

Unfair trade practices in India

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Abstract

Consumer means a person who buys goods for a consideration which has been paid or promised or partly paid or partly promised. Unfair trade practice means a trade practice, which for the purpose of promoting any sale, use or supply of any goods or services, adopts unfair method or deceptive practice. In India there are some authorities who deal in case of unfair trade practices; these are District forum established under section 10 of Consumer Protection Act, state commission under section 16 of Consumer Protection Act. Supreme Court of India also has appellate jurisdiction in cases of decision given by National Commission. Competition Commission of India is also doing a perfect job for the promoting of competition in India.

Keywords: consumer, consideration unfair trade practices, sale and buy, services, price, goods, deficiency etc

Introduction

The contemporary world under the aegis of liberalization, free-market and open trade has led to limitless industrial development turning the whole world into a global village-market. This has contributed to manifold linkages in the political, ideological, economic, social, health and industrial spheres whereby no nation, no community and no individual can remain an island by himself. The goals of Development for All, Wealth for All, Health for All, Clean Environment for All and Consumer Justice for All – which were rather an Eldorado seem to become a near possibility in the twenty-first century. The consumers are continually subjected to manipulate and non-manipulated unfair trade practices such as monopoly situation, cut-throat competition, sub-standard quality, misrepresentation etc. to garner benefits by extortious, illegal and immoral means detrimental to public interest in general and the consumer interest in particular. Consequently the notion of Consumer Sovereignty is merely a populist slogan having no or little bearing in the market place and the business world which is propelled by laissez fair overtones like demand-supply, profits, sub-standard quality, high price wherein the buyer is generally at the receiving end.

Generally consumer means a person who buys any goods for a consideration which has been paid or promised or partly paid and partly promised ^[1]. So buying of goods for consideration makes a person consumer. A wonderful significance of consumer is that age, competency, soundness of mind is not necessary. For example a minor cannot contract and contract by minor shall be void-ab-initio ^[2], but it does not mean a minor cannot be a consumer. An insane under treatment in mental hospital is a consumer. For consumer it is not necessary that there must be buying of goods

Only, there may be services. Any person who hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised is also called consumer. The word consumer also includes association ^[3]. But the consumer association can seek relief for the benefit of a consumer only on whose behalf it files a complaint and not for itself ^[4].

Consumer

The consumer is a person who pays for goods and services. A consumer plays very important role in economic system of a nation. Consumer uses economic services or commodities in an economic system. Without consumers demand producer would lack motivation key to produce. The consumer also forms part of the chain of distribution. If we will discuss the consumer in sense of law, the law interprets consumer in relation to consumer protection laws and definition of consumer is often restricted to living persons not to corporations and businesses and exclude commercial users. Consumer in respect of any particular goods or services, means— (a) A person to whom particular goods or services are marketed (b) A person who has entered into a transaction with a supplier in the ordinary course of the supplier's business (c) if the context so requires or permits, a user of those particular goods or a recipient or beneficiary of those particular services, irrespective of whether that user, recipient or beneficiary was a party to a transaction concerning the supply of those particular goods or services. According to section 2(d) of consumer protection act, consumer means a person who buys any goods for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment and includes any user of such goods other than the person who buys such goods.

Unfair trade practice

An unfair trade practice means a trade practice, which for the purpose of promoting any sale, use or supply of any goods or services, adopts unfair method or deceptive practice. Unfair trade practice can be categorized as under-

- False representation
- False offer of bargain price
- Free gifts offers and prize schemes
- Noncompliance of prescribed standards
- Hoarding, destruction etc.

False Representation

- Falsely suggestion regarding quality, standard, quantity, grade, composition, style or model of goods or services.

- False representation regarding approval, performance, characteristics, accessories of goods or services.
- False or misleading representation concerning the need or the usefulness of goods or services.
- Materially misleads about the prices at which such goods or services are available in the market.

False offer of Bargain Price

- Where an advertisement is published in a newspaper or otherwise, whereby goods or services are offered at a bargain price when in fact there is no intention that the same shall be offered at that price for a reasonable period or reasonable quantity, it shall amount to an unfair trade practice.

Free gifts offers and prize scheme

- The unfair trade practices under this category means offering any gifts, prizes or other items along with the goods when the real intention is different, creating impression that something is being offered free along with the goods, when in fact the price is wholly or partly covered by the prize of the article sold or offering some prizes to the consumer by the conduct of any contest, lottery or game of chance or still with real intention to promote sales or business.

Non-compliance of Prescribed standards

- Any sale or supply of goods for use by consumer, knowingly or having reason to believe that the goods do not comply with the standards prescribed by some competent authority, in relation to their performance, composition, contents, design, construction, finishing or packing as are necessary to prevent or reduce the risk of injury to the person using such goods, shall amount to unfair trade practice.

Hoarding, Destruction etc.

- Any practice which permits the hoarding or destruction of goods or refusal to sell the goods or provides any service with an intention to raise the cost of those or other similar goods or services shall be an unfair trade practice⁵.

Legal Remedy

Remedy generally means a successful way of curing an illness or dealing with a problem or difficulty. Whereas legal remedy means a way of solving a problem or ordering someone to make a payment for harm or damage which has been caused by such person by court of law or to do something to correct or improve something that is wrong^[6].

The absence of fair price, weak bargaining, lack of business ethic etc. the consumers for whom goods are produced become a usual casualty in the hub-bub of the market place. The lure of profits and incomes induces enterprises in collusive practices and behave in a way which is contrary to overall interests of the consumers. Consequently a spate of consumer laws have been passed especially in the latter half of the twentieth century for consumer protection against adulteration of foods, drugs, cosmetics in regard to quality of consumer products, product safety, price warranty of goods and so forth fixing accountability and strict liability on the seller-cum-manufacturer rather than the consumer which has paved the way in the emergence of a new jurisprudence concerning consumer interests, claims and needs.

The first ever international conference of leaders took place in The Hague on March, 1960. Five of the 17 organizations present signed papers to create the International Organizations of Consumer Unions (IOCU). The global consumer movement was born.

Meanwhile at the biennial conferences that IOCU organized, leaders spoke of a wider consumer agenda and particularly the need to address poverty, access to basic goods and services and the challenges faced by consumers in developing countries.

The early 1970s, a regional office was created in Asia, its advisory committee came from India, Singapore, Malaysia, Fiji and the Philippines, a very different stakeholder group from the founders of IOCU itself.

Anwar fazal, head of the Asia Pacific Office, took IOCU into new ways of campaigning and advocacy. He targeted transnational corporations with specific campaigns and played a leading role in setting up issue based networks with partners from outside the consumer movement, including the international Baby Food Action Networks (IBFAN)^[7].

UN Guidelines on Consumer Protection

These methods and activities brought result. Among them, the seminal international document of the consumer Movement – the United Nations Guidelines on Consumer Protection was adopted by the UN in 1985 after 10 years of campaigning. This gave important legitimacy to the principles of consumer rights and practical support for developing national consumer protection legislation^[8].

World Trade Organization

Advocacy began to focus on international trade negotiations, particularly those of the newly formed World Trade Organization (WTO). IOCU also increased its work at the International Organization for Standardization (ISO) and the codex Alimentarius Commission (Food standards) as international standards became the reference point for disputes about artificial barriers to trade^[9].

These developments in global governance made it increasingly difficult for individual countries to adopt national standards that were different from those agreed internationally.

Present Scenario

Today the founding principles of the movement – still energies and inspire people and organizations. The focus has broadened to address poverty reduction, corporate responsibility, services and sustainable consumption as well as providing advice on consumer products. As the movement enters its second 50 years, its commitment to campaigning advocacy and engagement continues to grow^[10].

The following are the General and special Laws and Practices for unfair trade practices^[11] -

- **Removal of Defects** – if after proper testing the product founds to be defective, then the ‘remove its defects’ order can be passed by the authority concern.
- **Replacement of goods** – order can be passed to replace the defective product by a new one product of the same type.
- **Refund of price** – order can be passed to refund the price paid by the complainant for the product.
- **Award of compensation** – if because of the negligence of the deliverer goods suffer physical or any other loss, then compensation for that loss can also be demanded.

- **Removal of deficiency in service** – if there is any deficiency in delivery of service, then orders can be passed to remove that deficiency. For instance, if an insurance company makes unnecessary delay in giving the claim then orders can be passed to immediately finalize the claim.
 - **Discontinuance of unfair trade practice**– if a complaint is filed against unfair trade practice then practice can be banned with immediate effect. For instance, if a gas company makes it compulsory for a consumer to buy gas stove with the gas connection, then this type of restrictive trade practice can be checked with immediate effect.
 - **Stopping of Sale and withdrawal of Hazardous goods**– The sale of products which can be hazardous for health and life, their sale can be stopped and such goods can be withdrawn from the market.
 - **Payment of adequate cost**–There is also a provision that the trader should pay adequate cost to the victim concerned.
 - **Criminal laws**– it is necessary to know that along with above remedies a consumer has also criminal remedies, and in case of forgery, cheating, mischief, misappropriation of goods, consumer aggrieved may approach to the proper authority for violation of his rights.
 - **Civil laws**– Sales of goods act, consumer protection act, and specific relief act also contain provisions regarding aggrieved consumer.
 - **MRTP Act, 1969**- The monopolistic and restrictive trade practices Act, 1969 was enacted to ensure that the operations of the economic system does not result in the concentration of economic power in hands of fews, to provide for the control of monopolies, to prohibit monopolistic and restrictive trade practices and regulation of unfair trade practices.
MTP(monopolistic trade practice)- A monopolistic trade practice is that which represents abuse of market power in production and marketing of goods and services by eliminating potential competitors, charging= unreasonably high prices, preventing or reducing competition, limiting technical development deteriorating product quality etc.
 - It can be said that the MRTP Act was successful to an extent. However, due to scarcity of resources, lack of clearly defined procedures and rules and regulations the act was not as effective as it was supposed to be. Also, the changing economic and trade environment (brought by the new economic policy, 1991) made it necessary for a change in MRTP Act. Currently the said act has been renamed as the Competition Act, 2002 with a few changes to it.
 - **The Competition Act, 2002**- This act was enacted by the Parliament of India and governs Indian competition law. It replaced the archaic the Monopolies and Restrictive Trade Practices Act, 1969. Under this legislation, the Competition Commission of India was established to prevent activities that have an adverse effect on competition in India. This act extends to whole of India except the State of Jammu and Kashmir. It is a tool to implement and enforce competition policy and to prevent and punish anti-competitive business practices by firms in the market. A competition law is equally applicable on written as well as oral agreement, arrangements between the enterprises or persons.
The Competition Act, 2002 was amended by the Competition (Amendment) Act, 2007 and again by the Competition (Amendment) Act, 2009.
 - **Anti-Competitive Agreements**- When enterprises, persons or associations of enterprises or persons, including cartels, enter into agreements in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which cause or are likely to cause an "appreciable adverse impact" on competition in India are called anti-competitive agreements. Such agreements would consequently be considered void. Agreements which would be considered to have an appreciable adverse impact would be those agreements which-
Directly or indirectly determine sale or purchase prices, Limit or control production, supply, markets, technical development, investment or provision of services, Share the market or source of production or provision of services by allocation of geographical area of market, nature of goods or number of customers or any other similar way, Directly or indirectly result in bid rigging or collusive bidding.
- Following are the Authorities and Agencies for Unfair Trade Practices in India**
- **District Forum** – A district forum is a place in a district where a consumer can lodge a complaint if he is misguided or deceived by any service provider or trader. District forum is the lowest consumer court in the hierarchy of redressal forums under Sec. 10 of Consumer Protection Act. At present there are 630 district forums across the country.
 - **State Commission** – State commissions have been established at the state levels by virtue of sec. 16 of Consumer Protection Act. State commission is next, after district forum in the hierarchy of consumer dispute redressal forums. There are 35 state commissions at present in India. State commissions can entertain all the matters where the value of services or goods exceeds Rs. 20 lakhs, but does not go beyond Rs. 1 crore. If the claim is above one crore, then it does not falls under its jurisdiction.
 - **National Commission** – A national consumer dispute redressal commission is established by the central government under the Consumer Protection Act. It is considered as an apex court, because it oversees the functioning of the state commissions and district forum also.
 - **Supreme Court** – if any person is not satisfied with the Judgment given by national commission can make appeal in the Supreme Court. There is a procedure for filing an appeal against the order of national commission. An appeal can be made with the Supreme Court against the order of national commission within 30 days from the date of order and this period can be extended for further 15 days. Supreme Court entertains the appeal only when the appellant has deposited in prescribed manner 50% of that amount or fifty thousand whichever is less
 - **Competition Commission of India** - Competition Commission of India is a body corporate and independent entity possessing a common seal with the power to enter into contracts and to sue in its name. It is to consist of a chairperson, who is to be assisted by a minimum of two, and a maximum of ten, other members.
It is the duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade in the markets of India. The Commission is also required to give opinion on competition issues on a reference received from a

statutory authority established under any law and to undertake competition advocacy, create public awareness and impart training on competition issues.

Commission has the power to inquire into anti-competitive or unfair agreements or abuse of dominant position or combinations taking place outside India but having adverse effect on competition in India.

Penalty

If any person fails to comply with the orders or directions of the Commission shall be punishable with fine which may extend to Rs.1 lakh for each day during which such noncompliance occurs, subject to a maximum of Rs.10 crore. If any person does not comply with the orders or directions issued, or fails to pay the fine imposed under this section, he shall be punishable with imprisonment for a term which will extend to three years, or with fine which may extend to Rs. 25 crores or with both.

PLA (Permanent Lok Adalat)

The word Lok Adalat means people's court. It is strictly not a court in the conventional sense because Lok adalat cannot adjudicate on facts by application of law. It is a forum where dispute between the parties are resolved by conciliation and participation. Lok Adalat is one of the most important components of the ADR System operating in India.

Criminal courts and civil courts have also jurisdiction in the matter of unfair trade practices to some extent.

Conclusion

From the above discussion it is clear that consumers are continually subjected to manipulate and non-manipulate unfair trade such as monopoly situations cut throat competition, substandard quality, misrepresentation etc. Wonderful significance of consumer is that age, competency, soundness of mind is not necessary. The word consumer also includes associations. On the other hand unfair trade practices means adopting unfair method or deceptive practice for the promotion of sale or use or supply of any goods or services. It includes false representation false offer of bargain price, free gifts offers and prize schemes noncompliance of prescribed standards etc. There are some legal remedies are available in India for unfair trade practices. These are removal of defects, replacement of goods, refund of price, award of compensation, removal of deficiency in service, discontinuation of unfair trade practice, stopping of sale and withdrawal of hazardous goods, payment of adequate cost etc. Beside these remedies The Competition Commission of Act, 2002 and Consumer protection Act, 1986 play a vital role in protection of consumer rights in case of unfair trade practices in India.

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