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New Age Challenges in Consumer Protection in India

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Abstract:

With the business landscape undergoing significant changes in the last decade, need for an evolved consumer protection framework is being felt across sectors and nations. This is largely due to emergence of digital economy, technological advancements relating to how transactions are carried out and growing complexity of goods and services.

Consumer protection frameworks need to be in line with these changes in business environment. This paper studies the emerging trends which have a bearing on the interests of consumers in the marketplace.

The paper further explores the new challenges being faced in the Indian market with a special focus on protection of the consumers in financial services, e-commerce and of vulnerable groups. It needs to be ensured that consumers are not subject to unfair and deceptive practices, have access to relevant and comparable information, have recourse mechanisms available to resolve disputes, and privacy of their personal information is maintained.

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1. Introduction

With fast paced developments taking place in the marketplace, the dimensions of consumer protection are rapidly changing. Complex products, innovative services, technological advancements, aggressive selling practices characterize the current marketing age. When the market landscape is so dynamic, the consumer protection frameworks therein cannot afford to remain static. They have to keep evolving, adapting and improving all the time. In addition, the globalization of the marketplace also poses challenges of its own.

Challenges relating to protection of consumers in marketplace include ensuring consumers have access to adequate information, are not subjected to unfair and deceptive practices and ensuring availability of recourse mechanisms in case of disputes. These challenges are more pertinent in relation to financial services, e-commerce transactions and for vulnerable groups. Financial services & E-commerce lack sector-specific legislation to protect consumers while 'grey areas' which are not sufficiently regulated continue to exist. With the advancement in technology and increasing complexity of products and services on one hand and absence of adequate regulation on the other, there are openings for unscrupulous elements to exploit the consumers.

Consumer protection concerns are shared globally and are not specific to any country or sector. International principles, standards, and inter-government cooperation in this regard can go a long way to serve consumers' interests.

2. Objectives & Methodology

The aims and objectives of this paper are to discuss existing consumer protection framework in India and to explore challenges to consumer protection in today's time

This paper is primarily based on literature review. Existing consumer protection framework in India was assessed to highlight areas which require focus of our future policy initiatives.

The paper is divided into two main sections. In the first section, the paper briefly lists down existing consumer protection mechanism in India. In the second section, the gaps in existing provisions are identified and emerging challenges to consumer protection are studied.

3. Existing Consumer Protection Frameworks in India

Consumer Protection Framework can be said to have three main arms as discussed below:

3.1. Legal and Institutional Framework

This framework includes the existing laws, regulations and institutions in place to protect the interests of consumers in India and can be divided into two categories: -

1. General legislations & institutions
2. Sector specific legislations & institutions

The Consumer Protection Act, 1986 (COPRA) in India provides a three-tier, quasi-judicial machinery, at the National, State and District levels, for the protection of consumers. The objective of the Act is to provide for better protection of the interests of consumers and to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes. Presently, there are 629 District Forums and 35 State Commissions in place with the National Consumer Disputes Redressal Commission (NCDRC) being at the apex to provide inexpensive, speedy and summary redressal of consumer disputes.

Under Section 6, the Act establishes Consumer Councils at the National, State and District level, the object of which is to promote and protect the rights of the consumers. The objectives listed under section 6, can be translated into the basic consumer right as provided in India which are:

- (a) Right against selling hazardous goods
- (b) Right to be informed about the quality, quantity, potency, purity, standard and price of goods
- (c) Right to choice of goods at competitive prices
- (d) Right to be heard
- (e) Right to seek redressal against unfair trade practices
- (f) Right to consumer education

The Consumer Protection Act is currently under revision and the Consumer Protection Bill, 2015 is under consideration in the Parliament. Along with several changes from the previous Act, the Bill proposes to bring in an independent consumer authority called the Central Consumer Protection Authority (CCPA). The central government will set up the CCPA to promote, protect and enforce the rights of consumers. The CCPA will be an independent authority with investigative powers to deal with matter that concern consumer interests. (Consumer Protection Bill, 2015).

Department of Consumer affairs, under Ministry of Consumer Affairs, Food and Public Distribution is responsible for enforcement of Consumer Protection Act in India. The department is also responsible for Monitoring Prices, ensuring availability of essential commodities and controlling Bureau of Indian Standards (BIS) etc.

Some other major general legislations in India are Indian Contract Act, 1872; Sale of Goods Act, 1930; Standards of Weights & Measures Act, 1976; Bureau of Indian Standards Act, 1986; Competition Act, 2002.

Some sector specific legislations are -

- Insurance Regulation and Development Act, 1999
- Reserve Bank of India Act, 1934
- Telecom Regulatory Authority of India, 1997

Sector specific regulators exist to ensure that consumer protection provisions and regulations are in place within their sectoral jurisdictions. The formulation and adoption of independent regulatory mechanisms in the area of electricity, telecommunications, insurance etc. has recently being undertaken in India. Some of these regulators are:

- Reserve Bank of India (RBI) for Banking Sector
- Insurance Regulatory and Development Authority (IRDA) for Insurance Sector
- Securities and Exchange Board of India (SEBI) for Securities Sector
- Telecom Regulatory Authority of India (TRAI) for Telecom sector

3.2. Self-regulation

Self-regulation by manufacturers, service providers and industry associations is existing in various sectors in the form of code of conducts, citizen charters or by following a set of best practices. For example, in the banking sector, most banks have adopted a Code of Bank's Commitment to Customers formulated by the Banking Codes and Standards Board of India. Similarly, industry associations like The Association of Mutual Funds in India (AMFI), Advertising Standards Council of India (ASCI) work to promote and protect the interests of consumers. Internal Complaint Handling procedures of sellers & service providers constitutes a very important part of consumer protection. As a good practice, some organizations have Customer Complaints systems which are ISO 10002 compliant.

3.3. Consumer Groups

No consumer protection framework is complete without the involvement of consumers' groups in awareness campaigns, dialogues and feedback to policy makers and advancing the interests of consumers in general. Many Voluntary Consumer Organizations (VCOs) are operating in India and actively involved in complaints handling, education, advocacy, litigation, creating awareness amongst consumers. For example, some prominent VCOs in India are Consumer Education and Research Centre (CERC), Consumer Unity of Trust Society (CUTS), Mumbai Grahak Panchayat (MGP), Voluntary Organization in the Interest of Consumer Education (VOICE).

4. Challenges in Consumer Protection

Consumer Protection concerns are not new and have been around for long. But the changes in the marketplace have revealed new issues in these age old problems. The consumer protection frameworks discussed above need to adapt and evolve to adequately address the following concerns:

4.1. Information Asymmetry

Information asymmetry in a marketplace occurs when one party to the transaction possess more information on the products/services. In a typical consumer market, the producer or seller possess more information as compared to the customer. When making purchase

decisions, consumers would like to know three pieces of information (London Economics, 1997): the price of the product, the quality of the product, and, the terms of trade.

In practice, consumers are imperfectly informed; they may not have the full (or any) details about these three pieces of information. This information asymmetry puts the consumers in a disadvantageous position, making them vulnerable to exploitation by the producers. Information asymmetry present in the market is one of the leading causes of consumer detriment experienced by consumers.

Information asymmetry is more prevalent in certain industries such as financial services, telecom, and e-commerce. These are the fastest growing sectors in India, where increasing number of consumers are entering the market. Information asymmetry in newer markets as these can arise due to the following:

- Complexity of the products/services offered: The consumer might not fully understand the product/service or the working/functioning of the same.
- Complex terms of contract: In absence of any standard contract, the consumers might not understand terms of contract
- New or innovative terminology: Consumers might not understand the terms used by the sellers.

4.2. Redress Mechanism

Redressal Mechanisms provide recourse to consumers who have had unpleasant experience in the market. Consumer Protection Act, 1986 provides for quasi-judicial system consisting of the Consumer Fora, State Commissions and National Commission. Some specific challenges relating to redress mechanisms are:

- Long, cumbersome, time-consuming legal process
- Onus is on the consumer to take action
- Lack of understanding about legal intricacies
- Lack of Alternate Dispute Redressal Mechanisms

4.3. Data Protection & Privacy

Data Protection & Privacy have gained importance with advancement of information technology. Boundary-less transactions and online dealings have brought in new challenges and frauds, especially in the context of data protection. Protection of credit details and credit history of consumers is a major risk area, as these details can be easily stolen and abused.

The issue of data protection has various elements that require attention. These include:

- Privacy of Personal Details of Consumers
- Private data Protection
- System and Data Integrity
- Data of consumers sold as commodity by business
- International Flow of Data

4.4. Unfair Trade Practices and Misleading Advertisement

Unfair Trade Practices are fraudulent, deceptive or dishonest trade practices or business representation of the product/service, which is prohibited by law or actionable under law by a judgement of the court. When advertisements try to influence the consumers by making unsubstantial claims they go against the interest of the consumers; they become deceptive, false or misleading and a question arises on the ethics of manufactures and sellers. (CUTS International, 2013)

There are certain challenges being faced in India as regards UTPs, as listed below: -

- COPRA is mainly a compensatory legislation, cannot grant penalties or punishments to offenders
- Individuals do not have the power or resources to take upon large business houses against any unfair trade practices or misleading ads.
- Consumer authorities under COPRA do not possess any investigative powers.
- Consumer courts and authorities cannot take up a case *suo moto*. They can act only when complaints are lodged.
- The scope of COPRA and the sectoral legislations clash that gives rise to confusion resulting in forum shopping by the aggrieved parties.

4.5. Quality Standards

Quality standards ensure the minimum quality compliance by producers. Indian producers follow either Indian standards as developed by Bureau of Indian Standards (BIS) or international standards by bodies such as ISO, WHO, FAO, etc. Certification of Indian standards is done by BIS. The compliance certification of international standards is done by various third parties. All international standards that are being followed in India are voluntary in nature. Standards developed by BIS fall under two categories: mandatory and voluntary. Standards relating to essential products and commodities fall under mandatory category, for example as in case of electric appliances and electronic goods. Some issues relating to Quality standards in India are

- Most of the standards in India are voluntary in nature
- A strict standards compliance is lacking
- Many existing Indian Standards do not conform to international standards
- The Third parties certifying compliance to standards may not themselves be authentic.

- Standardisation of services in India is not very popular in India

4.6. Vulnerable Consumer Groups

Vulnerable consumer groups require special protection against abuses and exploitation in the marketplace. Children, women, elderly, illiterate are some consumer groups likely to be vulnerable

- Due to Digital divide i.e. inequality due to access to information & communication technology and e-skills, elderly and children are more exposed to risks from their digital activity.
- People lacking access to internet, ICT or skills to use these resources might suffer with regards to various opportunities and developments. (EU, 2014).
- Children are especially vulnerable to abusive advertisements aimed at them and undesirable internet access. Children's growing participation in social networking websites has raised privacy concerns as having a profile on a social network has become an essential part of their online lives (OECD, 2009).

5. Conclusion

Due to changing nature of products and services and technological advancements in the business environment, new risks to consumer welfare have emerged. These necessitate updation of our existing consumer protection machinery. While Consumer Protection Act is under a process of revision and some of the gaps identified are being addressed, a lot still needs to be done.

As proposed in Consumer Protection Bill 2015, establishing a new specialized body, Central Consumer Protection Authority (CCPA) with investigative powers, sufficient expertise, adequate resources and continuity is definitely the need of the hour. The Authority should possess the following features: transparency, accountability, independent and fair composition, selection and appointment.

In addition to these proposed changes in Consumer Protection Bill 2015, the challenges discussed in the paper need to be looked at. The UN Guidelines on Consumer Protection can serve as a guiding principle in this regard. Consumer Protection framework, however, needs to be designed for the specific needs of Indian consumers keeping in mind the evolving nature of the marketplace. Further, interests of vulnerable groups should be given special attention and safeguards.

Considering the global nature of today's economy, consumer issues have become an international issue. Cross boundary trade and online transactions have resulted in a global customer base of many companies. Thus, International Cooperation in issues related to consumer protection have grown in its importance.

In order to ensure that interests of Indian consumers are protected in the rapidly changing business landscape, effective intervention by policy makers is required. It is time we bring our laws and their implementation in line with the advancements in marketplace. Such timely action would ensure consumers maintain their trust and confidence in the market and are well protected from market failures.

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