

**Problem of Unfair Trade Practice & Its Impact on Society with Special Reference to
Consumer Protection Act 1986 in Jalgaon City**

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ABSTRACT

THE CONSUMER PROTECTION ACT, 1986 is milestone in the history of socio-economic legislation and is directed towards public welfare and public benefits. The revolutionary changes in industry and scientific developments have lead to more consumer goods being produced. But in most of the cases due to shortage of time, the buyers are purchasing many ready made goods without actually assessing the quality and quantity of goods. The cut throat competitions between the manufacturers and traders have led to the exploitation of the consumers. The main object of the Consumer Protection Act, 1986 is to protect the genuine interest and rights of the consumers. But the consumer forums have no power to grant interim relief. In order to provide speedy justice to the consumer the Act should amended and the consumer forums should be given power grant interim relief to the complainants.

This paper makes an initial assessment of the problems posed by unfair trading practices and exploitation of consumer by organizations and trained sellers, existing trade practices and policies to regulate and implementation and establishment of consumer council. The main objective of this paper is to know the unfair trade practices and to aware consumer from exploitation.

Key words: Legislation, Consumer, Unfair trade Practice, Consumer Forum, Consumer Council, Exploitation

Introduction

The consumer legislation is a beneficiary piece of legislation and the legislature in order to help the consumer has not prescribed any court-fee to be affixed on the complaint. But it expected from the complainants that they should come before Redressal Agencies with the clean hands and that the reliefs claimed by them are not inflated.

On the strict reading of the provision of the act as whole it would be seen that in enacting the statute, the intention of parliament was provide protection and relief to four categories of consumer namely:-

- (i) Person who have suffered loss or damage as result of any unfair trade practice adopted by any trader.
- (ii) Person who have purchased goods for consideration which are found to suffer from one or more defects.
- (iii) Person who have purchased goods for which the trader has charged a price in excess of the price in excess of the price fixed by or under any law for the time being in force, or displayed on the goods or any package containing such goods ;
- (iv) Person who have hired any services for consideration when the services provided are found to suffer from deficiency in any respect

This Act also includes various rights of consumer:-

- (a) The right to be protected to be protected against the marketing of goods (and services) which are hazardous to life and property;
- (b) The right to be informed about the quality, quantity, potency, purity, standard and price of goods for services, as the case may be) so as protect consumer against unfair trade practices ;
- (c) The right to be assured, whenever possible, access to a variety of goods at competitive prices;
- (d) The right to be heard and to be assured that the consumer's interest will receive due to consideration at the appropriate Forums;
- (e) The right to seek redressal against unfair trade practices or unscrupulous exploitation of consumer; and
- (f) The rights to consumer education.

Consumerism is likely to dominate the Indian market. The transition will be form a predominantly “sellers market” to “buyers market” , where the choice exercised by the consumer will be influenced by the level of consumer awareness achieved. By the ‘consumerism’ it means the process of realizing the rights of consumer as envisaged in the Consumer Protection Act,1986 and ensuring right standards for the goods and services for which one makes a payment.

Today the consumer is called the king of the market. He is at the center stage all market activities. It is constant endeavor of producers that the production of a product must conform to the needs of consumer. In addition ti the satisfaction of consumer, it is also the endeavor of producers that there should be maximum. They, therefore, try to increase their sales by all possible means. Some of the means adopted to increase sale are such as to serve both the producers and the consumers. On the other hand, some of the methods adopted to

increase the sale are such as to sub serve the interest of producers but the same are against the interest of consumer. In other words the consumers are exploited. In contemporary years, increasing awareness has been given to consumer consciousness and protection of their and protection their interest which has led to the significance in functioning of Redressal Forums. The issues relating to consumer welfare affect the entire people since everyone is a consumer in one way or the other. Ensuring consumer welfare is the responsibility of the government. Accepting this, policies have been framed and the Consumer Protection Act, 1986 was introduced. A separate Department of Consumer Affairs was also created in the Central and State Government to exclusively focus on ensuring the rights of consumers as enshrined in the Act. This Act has been regarded as the progressive, comprehensive and unique piece of legislation. The Indian Consumer Protection Act as described as one “which has set in motion a revolution in the field of consumer rights, the parallel of which has not been seen anywhere else in world.”

Concept of Unfair Trade Practice

In the new corporate and business world today where there is cut throat competition the business persons daringly use unfair trade practices to edge over the other. This may give them advantage for short term but in long run it affects the organization and eventually the entire industry and society.

Definition of Unfair Trade Practice

In this Part, unless the context otherwise requires "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provisions of any services, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:-

- (1) The practice of making any statement, whether orally or in writing or by visible representation which, -
 - (i) Falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;
 - (ii) Falsely represents that the services are of a particular standard, quality or grade;
 - (iii) Falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;
 - (iv) Represents that the goods or services have sponsorships, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;
 - (v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;

- (vi) Makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;
- (vii) 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 to the effect 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;
- (viii) Makes to the public a representation in a form that purports to be -
 - (i) a warranty or guarantee of a product or of any goods or services; or
 - (ii) 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;
- (ix) Materially misleading 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;
- (x) Gives false or misleading facts disparaging the goods, services or trade of another person.

Explanation: For the purposes of clause (1), a statement that is -

- (a) Expressed on an article offered or displayed for sale, or on 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 on 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, game 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, or are of a kind likely 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 packaging 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 or destruction or refusal raises or tends to raise or is Intended to raise, the cost of those or other similar goods or services.

Judicial Contribution on Unfair Trade Practice

1) Godfrey Phillips India Ltd Appellant Vs. Ajay Kumar Respondent

Subject Index: Unfair Trade Practice - whether the impugned advertisement amounted to - the respondent filed a complaint in respect of an advertisement given by the appellant, alleging unfair trade practices. The advertisement was issued in newspapers and magazines in 1999 for the cigarettes manufactured and sold by it under the brand name of "Red & White" in respect of which the directions have been issued - the impugned advertisement apart from showing the packet of cigarettes with the aforesaid brand name stated "Red & White smokers are one of a kind". The advertisement also shows the smiling face of actor Akshay Kumar holding a cigarette. It also contains the statutory warning "Cigarette smoking is injurious to health" as well as price of the pack. The complaint was dismissed by the District Forum as

the complainant had also filed a suit in relation to the impugned advertisement in the Civil Court. It was therefore held by the District Forum that parallel proceedings in the District Forum by way of Public Interest Litigation could not be entertained. In appeal, the State Commission affirmed the order of the District Forum. Thereafter, complainant withdrew the suit, but filed Revision Petition before the National Commission. The National Commission held that the slogan in the advertisement that "Red & White smokers are one of a kind" showing the image of Akshay Kumar indicated that "smokers of Red & White cigarettes could be super actor performing all the film stunts without duplicates". According to the appellant, no evidence was led in the case by the complainant either with regard to the ability of film star Akshay Kumar to carry out stunts without duplicate or with regard to the alleged impression created by the impugned advertisement upon the complainant - according to the National Commission was sufficient to hold that the impugned advertisement amounted to unfair trade practices - there was no allegation or finding of loss or injury caused to the respondent on account of the advertisement issued in 1999. The complainant himself had stated that he was smoking cigarettes for the last two decades — it is not understandable as to how the National Commission even proceeded to deal with the complaint. It also noted that the complainant had not moved any application or obtained any permission under Section 13(6) of the Act and/or no such permission was granted — the orders of the National Commission are indefensible and are set aside. The appeals are allowed with no order as to costs.

2) *Devyani Beverages Ltd. vs. Coca-Cola Ltd*

The judgements of the Supreme Court are binding on all other courts. But, this would be only to the extent the Supreme Court categorically sets out a binding principle. The Commission, in its judgement, felt obliged to simply follow the judgement of the Supreme Court in the HMM case. Coca-Cola Ltd.⁸ had introduced a promotional scheme for Coke. A lucky winner could get a flat in Mumbai, a Honda City car, mobile phones, and walkmans. The case was brought before the Commission by its rival Pepsi that it was a lottery under Section 36 A (3b). The Commission had taken it up as an unfair trade practice before the Supreme Court gave its HMM case judgement. Later, the Commission said the case was very much like the HMM case, and thus, not a lottery.

3) *Godrej GE Appliances Ltd. vs. Whirlpool of India Limited*

The Whirlpool Ltd.⁹ was back before the Commission to get the interim injunction lifted on its 'scratch a gift scheme' in the light of the HMM case. In the earlier instance, the Commission was convinced that the scheme involved an element of chance or luck and,

therefore, prima facie, violated Section 36A(3) of the Act. It had, thus, put an interim injunction on Whirlpool to stop the scheme. The Commission, post-HMM case, reversed its reasoning. Citing similarity with the HMM case, it observed: In this case also, there is no draw of lots nor any price charged for participation in the scheme. Each participant got the value for his or her money and in addition stood a chance of winning a prize. According to the Commission, the Whirlpool case was on even sounder foundation because: ... while some purchasers of Horlicks in the 'Hidden Wealth Prize Offer' did not get any prize, in the 'Scratch a Gift Scheme' of the respondent, every purchaser of scheme would get gifts though of varied values not a result of human reason, foresight, sagacity or Design but is a result of chance. The Commission refuted the point by arguing that Since everyone was assured a gift, there was no chance. The Commission ruled that the bigger prizes 'were securable by purchasers only by chance.' And, thus, the scheme attracted Section 36A(3b). After the HMM judgement, however, the Commission reversed its reasoning: In a lottery or a game of chance, while some participants get the prizes offered, others remain deprived of the same. This does not appear to be the case with the respondent's scheme. The distinguishable feature of the impugned scheme is that every buyer gets some prize or the other be it small or big cash discount or some other prize. This eliminates the possibility of the gift scheme being totally a game of chance. This being so, the prize scheme of the respondent does not infringe upon the provisions of Section 36A (3b).

4) N. Ravindranath Kamath v. Spice Communications Ltd - Phone Connection on the promise tower being built

Kamath was approached by Spice Communications Ltd. who supplied form and booklet wherein a map of Karnataka was printed indicating that the tower would be erected at a place called Virajpet. On that assurance Kamath filled up an application for the connection by paying Rs. 3,100/- to them. Sim card was supplied at a cost of Rs. 6,800/-. Spice Communications could not erect the tower and thus Kamath could not use the cell phone from Virajpet despite a sum of Rs. 22/- being charged per day. On the map of Karnataka which was printed in the brochure it was assured by mid 99. Spice Communications did not construct the tower because it was not viable. A consolidated amount of Rs. 30,000/- along with Rs. 10,000/- was paid to Kamath and the Commission held that this was an unfair trade practice.

Statutory Provision Relating To Unfair Trade Practice in Consumer Protection Act 1986.

Consumer Protection Act of 1986 - Summary

The act in itself is rosy and seems omnipotent to promote consumerism in India. The law states that the consumer courts have the authority similar to that of a Judicial Magistrate of the first class in attaching properties and arresting persons in case any of its verdicts are violated or not adhered. But in practice, the law and the consumer court system suffer from the following drawbacks:

1. Seldom do companies pay heed to the consumer court. Their reports, orders and summons are very commonly ignored. As a result, most consumer cases drag on unnecessarily without any outcome.
2. Seldom do companies adhere to the verdict. As a result once the verdict comes, proceedings to execute the verdict take even more time of the complainant.
3. Consumer courts are not known to be devoid of corruption, like other courts in our country.
4. Consumer courts are overwhelmed and underfunded. The government paints very rosy statistics that 84% of cases in National Consumer Commission, 77% of cases in State Commission and 91% of cases in District Consumer Forums are disposed. However, it does not tell you how long it takes to dispose a case, nor how many cases are disposed in the favor of the consumer. We would have to assume a very large amount of time and a very low percentage as answers.
5. According to the Supreme Court there are 3.5 crore pending cases in the Indian courts today. Statistically, it could take 350 to 500 years to dispose of the cases pending in India. Add to this the fact that our government is inefficient in appointing Presidents for District Forums, and creating, encouraging and relishing bureaucratic delays, you would be extremely lucky if you can get your case disposed in 5 years.

However, we do still encourage you to file complaints at the various consumer courts as per the provisions of the Consumer Protection Act of 1986, as although a slow one, we think of it as a start on India's progress towards consumerism. Finally, we encourage you to seek other measures to fight against anti-consumer companies as explained in the following articles.

Consumer Disputes Redressal Agencies

This section of the act provides for the creation of consumer courts. The central government is given the responsibility to create and maintain the National Consumer Disputes Redressal Commission in New Delhi. The state government is given the responsibility to create a State

Consumer Disputes Redressal Commission at the state level and a District Consumer Disputes Redressal Forum at the district level.

Table 1: The statutory powers and jurisdiction of the three summerization

Amount of Compensation You Seek	Court	President	Other Members
Up to Rs. 20 Lakh	District Consumer Disputes Redressal Forum	Must be qualified to be a District Judge.	Two other members; one must be a woman
Rs. 20 Lakh to Rs. 1 Crore	State Consumer Disputes Redressal Commission	Must be a person who is or has been a Judge of a High Court.	At least two other members.
Higher than Rs. 1 Crore	National Consumer Disputes Redressal Commission	Must be a person who is or has been a Judge of the Supreme Court	At least four other members.

You cannot file a complaint in a consumer court if two years have elapsed after the cause of action (such as payment of a bill or the incident that started the dispute with the company

Problem of the Study

Every person in India is consumer. He shall entertain human rights; the constitution also guarantees certain fundamental rights to every Indian. Consumerism is part and parcel of the guideline given by constitution. In day to day life every consumer is cheated by the well organized and trained seller/trader or manufacturer of goods and services. Exploitation of the consumer by the seller is a white collar crime. There is no ill intention in the minds of the sellers. The sole motto is achieving abundant profits and profits only ten rupees for one rupee investment. For this purpose, the adopt certain restrictive and unfair trade practices. Adulteration of food, selling goods injurious to the public health, selling narcotic drugs, liquor, panmasala, cigarettes, obscene literature, etc. Are some of white collar crimes done by some one of the seller. Adopting restrictive and unfair trade practices, adulteration of food, selling the expired drugs, etc. are socio-economic crimes. These are not violent acts. They are committed by illegal acts by means of concealment and the purpose being to get the huge profit. “Consumerism” prevents such illegal and unfair practices.

Though the Consumer Protection Act 1986 passed for protecting interest of consumer at large and for that purpose several redressal agency established but still all this efforts fail to protect consumer in full satisfaction. Because the problem of unfair trade practice researcher want to curb the problem from society. This research work creates and awareness among the consumer about their rights and try to solve the problem of unfair trade practice.

Research Methodology

Research is work of watching the things in from as they appear and then to examine and differentiate, as to what they appear and as to what they really are.

There are two methods of Research:

- 1) Doctrinal or Non-Empirical Research.
- 2) Non-Doctrinal or Empirical Research.

For the Purpose of the present research, the researcher has opted for the second method i.e. non- doctrinal or Empirical Research method as the problem forming the subject of the research is solely related to the consumer and there problems it is not possible to complete the research in the true sense unless there is an interaction with the consumer at large

Sources Of Data

Both documents and primary sources, primary as well as secondary. Documents: - Books refer case laws.

Objectives of Study

- I) To Study the exploitation of consumer by well organised and trained seller.
- II) To find out various remedy available to consumer.
- III) To Identify specific unfair trade practices those are currently in existence in India and defines their nature and magnitude.
- IV) To determine the relevant policy, regulatory and implementation challenges with reference to unfair trade practices.
- V) To study how the consumer protected by the consumer protection counsel to establish at central and state level.
- VI) To study various rights of consumer available under the Consumer Protection Act 1986.

Hypothesis

It is a theory entertained in order to study the facts and examine the validity of the theory.

According to George Caswell, "Hypothesis is a summary temporary and imaginary related to subject of study".

According to Good and Hatt, "Hypothesis is a proposition which can be put to test to determine its validity

"According to Poline V Young, "A provisional central idea which becomes the basis for fruitful investigation is known as a working hypothesis".

Thus hypothesis may not be a true one. It is a claim for truth. It is a bridge in the process of inquiry or search which brings with it some felt problem and ends without the resolution of the problem.

Analysis & Interpretation of Data

Q 1 Which age group you are belongs?				
Age Group	14-21	22-35	35-50	50 & above
No of Respondent	41	35	14	10

Q 2 Do you know about unfair trade practices?			
	YES	NO	can't say
No of Respondent	58	35	7

Q 3 Which types of unfair trade practices have you suffered from?				
	Undue Influences	Fraud	Black marketing	Any other
No of Respondent	12	42	32	14

Q 4 In which types of business you are face the unfair trade practices?				
	Agriculture Sector	Education Sector	Hospitals	Any other
No of Respondent	53	13	29	5

Q 5 Do traders takes undue advantages of you?			
	YES	NO	can't say
No of Respondent	55	40	5

Q 6 Did you complaint against Infringer?			
	YES	NO	can't say
No of Respondent	11	67	22

Q 7 Do you know about consumer protection act 1986?			
	YES	NO	can't say
No of Respondent	32	57	11

Q 8 Do you know how to file a case in consumer protection act 1986?			
	YES	NO	can't say
No of Respondent	26	62	12

Q 9 Did you file in consumer protection act 1986?			
	YES	NO	can't say
No of Respondent	2	91	7

Q 10 Can consumer protection act gives you justice?			
	YES	NO	can't say
No of Respondent	2	91	7

Q 11 How many days the results came?				
	Within a week	Within a month	Within a half year	More than one year
No of Respondent	35	57	8	0

Q 12 Are you satisfied with justice?			
	YES	NO	can't say
No of Respondent	98	2	0

Q 13 Are you aware about CPA 1986 to your family, friends etc.?			
	YES	NO	can't say
No of Respondent	73	21	6

Q 14 Are you & and your family faces another types of fraud?			
	YES	NO	can't say
No of Respondent	46	42	12

Major Findings

Having the due regard of the data, guidance collected through the survey, the researcher is of the opinion that, following are the essential major findings of the whole of the survey.

- 1) If the act of CPA 1986, properly implemented then it became BHRAMASTRA for the purpose of protection to general people.
- 2) Hierarchy of authorities under CPA 1986 are good for the purpose of protection to people and control which of them.
- 3) The object of the Act gives speedy justice and less expense are partly successes in now the time.
- 4) In the CPA 1986 the consumer can be appear and argue his case in consumer forum, no need of advocate, this good for consumer.
- 5) Government success to propagate the information about CPA 1986 through electronic media, newspaper.

Conclusion

This is true that UTP is an inseparable part of the trade & business but it is not the fair part of trade & business. It may give to you benefits within short period but in long run it has a notable impact on trade & business. It has a direct impact not only on that particular company but also on entire market. The impact of UTP can effect the reputation of industry, country and the employee working in that organization. Therefore companies should not concentrate on the shortcut ways and get involve in UTP

However so far as the hypothesis of the topic is concerned, following points will help us for knowing it's result as whether proved or otherwise. Only on the basis of the survey made and data collected.

The seller makes food adulteration sell duplicates commodities in UTP that cheat not for loss, that only for profit then ultimately proves Hypothesis No. 1

Generally seller are status full person in society and not directly cheat then that crime are not liquidated in other crime then it prove this is white collar crime then ultimately proves Hypothesis No. 2

Consumer not suffer loss if they follows the rules and regulation of statues then this prove the not follows the law and suffer loss then ultimately proves Hypothesis No. 3

The trader easily cheat the consumer and consumer also suffer from UTP then this is sign of trader trained in tracking then ultimately proves Hypothesis No. 4

Even after the statues exist, consumer suffer from UTP then this shows law fail to protect then ultimately proves Hypothesis No. 5

Suggestions

- 1) Govt. tries to propagate through the advertisement about the information, rights, which remedies and authorities are available in district level for the protection of consumer rights through news paper, TV program, and electronic media.
- 2) To make compulsory subject about consumer protection and UTP in primary education.
- 3) As a large no of person cheated by the well trained traders are belongs to village site so for creating awareness among that people government should establish a local committees in that villages for the protection of consumer.
- 4) Awareness camp should be arranged in schools and villages about UTP.
- 5) To make obligatory on legal authority for the purpose of ,
 - I) Speedy dispose of cases
 - II) Give free legal aid
 - III) About fair justice

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