For example, many a time the consumer is forced to purchase a particular brand of a gas stove while getting a gas connection. Such restrictive trade practices should be brought under the Consumer Protection Act, 1986, the reason being that no elaborate investigations are necessary in such cases.

6. Section 6 refers to the objects of the Central Council, which are to promote and protect the rights of the consumers.

7. Article 323A of the Constitution refers to administrative tribunals and their functioning.