

# **Proceedings**

**National Seminar on**

## **Consumer Protection in India: Problems and Prospects (February 25-26, 2008)**

Sponsored by

**Department of Consumer Affairs  
Ministry of Consumer Affairs, Food and Public Distribution  
Government of India, New Delhi**

Jointly organized by



**G.B. Pant Social Science Institute, Jhusi, Allahabad**



**Centre for Consumer Studies, IIPA, New Delhi**

**National Seminar on**

# Consumer Protection in India: Problems and Prospects

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## Proceedings

### Introduction

Indian market today is dominated by the consumerism, particularly after a decade from economic reforms process. It is gradually being transformed from a predominantly sellers market to a buyers market where exercised choice by the consumers depends on their awareness level. Consumer rights could be protected in a competitive economy only when right standards for goods and services for which one makes payment are ensured by evolving a network of institutions and legal protection system. Ensuring consumer welfare is the responsibility of the government as every citizen of the country is a consumer in one way or the other.

However, an unmistakable duality exists in the way the consumer has been represented in the literature on consumerism. The dominant position is that all consumers function as free, discriminating, and happy individuals, making rational choices while consuming goods and services in the market. Diametrically opposed is the view that the consumer is an irrational being irresistibly drawn to the market, but unaware of the imminent threat posed by it. Sometimes this distinction is made to differentiate between consuming communities among which high information and awareness prevail, from those where they are low. All consumer awareness/protection movements ideally aim to create an 'informed' consumer. It seems that with the gradual transition of the feudal into a market society, the term consumer began to earn greater respectability. By the nineteenth century consumer came to be used as a counterpoint to the term producer. The nineteenth century view of the consumer has survived in most capitalist democracies. In fact, consumers have a 'secondary relationship' with goods and services, because they are forced to live with and through services and goods that they themselves did not create. Thus, the consumer still remains as a 'marginal group' in today's dominant market economy of the world.

In order to address some of the issues outlined above, G. B. Pant Social Science Institute, Allahabad in collaboration with Indian Institute of Public Administration, New Delhi organized a two days National Seminar on 'Consumer Protection in India: Problems and Prospects', during February 25-26, 2008. The seminar has been sponsored by the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, Government of India, New Delhi. The main objective of the seminar was to arrive at some broad understanding on the issues of protection of consumer rights, role of adjudicatory bodies, need/scope of consumer movement and the available policy options in Indian context. In addition to the Inaugural and Valedictory Sessions, the sub-themes of the seminar have been worked out as follows:

1. Consumer Rights and Responsibilities;
2. Consumer Protection Act and Role of Adjudicatory Bodies;
3. Service Sector and the Consumer;
4. Medical Negligence and the Consumer.

In all, 22 papers had been presented by the experts belonging to multiple disciplines in various sessions of the seminar. Apart from the experts presenting papers, other participants of the seminar included Presidents/ Members of the District Consumer Forums, Faculty Members of G.B. Pant Social Science Institute, members of the Judiciary, NGOs, Students, Research Scholars and representatives of the government organizations (List of Experts and Participants, Annexure-I). The Seminar received sufficient media coverage. A summary of the session-wise discussions of the seminar is presented in the following paragraphs.

## Inaugural Session

The Inaugural Session of the Seminar began in the Auditorium Hall of G.B. Pant Social Science Institute, Allahabad on February 25, 2008. Delivering his Keynote Address on this occasion, Professor S.S. Singh, Coordinator, Centre for Consumer Studies, Indian Institute of Public Administration, New Delhi argued that the efficient and effective programme of Consumer Protection is of special significance to all of us, as we all are consumers.

Even a manufacturer or provider of a service is a consumer of some other goods or services. If both the producers/ service providers and consumers realize the need for co-existence, adulterated products, spurious goods and other deficiencies in services would become a thing of the past. Professor Singh concluded that the active involvement and participation from all quarters i.e. the central and state governments, the educational Institutions, the NGO's, the print and electronic media and the adoption and observance of a



Inaugural Session in Progress

voluntary code of conduct by the trade and industry and the citizen's charter by the service providers is not only necessary but a *sine qua non* for the success of the Consumer movement. The need of the hour is for total commitment to the consumer cause and social responsiveness to consumer needs. This should, however, proceed in a harmonious manner so that our society becomes a better place for all of us to live in. He also emphasized on revolutionizing the present consumer movement that would succeed only with the active involvement of the young and energetic class of the Society.

The Chief Guest of the Session Honorable Justice A.P. Misra, Former Judge, Supreme Court of India, pointed out that in today's globalized era the problem of a consumer is of very crucial importance. Protection connotes someone is there as protector and protected. Consumer problem often is depicted as trader versus consumer but the trader himself is also a consumer. Justice Misra informed that in *Satyuga* no violation took place as all performed their purest duties dictated by the divine law. However, the present days world is



Hon'ble Justice A. P. Misra

generating impurities of all kinds. The consequences of today's mass consumption are leading to generation of these impurities in basic livelihood resources and the degrading environment badly. Therefore, the production of good human beings is more important than production of goods and services only. He suggested that the issue of protecting the consumers calls for evolving healthy Institutional back up system, awareness generation and grievances redressal system. Our school curriculum should include consumer rights and traders obligations to the society.

Earlier welcoming the distinguished guests of the seminar, Professor Pradeep Bhargava, Director of the Institute hoped that the issues like access to health, education and livelihoods of the poorest who suffer out of poor qualities of these services would also be discussed and policy recommendations made for the future. Delivering his presidential remarks, the Chairperson of the Session Professor Suresh Misra, Chair Professor Centre for Consumer Studies, IIPA, New Delhi informed about the various initiatives taken up by the Government of India for the protection of consumer rights. He hoped that the institutions like G.B. Pant Social Science Institute will collaborate in these valuable academic activities in future. Introducing the theme in the beginning, the Coordinator of the Seminar Dr. K.N. Bhatt argued that the healthy markets only could maximize welfare of the consumers with certain underlying assumptions. However, in most of the developing countries the markets are imperfect and sick. Net result in such situation is the exploitation of the consumers. In a rudimentary economy, argued Dr. Bhatt, commodities were exchanged for commodities as per their use value. This situation changed to the exchange of commodities for money further leading to commodities production as per the requirements of the consumers. In present days world the situational is diametrically changed to profit maximization by resorting to investment in terms of money for commodity production and earning more money as per the exchange value of goods and services. Commodities and services under these circumstances are primarily produced for exchange value. He suggested for assigning due consideration to the traditional Indian view point of *Bhoga*. Finally, Dr. Bhatt proposed a formal vote of thanks.

## **Consumer Rights and Responsibilities**

After concluding the Inaugural Session, the first session of the day on 'Consumer Rights and Responsibilities, began at 12.30 afternoon on February 25, 2008. The first-half of the session has been Chaired by Professor S.S. Singh and the second-half by Sri Chandra Prakash, President, District Consumer Forum, Allahabad and Co-Chaired by Professor Shamim Ahmad from Aligarh Muslim University, Aligarh. Ms Sapna Chadah from IIPA, New Delhi was the Repporteur for the session. Five papers were presented in the session. Presenting his paper on



Session 'Consumer Rights and Responsibilities' in Progress

'Consumer Protection in India in a Regime of Consumption: Some Unresolved Issues', Professor Lalit Joshi examined the notion of consumer protection in India within the larger context of the practice of consumption. He argued that the existing consumer protection initiatives in India address only to the needs of the elite and empowered consumers. A disempowered consumer on the other hand, has no alternative choice except to agitate or may resort to violent resistance sometimes. Many problems arise only when consumption is regarded as a derivative of production. Numerous deceptive, disruptive and misleading tendencies are followed mainly through advertisements to mould the needs of consumers. Professor Joshi suggested that the terms consumer, consumption and consumer protection need to be read afresh in the light of globalization, particularly because some of these threaten to challenge the foundational bases of traditional social science formulation.

Dr. T. Ravichandran in his discourse on 'Towards a Self-Reliant Indian Consumer: Problems in Perspective' discussed the problems and theories applicable to the Indian consumers. He said that the average Indian consumer is susceptible to capitalist controlled media influences and is self-depreciated and unsure of his needs and wants. Indian consumers need to be understood and their problems resolved through law and other devices. He discussed theory of commodity fetishism deployed to explain subjective feelings towards consumer goods. Dr. Ravichandran concluded that Indian consumer needs to be taught, trained and should be made to learn to consume. Consumer should not ask what the government can do for them but first think what they can do for themselves.

Dr. Bhaskar Majumder in his paper 'Consumer Rights and Human Rights: Some Questions' highlighted the problem of protecting consumer rights that requires in the first place existence of basic minimum rights as individuals. Secondly, the basic minimum entitlements need institutional acceptance as rights. In underdeveloped countries like India rights based institutional approach is often missing, either because of non-existence or improper functioning of intuitions and because of weak bargaining power of individuals. Professor Rais Ahmad gave a holistic view of the consumer protection regime in India through his paper 'Consumer Protection in India: An Overview'. He discussed the new emerging dimensions of consumer protection in changing scenario of globalization. He suggested to make Consumer Protection Act (CPA), 1986 more effective and meaningful. Sri K.C. Dwivedi in his paper 'Consumer

Protection in India: Problems and Prospects', jointly written with Sri S.N. Shukla, has highlighted some the important aspects of CPA, 'the Magna Carta' of consumers. He felt that the enactment of the Act is a right step in right direction for protecting the interests of the consumers from exploitation.

## Consumer Protection Act and Role of Adjudicatory Bodies

The session on 'Consumer Protection Act and Role of Adjudicatory Bodies' was Chaired by Professor Lalit Joshi, Co-Chaired by Professor Rais Ahmad and Dr. T. Ravichandran was the

Reporteur. Five papers were presented in the session. Sri Ravi Kiran Jain in his paper "The Myth of Consumer Protection in the Present Era" at the outset linked the Constitution of India with the consumers. He pointed out that tall claims made by the political leaders of the country to remove poverty and give equal opportunity to all remained only a myth. In terms of markets, although the market is projected as a buyer's market, in reality, it remains to be a seller's market. In this light, the CPA, only serves to help the knowledgeable but not the poor and needy. Sri Jain concluded with the note that we need to address the larger issues associated with CPA seriously by confronting various aspects of governance, human development, etc.



Session 'Consumer Protection Act and Role of Adjudicatory Bodies' in Progress

The paper on 'Medical Negligence: the Changing Scenario Under Indian Law' was presented by Professor Rakesh Khanna. He mainly focused on the important aspects of medical negligence and pointed out that the CPA itself is based on negligence based remedy which needs to be first ascertained. In order to do so, one has to go to the law of torts. Although in this sense, it is not new as the CPA still covers those doctors who are paid directly or indirectly by the consumers. The paper threw light on various court cases and judgments in this regard. Justice Chandra Prakash in his paper on 'Consumer Protection Act: Some Anomalies' noted that after a dispute dismissed by the consumer courts, it cannot be readmitted, also violation of the Act demands only minimum imprisonment and fine amount. He recommended for the amendment of the Act on these aspects.

Professor A.N. Singh in his paper on 'Participation as Means of Consumer Empowerment: Challenges and Opportunities' highlighted the concern for the empowerment of consumers by participation as the participation only can develop the ability and competence to fight and accomplish more work. Overall, Professor Singh advocated a holistic approach that includes the social, legal religious and cultural aspects of the consumerism. In paper on 'Consumer Protection Act: A Boon to Consumers', Dr. L.M. Joshi threw some insights from the administrative and training side, from which the CPA is found to be very useful. Hence, advocacy of the Act is considered to be very important. Also, the present Act can be made more effective by taking feedback from the consumers. There evolved a lively discussion after the paper presentations. The session ended with the chairs appreciating the speakers for giving such a thought provocative and informative insights.

## Service Sector and the Consumer

First Session on 'Service Sector and the Consumer' on the second day of the seminar began at 9.30 AM with Professor Pradeep Bhargava and Professor A.N. Singh as the Chairperson and Co-Chairperson and Dr. Ajita Singh as the Rapporteur. Presenting his paper on 'Market and the Rural Consumer: Need for Policy Intervention' Professor Suresh Misra discussed some specific strategies and programmes with a view to empower rural consumers in order to achieve one of the objectives of the CPA to promote consumer education and awareness. He argued that in the era of consumerism and market economy the problems of rural consumer have not been adequately addressed. The rural consumer remains disadvantaged as their right to information, choice, redress, education and the right to be heard are not sufficiently fulfilled. They are exploited in many ways due to poor knowledge about their rights. The rural consumer who depends largely on weekly market especially in the remote areas, to purchase essential things is often cheated in price, weight and measurement. Professor Misra suggested for the development and adjustment of the existing consumer protection and consumer welfare polices for meeting the specific requirements of rural consumers more effectively.



Session 'Service Sector and the Consumer' in Progress

Dr. Jabir Ali and Tribhuvan Nath discussed the emerging issues related to food safety and consumer protection in existing policy environment in the country. The regulations on food safety and consumer protection have been assessed to bring synergy in effective implementation. The consumer perception on food safety and protection has been analyzed by survey of 631 samples in urban locations in six districts of Uttar Pradesh. They concluded that the consumer want safe, good quality and convenient food products which has to be met by proper policy framework. At present, we have multiple regulations on food safety and protection of consumer's interests which need to address the consumer's concerns in effective and integrated manner. Dr. P.M. Prasad in 'Consumerism and the Liability Rules: An Economic Perspective' introduced the asymmetric information about the attributes of goods and services between sellers and consumers. He advocated for strict liability to be preferred if it is of more importance to give an incentive to the tortfeasor to change the activity level than to the victim. The favouredness of strict liability over negligence should be based on the arguments of unilateral precaution, risk spreading and lower administrative costs.

Professor Samim Ahmad in 'Consumer is the Loser: Random Examples Analysed' noted that the business practices in Indian scenario have failed to support the claims of the consumers. Most of the business offers simply delude the customers and still try to win their loyalty without fully safeguarding their long term interests. Analyzing a few real life examples against the theoretical standards and the harsh reality, he concludes that in this age of information, high technology and innovation the consumer remains deprived of the basic rights. The buyer, by and large is misled, deceived and

robbed as usual. Dr. Bipasha Chaudhury in her joint paper with Professor M.M. Krishna on 'Consumer Protection in 21<sup>st</sup> Century with Special Reference to TRIPS' dealt with TRIPS agreement of WTO as a safeguard to the consumers interest by adding various exceptions and limitations in its clauses. She ended with a suggestion that it is necessary to create laws to at least limit the level of profits that a company can generate. Dr. Arun Bhadauria in 'New paradigms of Consumer Protection in Agribusiness in U.P.' felt that the farmers should be freed from bottlenecks, so that the rural economy prospers in the congenial atmosphere and rural areas could be brought up into the mainstream of the economy.

## Medical Negligence and the Consumer

Chaired by Professor Rakesh Khanna and Co-Chaired by Dr. Jabir Ali, the first paper of the session was presented by Ms Sapna Chadah on 'Medical Negligence and Consumer Protection Act, 1986.'

She argued that the negligence is not susceptible to any precise definition. It is not an absolute term, but is a relative one, rather a comparative term. It varies as per the circumstances. Negligence as a tort is the breach of a legal duty to take care which results in damage, undesired by the defendant to the plaintiff. Till the enactment of CPA, 1986 people had a number of remedies available for medical negligence but none of them was effective. This Act provides speedy and cost



Session 'Medical Negligence and the Consumer' in Progress

effective justice against medical malpractices. The medical services are included under the definition of service as defined under the CPA. Dr Surya Bali in 'Medical Negligence: A Naked Truth' analyzed three cases of medical negligence from Allahabad. These cases brought into light that in government health services, obstetrician and health staffs have not been sensitive to the specific health services needs of pregnant women. Dr. Bali felt that there is an urgent need to assess the actual quality of obstetric care provided. Also there appears to be a need for awareness-raising programs highlighting the availability of current obstetric care where this is of sufficient quality.

Dr. Kavita Agarwal in her joint paper with and Sri Rahul Sripat on 'Medical Negligence: Role of Patient Consent in Operating Procedures' argued that the law is to give benefit not only to client but also to the doctor. She noted that proper documentation of procedure adopted, treatment provided and prior informed consent of the patient or his attendant is the only answer to a doctor-patient health and clean relationship. In order to avoid future legal implications, the physician must follow basic procedure for medical assessment of the emergency and must understand the legal rights of the patient and legally recognized exceptions to the informed consent. Dr. Ashok Tahilliani and Sri Rahul Sripat's paper on 'Human Errors and Why Doctors Make Mistakes' could not be presented in their absence.

## Valedictory Session

The Valedictory Session of the Seminar started with the presentation of the report by the Reporteurs for each session. Professor R.P. Misra, Former Vice-chancellor, University of Allahabad presided over the session and Hon'ble Justice Palok Basu, Former President State Consumer Dispute Redressal Commission, U.P. and Ex. Judge, Allahabad High Court was the Chief Guest. Delivering the Valedictory Address, Justice Basu focused on protecting the interests of the consumers and noted that such academic events need to provide feedback for policy intervention and visualizing better Institutions for future. He showed his unhappiness about the illegal occupation of land in urban area. Cases should be filed against the illegal occupants to vacate these areas. Justice Basu suggested making consumers aware of their rights. In order to deal with the problems of the rural consumers', some institutional backup system must be put in place within village panchayats.



Valedictory Session in Progress

Delivering the Presidential Address, Prof. R.P. Misra emphasized for resorting to Gandhian Values and decentralization as a vision for protecting all, including consumers. As per the Gandhian thought the consumers and producers were not looked as separate individuals. The process of production was supposed to be decentralized and distributed in parity. Professor Misra cautioned the people not to be misled by the advertisements, especially in the electronic media. Those presenting these advertisements falsely highlight the qualities the products as they are highly paid for it. Earlier Professor Pradeep Bhargava, Director, welcomed the guests and at the end Dr. K.N. Bhatt, Coordinator of the seminar proposed a vote of thanks.