

**CONSUMER CONCERNS IN THE 21ST
CENTURY – SOCIO-LEGAL
PERSPECTIVES**

ABOUT THE EDITORS

Prof. Suresh Misra is Chair Professor (Consumer Affairs) and Coordinator, Centre for Consumer Studies at IIPA, New Delhi. He holds his Masters in Political Science from Jawaharlal Nehru University, New Delhi, Masters in Human Resource Management from Pondicherry University and D.Phil from Allahabad University. He had his advance training in Corporate Management at AOTS, Japan, TQM at U.K. Civil Service College and in Training Techniques and Methodology from the Thames Valley University, UK. Dr. Misra has authored/edited 19 books and contributed several papers in journals of repute. His major areas of interest include Consumer Welfare, Administrative Reforms, Development Administration and Local Governance.

Dr. Sapna Chadah is working as Assistant Professor (Administrative and Constitutional Law) at IIPA. She has done her LLB and LLM from Delhi University and Ph.D. from Jamia Millia Islamia, New Delhi. Dr. Sapna has organised a number of capacity building programmes in the area of consumer protection and administrative law. She has been associated with the Consultancy Project on 'Involvement of Universities and Colleges in Consumer Protection'. She has five books to her credit and published several papers in journals of repute. She has also completed a number of research projects.

Dr. Mamta Pathania holds her Masters, M.Phil and Ph.D in Public Administration from Himachal Pradesh University, Shimla. Currently she is working as Assistant Professor, Consumer Studies at IIPA. Before joining IIPA, she worked with the Department of Public Administration, H.P.U, Shimla and later on with the Department of Public Administration, Regional Centre (H.P.U), Dharamshala, (H.P) as a Lecturer in Public Administration. She has authored/edited two books and contributed papers in journals of repute. Her major areas of interest include Public Sector Undertakings, Consumer Studies, Rural and Urban Administration.

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Editors

**Suresh Misra
Sapna Chadah
Mamta Pathania**



**Centre for Consumer Studies
Indian Institute of Public Administration
IP Estate, New Delhi**

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2012

ISBN: 81-86641-64-5

Price: ₹ 425.00

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इन्द्रप्रस्थ एस्टेट, रिंग रोड, नई दिल्ली-110 002 • दूरभाष : 23702400 (15 लाइन)

INDIAN INSTITUTE OF PUBLIC ADMINISTRATION

INDRAPRASTHA ESTATE, RING ROAD, NEW DELHI-110002 (INDIA)

Rakesh Hooja Ph.D., IAS (Retd.)

Tel.: 011-23702434(Off.)

Director

FOREWORD

Business in the 21st century has been both growing and changing form regarding how it is carried out at a phenomenal pace, benefiting both the consumers and businesses. As a result of this, today the consumers enjoy broader selections of products and services from around the world, and business enjoys access to larger markets and more opportunities to compete. In the ever expanding market the consumption patterns have become the focal point of all businesses influencing the economy and the society as a whole. Consumerism in the present century has become an individual experience with so much being tailored to fit our demands and interests, met by an endless line of new products, new ways to market them, and new ways to spend. Such powerful spending has not only increased the overall global economy but has also promoted consumerism to a great extent.

In the era of competition the new information technologies have brought drastic and revolutionary changes in the marketplace and in the ways the consumers think and shop. It has put the consumers in the driver's seat and has ushered in a new era of consumer sovereignty enabling consumers' to access more information, choice, control, and convenience. Simultaneously technological change had enabled advertisers and marketing strategists to adopt newer technologies and methods to influence consumer behaviour and consumer choice and their efforts are not always in the best interests of the consumers. E-commerce, online shopping, consumer's health, food safety, organic products, green consumerism, aggressive advertising that is not always benevolent, and global trade practices are some of the emerging areas of concern for the policy makers. Even though regulators have come to play an important role in a number of sectors but still the consumers have not been benefited to a great extent. For law enforcement agencies, the emerging technologies present serious challenges in detection, apprehension, and enforcement. To deal with the concerns emerging in the new high-tech global marketplace, consumer advocates, NGOs, the business community, and the government must join forces to design and implement measures to protect consumers and to promote competition.

The Internet enables consumers to pick and choose the information they

want from sources around the world, and to receive it at the click of a mouse. The mobile telephone and television technologies also promise to offer consumers new information, shopping, and entertainment services. These new technologies have no doubt made life easier for the consumers but at the same time they have posed and resulted in new and complicated consumer issues—such as privacy, security, misleading advertising and product information, internet frauds etc. There is no doubt that the new technologies have created exciting and numerous benefits for consumers. But they also have created new risks for consumers and uncharted territory for industry and government to negotiate.

Changing paying habits have also led to problems for the consumers. Over-indebtedness is common because of consumer's tendency of 'Buy now, pay later'. The consumers sign one sided contracts and don't realize the implications of purchasing on credit, which puts them in trouble later on. On the one hand, consumers who have money are able to use it on the expanding consumer goods and services offered on the market whereas others with less money are possibly unable to even meet their daily basic needs. The consumption patterns all over the world are putting strain on the carrying capacity of nature. Therefore, there is a need to adopt sustainable patterns of consumption by all so that the needs of the present generation are met without jeopardizing the needs of future generations.

Consumers need to be educated and made aware so that both individually and collectively they take actions that would ensure better goods and services being made available to them. Producers, traders and businessmen are bound to respond if aware consumers mobilize themselves to ensure better trading practices. Consumers also need to be made aware not only of their rights, but also their responsibilities as consumers. They also need the help of consumer protection agencies.

However, our consumer protection paradigm was developed when business operated in radically different conditions. In recent years, new issues have arisen, and the mechanisms and ways of consumer protection needs to be modified in the light of 21st century challenges. But given the rapid pace of change, the window of opportunity to prepare for these emerging challenges, which keep assuming new forms, may be limited. However, there is a need to move forward. The challenges for consumer protection agencies will increase at a time when their resources — human and financial — are stretched tighter than ever. We cannot deny the fact that consumer protection is likely to be most effective when businesses, government, and consumer groups all play a positive role reinforcing each others efforts. The emerging areas of concern suggest that successful solutions call for creative thinking and cooperation among all interested stakeholders.

Date: March 20, 2012

Place: New Delhi



Rakesh Hooja

PREFACE

Over the past twenty years the commercial and social environment of markets has undergone a drastic change. Today people are living in an era of greater globalization, stronger international influences, greater use of credit and the growth of services in the marketplace. By the late 1990s a new consumer paradigm began taking shape. As a consequence the 21st century consumer is having exciting new choices, opportunities and expectations in an increasingly fast-paced and dynamic marketplace. The consumers have been benefited from new products driven by innovation and technology, increased access to a global market and extraordinary growth in the services and information sectors. Consumerism as an activity has extended extensively in the present century. It is driven by expanding market competition, growing consumer sophistication, and more readily available online information. The market in present times has shifted increasingly to services and to more sophisticated forms of transaction.

Although the paradigm consumer transaction may still be the face-to-face purchase of goods or services from local traders, it has long been possible for consumers to buy goods at a distance; the rise of electronic commerce over the internet has made it possible to buy goods and services from most places around the world. In the last decade the internet and technologies like mobile services have truly revolutionized the consumer focused industries. Today the consumers enjoy the convenience of shopping or researching purchases from their homes at times of their ease. The consumers now have the power on their fingertips enabling them to shop and purchase anytime, anywhere. Whether banking from home, purchasing theatre tickets by phone, subscribing to magazines by mail or shopping on the Internet, many consumers now make transactions using remote media, and this practice can be expected to increase. The Internet also makes possible a large volume of transactions that can be both conducted and fully completed at the same time through remote means like downloading software or other digital content products and simultaneously paying for them by credit card. The major consumer issue arising here is not product quality or manufacturer accountability but rather information control. Computer databases hold personal, financial, and medical information of millions and millions of individuals which is a large and looming privacy issue. How this personal and very private information is to be prevented from getting into the hands of people and organizations that shouldn't have it, is a growing consumer concern.

Gaps in consumer law created by marketplace changes create opportunities for the dishonest to victimize consumers who are unfamiliar with new choices and to combine old scams with new technologies. The shift to a service economy, and slowly to a digital economy in which information-related services are playing a large role, means that more and more consumer transactions are taking place that are not covered clearly by consumer protection standards. Electronic commerce crosses provincial and international borders. Businesses and consumers will both benefit if standards and rights concerning electronic commerce are similar across jurisdictions. The array of credit-related service scams that target financially distressed consumer have also emerged as a continuing consumer problem.

The growing affluence of the middle class and changing demography of the consumers has brought drastic changes in consumers' behaviour regarding consumption of food. Development and urbanization are pushing consumers towards unhealthy lifestyles and dependence on junk food is increasing. While many countries are having high rates of starvation and malnutrition, their new middle classes especially in urban areas are showing a tendency towards obesity and other health problems due to unhealthy food habits and lifestyles. The shift in patterns of food consumption has also fuelled a growing sense of crisis around the security of our global food supply. There is a need for education and awareness regarding food safety and security issues to minimize wasteful behaviour and irresponsible practices. The consumers need to be more conscious of what they eat.

Though the consumers are becoming increasingly sensitive to the concepts of environmental harm and sustainability, consumption levels are still high and behaviour is still principally dictated by price, quality and convenience rather than origin of products and sustainable content. The issue still remains niche, and the disconnect between the awareness and action is stark. The new found purchasing power often leads to more conspicuous consumption with little consciousness of impact that have on the environment.

Date: 15.3.2012
Place: New Delhi

Suresh Misra
Sapna Chadah
Mamta Pathania

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LIST OF CONTRIBUTORS

Suresh Misra, Chair Professor (Consumer Affairs) and Coordinator, Centre for Consumer Studies, Indian Institute of Public Administration, IP Estate, Ring Road, New Delhi-110002, Tel: 23766136 (O), 9312413955 (M), *Email: drsureshmisra@gmail.com*

Sapna Chadah, Assistant Professor, Centre for Consumer Studies, Indian Institute of Public Administration, IP Estate, Ring Road, New Delhi – 110002, Tel: 23468348 (O) 9810657989 (M), *Email: sapnachadah@yahoo.co.in*

Mamta Pathania, Assistant Professor, Centre for Consumer Studies, Indian Institute of Public Administration, IP Estate, Ring Road, New Delhi – 110002, Tel: 23468392 (O), 9958422873 (M), *Email: mamtapathania@gmail.com*

Amit Kumar Singh, Research Officer, Centre for Consumer Studies, Indian Institute of Public Administration, IP Estate, Ring Road, New Delhi – 110002, Tel: 23468434 (O), 9820043509 (M), *Email: amitsinghh@gmail.com*

Prateek Bhattacharya, Flat No. 81, Alamanda, Glendale, Gladys Alvades Rd., Thane (West) – 400610, Maharashtra, Tel: 022-21715928 (R) 09950716052 (M), *Email: prateekbhattacharya@yahoo.com*

Banhi Chakraborty, Assistant Professor, Department of Architecture and Regional Planning, Indian Institute of Technology, Kharagpur- 721302, West Bengal, Tel: 09433214945 (M), 03222-281945 (R), 03222-281944 (O), *Email: banhi@arp.iitkgp.ernet.in; banhi@hijli.iitkgp.ernet.in*

Abha Khetarpal, Associate Professor, Department of Home Science, D.A.V. College for Girls, Yamuna Nagar- 135 001, Haryana, Tel: 09255130100 (M), *Email : abhakhetarpal@rediffmail.com*

Sushma Goel, Associate Professor, Department of Resource Management and Design Application, Lady Irwin College, Sikandra Road, Delhi University, New Delhi-110001, Tel: 9899649760 (M), *Email: sushma_goel2003@yahoo.co.in*

Arun Bhaduria, Programme Coordinator Agribusiness, Amity Business School, Amity University, Lucknow Campus Viraj Khand-5, Gomti Nagar, Lucknow- 10 Tel: 0522-4045723 (R), 09369812238 (M), *Email: arunbhadoria@rediffmail.com; drarunbhaduria@gmail.com*

Aditya Bijan Brahmabhatt, 21, Krishna Duplex, Near Vuda Flats, Off Gotri 30m Road, Gotri, Vadodara, Gujarat – 390021, 9820024088 (M), *Email: bijan19@gmail.com*

Karan Sachdev, AA/14, Civil Town Ship, Rourkela-769004, Tel: 91 9924505530 (M) *Email: karansachdev@gmail.com*

Yashomati Ghosh, Fulbright Scholar and Fellow at the Berkman Center for Internet and Society, Harvard University (2010-11), Assistant Professor, National Law School of India University, Nagarbhavi, Bengaluru 560072. Tel: +919538263180 (M), +918023213160 (O) *Email*: *yashomatighosh@gmail.com*, *yashomati@nls.ac.in*

Anirban Chakraborty, Assistant Professor in Law, West Bengal National University of Juridical Sciences, Ambedkar Bhavan, 12 LB Block, Sector III, Salt Lake City, Kolkata-700098, Tel: 91-33-23357379/ 0534 (extn:1180) (O) 91-033-24220226 (R) 91-098304-21885 (M), *Email*: *anir_chak@yahoo.com*

Paresh Bihari Lal, Litigation Department, First Floor, Amarchand Towers, 216, Okhla, Phase III, New Delhi-110020, M: 09582611759, *Email* : *devnampriya@gmail.com*

Ram Krishan Nigam, Advocate, Lucknow Bench of Allahbad, 21, Hewett Road, Shivaji Marg, Siywar Niwas, Lucknow, Uttar Pradesh, Tel: 8896862333 (M), *Email* : *ramkrishan2010@gmail.com*

K. Soundararajan, Associate Professor in Business Administration, Directorate of Distance Education, Annamalai University, Annamalai Nagar – 608002, Tel: 04144-238610 (O), 04144-225775 (R), 09894082552 (M), *Email*: *spknrajan@gmail.com*

G. Vedanthadesikan, Assistant Professor, Department of Rural Development, Annamalai University, 09443538760 (M), *Email* - *desikananirudh@yahoo.com*

Ankur Khandelwal, Associate, Khaitan & Co. Advocates, 10th Floor, Ashoka Estate, 24 Barakhamba Road, New Delhi-110 001, M: 8826637207, 9897074477, *Email*: *ankur.khandelwal@hotmail.com*

Pariru, Associate, Pangea3 Legal Database System Pvt. Ltd., B-23, 2nd Floor, Sector-58, Noida (UP)-201 301, Tel: 919560042707 (M), *Email*: *pariru168@gmail.com*

Rabindra Nath Pati, Project Director, Council for Tribal and Rural Development, HIG 101 Kanan Vihar, Phase-1, P.O. Patia, Bhubaneswar-751031, Odisha, Tel: 9337112909 (M), *Email* : *drpati54@gmail.com*,

Vinitha Johnson, 943/3, 69th Street, KGR Apartments, West K.K. Nagar, Chennai-600078, Tel: 09829961095 (M) *Email*: *vinitha.419@gmail.com*

Geetanjali Sharma, Room No. 215, Meera Bai Hostel, National Law University, NH-65, Nagaur Road, Mandore, Jodhpur-342304, Tel: 0-7597007421, (M)- 9718637121(M), *Email* : *geetanjalisharma21@gmail.com*

Debasis Poddar, Assistant Professor, School of Law, ITM University, HUDA, Sector -23-A, Gurgaon, Haryana- 122017, Tel: 9685-313264 (M) (C.G.), 9433-112530 (R) (W.B.) *Website* : *http://itmindia.edu*, *Email* : *debasis.calcutta@gmail.com*

K.N. Bhatt, Associate Professor, G.B. Pant Social Science Institute, Jhusi, Allahabad – 211 019, Uttar Pradesh, Tel: 09336899726, 09454951081 (M) 0532-2569206 (Fax), *Email* : *knbhatt1@rediffmail.com*

1

INTRODUCTION

In the 21st century, consumers and consumer behaviour is the focal point of all economic activities. The neo-liberal view of consumer protection uses the rhetoric of deregulation, privatization, and individualization to emphasize the consumer as the person with power to drive and direct the market through their choices. The consumer was seen as the important regulatory subject to be empowered with sovereignty. Consumers are the key players in the market place today and their consumption patterns are greatly influencing the society and the economy. Technology has made available a variety of goods and services to the consumers from all over the world, which are now only a click away. New products and services throng the market everyday many of which disappear very soon. The 21st century market overcomes the capacity constraints of physical space, traditional distribution channels and geography. The result is expanded consumer choice, both in range and depth of offerings, which can be sourced from anywhere in the world. Increased and rigorous competition in the market has made most of these products accessible and affordable for the common man. Possessing many of these products has become a status symbol for the consumers. Consumption patterns and consumers' values today are very different from what they were a decade ago.

Buying myriad of products through online shopping, super-markets and shopping malls is distinct feature of today's consumption. Ordering goods or services via the internet, making purchases using plastic money without paying in cash, consuming convenience foods or highly-packaged products without any food value are common these days. Consumers value goods which are cheap, convenient and time saving. It is the result of uncontrolled and unmindful consumption which is leading to an enormous depletion of non-renewable resources and putting strain on the renewable resources.

Development today means material prosperity and conspicuous consumption even at the cost of human development. High standard of living

means more goods and services unmindful of their implications for environment, health and hygiene. To turn away from the basic human values such as truth, non-violence, love, compassion, human brotherhood, and respect for nature on which most great civilizations were built, is another trait of modernity. Nature has become the resource for exploitation as do the fellow human beings. Want based conspicuous consumption does not produce happiness; and if it does, it is not for all. The need based consumption on the other hands leads to Sarvodaya (development of all). We have seen how nature is being robbed of its inherent capacity to regenerate. If we continue to tread on the path set by modern civilization, we are sure to destroy ourselves. We can either opt for higher GNH (Gross National Happiness) and usher in a new civilization or continue to pursue the mirage of higher GDP and be the dying generation of the so-called modern civilization.¹

A time has come when a responsible consumer movement is no longer the one that attempts to enhance the consumption of resources of a world of supposed limitless abundance, instead one that seeks to promote a better quality of life in a world of growing scarcity.

The issues in 21st century are quite different as compared with earlier centuries. We are faced now with revolutions in technology and globalization which have led to complexity and information asymmetry. With the technological advancement the products and services provided in the market are becoming more sophisticated and complicated. The new century is the information and knowledge century and many national and global issues are coming ahead calling for bold initiatives in the policy and planning realms relating to consumer protection. As a result the Consumer Protection Act and the machinery under it are facing new issues and problems. Some of these issues have been discussed in the following paragraphs.

Green Consumerism and Sustainable Consumption

It is now globally well recognized that the current lifestyles by affluent consumers (in both rich and poor countries) are not sustainable. The consumption accounts for a large share of resource use and of the emission of pollutants to the environment. It is nowadays universally accepted that here the consumers themselves can make a difference by adopting sustainability with regard to their consumption pattern. “Sustainable” here refers to a level and pattern of consumption which meets the needs of the present without compromising the ability of future generations to meet their own needs.² Changed patterns of consumption, while dependent on consumer cooperation, cannot be achieved by focusing on consumers alone. Three main groups of

¹R. P. Misra, “Facing Environmental Challenges: The Gandhian Way”, *Anasakti Darshan*, Vol. 5, No. 2, July – December 2009, pp. 1-47.

²World Commission on Environment and Development, 1987.

actors influence the sustainability of private consumption: consumers, governments, and business. However, most governmental policies today are focused on increasing economic growth, and private and public consumption, without paying enough attention to how to make this growth and consumption sustainable.

How individuals and groups consume involves a complex set of behaviours. There is need for significant policy changes concentrating on motivating and enabling consumers so that they welcome rather than feel challenged by sustainable consumption initiatives; targeting consumption practices of different social groups in order to maximise the impact of policies; identifying the right 'policy mix' to direct initiatives in the most effective ways and capturing opportunities and reducing constraints in government-business collaborations thereby to mitigate the carbon content of consumer behaviour. Sustainable consumption will also require changing broader patterns of production, trade, economic exchange value, public service provision and so on.

The concept of Green Consumerism is today a buzzword all over the world. Choice of organic food, herbal cosmetics and food supplements constitute the drive for Green Consumerism. The dynamics of market forces are complex, which exploit the consumers in different forms. The spurious herbal cosmetics are becoming a major source of health hazard particularly in the rural areas. In mass consumption societies, laws and economic incentives often encourage people to cross key economic, environmental and societal thresholds. Consumers in these societies do not always find what they actually need with affordable options. By reorienting society's priorities towards improving peoples' well-being rather than merely accumulating goods. Consumption can act not as the engine that drives the economy but as a tool that delivers an improved quality of life. Over consumption now takes away large quantities of resources, many of which are being used far beyond their carrying capacity. It is also having adverse effect on the climate leading to global warming and environmental risks. The consumers' world over are at serious risk and the international community needs to address these issues urgently.

Food Safety

Food is one of the most basic necessities of life. However, with increasing income, affluence and changing lifestyle there is drastic change in the food we consume. There is changing consumer behaviour as regards food is concerned; there is a increasing demand for the processed and prepared food as it saves time and is easily available at modern retail outlets. The development and urbanisation means less physical labour and activity. On the other hand the food we are consuming today has high proportion of fats, saturated fats and carbohydrates. This is resulting in more cases of obesity. Obesity is becoming an epidemic both in developed and developing countries. As per the

estimates of World Bank, globally there are more than one billion overweight adults and atleast 300 million of them are obese.³ The reason for concern is that obesity is becoming more common among children because of their preference for fast food which is rich in fats and sugars, ariated drinks, packaged goods and prepared meals. Obesity is major contributor to a number of health problems such as diabetes, heart problems, etc. There is thus need to generate awareness and educate consumers about the need to adopt a healthy lifestyle and change food habits which will help combat obesity, diseases and aging.

In modern times, rapid globalisation of food production and trade has increased the potential likelihood of food contamination. Many outbreaks of food borne diseases that were once contained within a small community may now take place on global dimensions. The food chains owned by the multinational companies are selling junk food which has resulted in health hazards leading to obesity among children and other health related problems. The street food being served in unhygienic conditions is another cause of worry. Under the existing provisions, small operators like street vendors cannot be licensed. The new regulations should require them to undergo a simple registration process at the base level, say the panchayats or municipalities. There is a need to insulate the consumers through appropriate remedial measures.

The multiplicity of laws and the necessity of consolidating diverse orders and statutory requirements on food safety and allied issues culminated in birth of the Food Safety and Standards Act, 2006. The Act will be a unified law which *inter alia* addresses the need to ensure safe and wholesome food for human consumption, lay down safety standards on scientific basis. The Food Safety and Standards Authority of India (FSSAI) has been created under the Act, so that the consumers can be aptly protected. It should follow the example of the European Food Safety Authority (EFSA) which is the keystone of European Union (EU) risk assessment regarding food and feed safety. In close collaboration with national authorities and in open consultation with its stakeholders, EFSA provides independent scientific advice and clear communication on existing and emerging risks. This is what the FSSA should do in India and the consumers must be a key stakeholder in the consultation process. In fact food testing laboratories must to be set up at every district headquarter to ensure that the consumers get speedy justice in cases relating to food adulteration. For this the states need to set up a separate Food Safety Department which would monitor food processing in their respective areas.

In the 1990s, the safety of consumer goods, technical goods, pharmaceuticals, chemicals, pesticides played a major role. Whereas today health and safety issues deserve special attention especially the issues like

³WHO, (2010), *Obesity and Overweight*, WHO, <http://www.who.int/dietphysicalactivity/publications/fact/obesity/en/>

GMOs. Here, the level of safety is often defined at the international level, by WHO, FAO, CODEX Alimentarius, and UNEP, and thus arises the need to bring the national standards at par with the international standards.

Internet and E-commerce

Internet has created new opportunities for business and commerce wherein the whole world can be treated as one single global marketplace or “Cyber Market”. This cyber market has created multitude of opportunities for consumers who at the click of a button can access goods and services from different parts of the world at competitive prices. Years before the Internet’s breakthrough in the business world, many authors pointed to the far-reaching effects of electronic markets. Bakos⁴ argued that with the introduction of the Internet, the power structure between buyers and sellers will shift in favour of buyers. Later on, this thesis was supported by authors such as Rust and Oliver⁵ who predicted that “services offered over a public electronic network that includes video, image, text and voice communications for home and office” would significantly enhance the power of consumers by dramatically increasing the quantity and quality of information available to the consumer. Shipman⁶ termed it as “new consumer sovereignty”. Murphy⁷ stated that “We’re witnessing the greatest transition of power in history, one that will take power away from the mightiest corporations and social institutions and give it to [...] consumers.”⁸

No doubt the internet has facilitated better services. Consumers everywhere enjoy greater choice in a global marketplace, especially online. However, there are some crucial issues related to consumers in Knowledge-Based Economy (KBE). Some of the crucial issues which characterize consumers in the KBE relate to resources, firstly, to the new skills which they need in order to participate in the KBE; and secondly, to the assets, such as computers, that are needed to participate fully in many of the “virtual” aspects of the modern marketplace. Many of the electronic and technological tools needed to participate in the KBE require consumers to develop new technical skills. In terms of financial resources, computers and mobile phones are

⁴Bakos, J. Y. (1991). “A Strategic Analysis of Electronic Marketplaces”, *Management Information Systems Quarterly*, 15, 295–310.

⁵Rust, R. T., & Oliver, R. W. (1994). “Video Dial Tone: The New World of Services Marketing”, *Journal of Services Marketing*, 8(3), 5–16 at pp 5, 10; Rust, R. T., & Oliver, R. W. (1994), “The Death of Advertising”, *Journal of Advertising*, 23(4), 71–77.

⁶Shipman, A. (2001). “Privatized Production, Socialized Consumption? Old Producer Power Behind the New Consumer Sovereignty”, *Review of Social Economy*, 59, 331–352.

⁷Murphy, T. (2000). *Web Rules: How the Internet is Changing the Way Consumers Make Choices*, Chicago: Dearborn, p. 1

⁸For further details see Behrang Rezabakhsh, Daniel Bornemann, Ursula Hansen and Ulf Schrader, “Consumer Power: A Comparison of the Old Economy and the Internet Economy”, *Journal of Consumer Policy*, (2006) 29:3–36, p. 4.

expensive products. In terms of expertise, consumers have to learn how to search for and then choose from amongst a range of technological products (e.g., computers) and allocate their household and family resources accordingly. Lack of access to the internet can dramatically reduce consumer choice in terms of online channels; whilst texting is needed for many activities central to the lives of younger consumers with the development of m-communications. The implications of the gaps between resources and the KBE, represent firstly, potential difficulties for disadvantaged individuals and communities; secondly, potential sources of stress for intergenerational relationships; and thirdly, important issues around the teaching and learning processes within consumer socialization.⁹

Consumers everywhere enjoy greater choice in a global marketplace, especially online. But there are also greater opportunities for scammers and fraudsters to target consumers. Perhaps it is also the easiest way of exploiting the consumers due to issues like lack of assurances about quality of goods and services, non-application of the guarantee or warranty rules, absence of protection from hazardous goods and services, unfair trade practices etc. The rise in cyber crimes having cross border ramifications has left the consumers in a lurch. One of the areas of concern is privacy. Concerns over the safety of personal information collected online have undermined consumer confidence and hence their willingness to purchase items, in particular if the purchases would involve cross-border transactions. There is need to improve consumer protection and confidence in online payment systems. The regulatory frameworks for e-commerce vary among countries. In addition to differences in substantive law, countries have different approaches toward regulation, having implications not only for business, but also for consumers.

A critical obstacle in the information economy is the concerns of i-Consumers when purchasing digital information products and services. Over the past few years, it has become apparent that there are many discrepancies between the rights and interests of consumers and the way digital content is marketed through overly restrictive contracts and technological measures that would prevent them from private copying and playing legitimately purchased CDs on their computers or car radios. The challenge is to reconcile the conflicting interest and to find a balanced solution. Traditionally, the interests of the content industry and authors to control the dissemination and use of protected music, films, games, etc. are protected by copyright law. Copyright law has been designed in the first place to regulate the relationship between right-holders and intermediaries, e.g., music publishers. Copyright law lacks a coherent concept of 'the consumer'. One essential question when discussing

⁹Margaret K. Hogg, Geraint Howells, David Milman; "Consumers in the Knowledge-Based Economy (KBE): What Creates and/or Constitutes Consumer Vulnerability in the KBE?", *Journal of Consumer Policy*, (2007) 30:151–158, at p.153

how to improve the legal position of i-Consumers is where and in which form to accommodate digital consumer rights. There is need to integrate consumers' rights into the existing structures of copyright law. A viable alternative turns towards consumer law. Consumer law has traditionally been the place to set basic rules for the commercial interaction between 'persons acting as consumer in the marketplace and their counterparts, the business'.¹⁰

Standardization with the ultimate goal to improve interoperability for consumers is of particular relevancy to the i-Consumer. Due to the use of a range of conflicting content protection technologies, such as Digital Right Management (DRM) and Technical Protection Measures (TPM) in information markets, the ability of i-Consumers to access and use digital content can be seriously hampered. The lack of adequate interoperability solutions also favours lock-in situations that can have negative effect on choice and competition. An important potential limitation of the consumer law approach is: Under which conditions are i-Consumers still 'consumer'? Digital technologies did not only trigger new business models and opportunities of marketing digital content to consumers. Digital technologies also empowered users to take on functions that so far were reserved to professional suppliers. The active user or 'prosumer' is another facet of the i-Consumer and one that is potentially at odds with traditional systems of consumer protection. Accommodating the interests of the i-Consumer, both as 'consumer' and as active participant in the production chain is another important challenge of future i-Consumer law.¹¹

The important question which arises here is what should be the role of the state in terms of consumer welfare and consumer education in the KBE? Should it be active and interventionist on behalf of consumers or should the state role be restricted to regulating the marketplace for products and services? The digital age and Internet have empowered the consumer to be skeptical, but equally exposed him/her to more risks, possibly requiring higher-level skills in order to navigate in the KBE marketplace. The relationship between the new approach to policy-making which seeks to educate the consumer and the more traditional forms of consumer protection that placed greater emphasis on controlling trader conduct, needs to be explored. In addition, the underlying assumption about the level of consumer literacy which is required in order for consumers to enjoy the opportunities represented by the KBE and to be able to take a more proactive role within consumer protection, needs to be examined, if not problematized. From the perspective of policy-makers, there has been a fundamental shift of emphasis within the

¹⁰Natali Helberger, "Making Place for the iConsumer in Consumer Law", *Journal of Consumer Policy*, (2008) 31; 385-391

¹¹*Ibid*

KBE towards a policy of providing consumers with information so that they are able to protect themselves.¹²

Global Market and Jurisdictional Problems

The fundamental reason of consumer concern is based in jurisdictional problems presented by global internet market. Due to inherent nature and geographically borderless character the digital network and computer based electronic marketplace challenges the existing legal regime. The laws are inadequate to protect the consumers as they apply within the national boundaries only and the consumer cannot get relief in many such crimes. This requires a global approach to consumer protection as part of a transparent and predictable legal and self-regulatory framework. Although there are numerous evolved systems of consumer law around the globe, these have generally emerged either at the national level or within the confines of particular regional associations. The adoption of the UN Guidelines on Consumer Protection is the only significant contribution to consumer law and policy at the international level. There have not been consistent attempt to consider the international implications of consumer law and policy. The legal developments at the international level are lagging behind the changes witnessed in the way consumers can now acquire goods and services.

Many e-commerce transactions have a transnational dimension, in that the consumer will be located in a different jurisdiction from that of the trader, and consequently, (atleast) two sets of legal rules may come into play. Herein the rules of private international law, which resolve questions of which courts have jurisdiction to hear a case and of which national law should be applied, have developed to minimize any uncertainty in respect of which rules would apply. However, consumer transactions raise special issues, because in national law, consumer law usually has the character of “mandatory law,” i.e., it is not possible to displace specific rules adopted for the protection of consumers through the application of a different national law, or terms in a contract seeking to modify or exclude such rules. The existence of various national consumer protection regimes can be a hindrance for both traders and consumers to engage in cross-border transactions. Over a period of 25 years or so, the EU has adopted a string of measures which seek to harmonize aspects of national consumer laws, to minimize the differences in these mandatory rules and to make cross-border shopping more attractive. However, when it comes to the international level, we find nothing. This contrasts sharply with the field of commercial law, where there are numerous international conventions and other agreements that deal with aspects of transnational commercial law.

¹²Margaret K. Hogg, Geraint Howells, David Milman; “*Consumers in the Knowledge-Based Economy (KBE): What Creates and/or Constitutes Consumer Vulnerability in the KBE?*”, *Journal of Consumer Policy*, (2007) 30:151–158, at p. 155

On the other hand consumer law is regarded as a matter for individual jurisdictions, and that agreement at the international level for a common legal framework on consumer protection could not be achieved. However, this position can no longer be maintained without detailed scrutiny, and the time has come to challenge and change this position. Another important challenge is of enforcement as there are no enforcement authorities at the international level. That is why international rules have to be enforced by national competent authorities. The legal environment, however, is changing quickly also and in particular with regard to consumer law issues. Arbitration and ADR or on-line dispute resolution mechanisms are quickly gaining pace to handle transnational consumer complaints. This might be due to the increasing importance of internet sales where borders do not matter anymore. Litigation in and before courts does not really matter in trans-border law issues as it is legally complex, often costly and most of the time inefficient. Collective enforcement is gaining pace, as more and more consumer law issues bear a genuine international dimension. The development of an International Consumer Law would need to tackle the difficult question of whether it is possible to put into place a global legal framework which could govern all international consumer transactions. Substantial research is needed on discovering specifically transnational issues affecting consumers and on identifying appropriate transnational legal solutions.¹³

Privatisation and Deregulation

Achieving good governance in a global environment is much more challenging. Apart from the domestic needs, the globalization of production and of markets has also established the need for states to adopt policies and policy stances that not only protect their citizens but also increase their competitiveness over the years and decades ahead. Even as the wave of programs for the deregulation of public utilities is being undertaken, governments have also begun to explore the need to make utilities more accountable to the consumers. There is a growing recognition that the decades of annual reporting to Parliament, legislatures, and the internal complaint handling supervised by government departments, has been inadequate. Though the initial focus of economic reforms was dominated by the need to establish competitive markets and appropriate regulatory systems, but very soon the Government realized the need for adequate consumer protection and effective process for consultation with and involvement of consumers in the regulatory system so as to minimize their exploitation by the service providers. It was felt that the consumers would benefit because ‘opening up regulated markets to competition and eliminating restrictive practices, means more choice, more

¹³Christian Twigg-Flesner & Hans Micklitz, “*Think Global—Towards International Consumer Law*”, *Journal of Consumer Policy*, (2010) 33:201–207

products and competitive prices'. But this move has not resulted in the empowerment of the consumers which is a matter of serious concern as in the deregulated market there is no effective mechanism to protect the consumers. In spite of privatization and deregulation the move must be towards a larger participatory role as far as the issues relating to the consumers are concerned.

Need to Strengthen Redressal Agencies

With growing competition and the changes in the technological, legal and the social environment the consumer is becoming more demanding and assertive. The task of the redressal agencies, in near future, is going to become much more challenging. They need to be strengthened not only in terms of physical and financial facilities, but also by upgrading the knowledge and skills of the members of the redressal agencies particularly the District Forums, which are the first point of contact for the consumers to meet the challenges and redress their grievances.

On the part of the consumers, education and awareness is the best way towards empowerment. The challenge is to protect the ignorant rural consumers who constitute the bulk of our population and are exposed to various forms of exploitation by the manufactures and the service providers aided by the advertisers. The need is for various stakeholders to come together in an organized manner to take the consumer movement forward. There is need to ponder over various issues confronting the consumers and help decide appropriate strategies to protect the consumers. All we need is to take a few steps to restore the consumer's power to influence the market.

Consumerism as an activity has certainly extended enormously in the 21st Century. It is driven by expanding market competition, growing sophistication of products and services, and more readily available online information. The old government interventionist model of regulation is gradually being replaced by a new one based on market oriented competition. The major consumer issue in the opening decade of the next century will not be product quality or manufacturer accountability but rather information control. Irrespective of the phase we are into the objective of the consumer movement will always remain the same: to achieve and maximize consumer welfare from the marketplace. Keeping the emerging consumer concerns in the 21st Century the machinery under the Consumer Protection Act, 1986 needs to be strengthened and equipped with more powers. It is in this context that the book assumes importance. The book is an outcome of a National Seminar on "Consumer Protection in India: Lessons Learnt and Future Challenges", organized by the Centre for Consumer Studies, Indian Institute of Public Administration, New Delhi.

The papers contributed by well known experts discuss some of the most important and critical issues pertaining to consumer protection in India. These

evaluate the measures taken to strengthen the consumer movement in the country and through well researched case studies identify the lacuna in the area of consumer protection and suggest future course of action.

Consumer welfare legislations are an integral part of a consumer protection framework in any country. The consumer protection movement is a global one and each country has a protection regime that suits its needs and the aspirations of its people. There are always good practices that can be studied and incorporated into one's system with some modifications. "Best Practices in Consumer Protection – Global Scenario" by Mamta Pathania and Amit Kumar Singh essentially underlines the best practices in consumer protection in select countries. It highlights the structures, systems and framework of different nations relating to consumer protection and welfare which would help to underline the strengths and weaknesses of each system. It is a cross cultural study aimed at documenting the processes and procedures prevailing in different countries.

The authors opine that even though many countries have developed a legal framework to protect the consumers yet it's not a comprehensive one. In the changing global environment there is a need to learn from experiences of other countries. In the present scenario, India is witnessing changes in the technological, economical and sociological spheres and it is in this backdrop that we need to learn from the practices and experiences of other countries so as to strengthen the consumer movement.

Since 1980s deregulation and contracting out of governmental functions, services and responsibilities have reverberated around the world under the impact and influence of liberalization, privatization and globalization (LPG). Main thrust of the changes introduced under the impact of liberalization, privatization and globalisation on the system and sub-systems of governance has been seen from the perspective of economy, efficiency, effectiveness, ethics and equity. Most of the developed as well as developing countries have gone further in the direction of a customer/contractor structure, with diminishing core ministries and a large amount of privatization, creation of executive agencies and contracting with the private sector under the influence of the market ideology. This has thrown open a large number of areas to market forces to transact heretofore governmental business.

Sapna Chadah in her paper on "Emerging Regulatory Regime in India-Need to Protect Consumers' Interest" has highlighted that privatization and liberalization has not resulted in complete withdrawal of the state from the market; the State has merely reformed. To the reformation it has assumed a more overt regulatory role vis-à-vis economic power. There has been a shift in the perceived role of government from acting as the principal vehicle for socio-economic development to guiding and facilitating that development. Accordingly, while policy formulation remains one of the main functions of government, the role of the government in implementing policy decisions is

changing. It has been observed that economic liberalization brings with it an increased requirement for regulatory activity. What we see is not that total retreat of the State, but rather the substitution of one form of involvement by the state in the economy for another. It is, therefore, performing the functions of supervision and monitoring, as the process of deregulation, required to be regulated with more care and caution. With privatization and liberalisation an array of regulatory agencies has spawned which carry with them rule-making and rate-making powers, grievance redressal powers in addition to their general powers of promoting competition and efficiency. Access to justice and resolution of grievances is beginning to be seen as an inherent feature of regulation.

“Does ‘Maximum’ in MRP Really Mean ‘Maximum’ – A Study of Violation of Consumer Rights” by Prateek Bhattacharya looks at the growth of the concept of ‘MRP’ and its interpretation from a legal point of view, focusing on the development of jurisprudence in the matter leading up to the enactment of the Consumer Protection Act, and the impact of this Act on the status of ‘MRP’. The author highlights important issues like, has MRP always been the maximum price whether it is or isn’t legal for establishments to quote prices beyond it and so on.

Prateek opines that a rise in the system of free market economy has led to an increase in the number of private players and a decrease in the level of accountability. It is for this very reason that the rights of a consumer are being preached and fought for. In light of recent events in retail and food outlets it is pertinent to analyse the nature of the term ‘Maximum Retail Price’ and the practice of a flagrant violation of the upper limit which the MRP defines. It is a common observation for consumers to find an increase beyond this MRP of goods in theatres, hotels and restaurants under the garb of ‘Service Charges’. The question, in such a situation, is whether this increase beyond the MRP is truly legal and within the authority of these establishments. The paper also deals with the accountability as well as responsibility of such establishments to provide good service and refrain from cheating their customers.

“Consumers’ Health and Drug Market” by Banhi Chakraborty talks about India’s drug market which at present seems to be over flooded with several branded drugs. Number of sellers vary from approximately 21 to 152 (2005) among different categories of formulations so far available in the market. In spite of that, to the majority of consumers those are still beyond their means. Quoting the reasons for the same the author opines that one of the reasons is biased prescribing methods of the practitioners who generally prefer medicines-the manufacturer or providers which are more incentive paying. The obvious implication falls on the price. Moreover, options for cheaper brand/ variety from the consumers’ side are highly unexpected because of their gross ignorance in this respect. Unlike the other consumer goods, common people

as consumers have no choice other than prescribed drugs or medicines. India's progress in drug market has led to a comparable position to that of US or Europe explicitly after implementation of TRIPS. Overall prices of medicines have consequently jumped to 200% or more. The paper describes that there exists wide variations in the brands for a single medicine as well as their prices (ranging from 2%-14% or more). This situation pushes the consumers in a fix either between high priced drugs or to draw immature end in the treatment. This raises the question regarding the fulfillment of commitment towards providing "Health for All by 2000 AD" and existing mechanism in drug market. Thus the present paper attempts to investigate the same based on few case areas in Kolkata and in two districts of West Bengal in order to find the inter-market differences if any.

"Safe Food - Must for the Consumers" by Abha Khetarpal talks about the food safety which is an increasingly important public health issue. Governments all over the world are intensifying their efforts to improve the food safety. These efforts are in response to an increasing number of food safety problems and rising consumer concerns. The weighing of potential risks and benefits is an important aspect of assessment of foods derived from biotechnology that has not received much attention in the past. Likewise, clear communication of the basis for safety assessment in this area is generally lacking at national and international levels. The author opines that if not properly monitored and assessed changes in animal husbandry practices, including feeding, may have serious implications for food safety. Adding low levels of antibiotics to the animal feed in order to increase growth rate has raised concern about the transfer of antibiotic resistance to human pathogens from this practice. Modern intensive agricultural practices contribute to increasing the availability of affordable foodstuffs and the use of food additives can improve the quality, quantity and safety of the food supply. Further appropriate controls are necessary to ensure their proper and safe use along the entire food chain. Pre-market review and approval followed by continuous monitoring are necessary to ensure the safe use of pesticides, veterinary drugs and food additives.

The paper also describes other challenges, which need to be addressed to help ensure food safety, which include the globalization of trade in food, urbanization, changes in lifestyles, international travel, environmental pollution, deliberate contamination and natural and manmade disasters. To provide the scientific basis for decisions regarding human health, new methods and policies to assess such food need to be developed and agreed upon internationally. The assessment should consider health benefits as well as possible negative health implications.

"Street Food Safety and the Consumer" by Sushma Goel talks about the concept of food safety as most of the street food centers have been mushrooming on the roadside, either on the pavements as temporary structures

or as pushcarts parked on the wayside near public places such as railway stations, bus stations, cinema halls etc. where most of the street foods are exposed to dust, vehicular emissions and flies. Unhygienic practices are followed during food preparation and handling, inadequate storage facilities, the personal hygiene of vendors, lack of adequate sanitation and refuse disposal facilities are serious matters of concerns.

Sushma in her paper opines that one of the most critical problems in street food vending is the supply of water of acceptable quality and insufficient quantities for drinking, washing, cleaning and other operations. There are many regulations but poor implementation and monitoring has been responsible for the poor hygiene and sanitation conditions of the street foods. The paper highlights that Government intervention at this point is necessary; therefore, the state government of the capital has to play an instrumental role by providing the street food vendors with basic amenities like safe water, regular electricity supply and proper waste disposal mechanism. Consumers can also play an important role in determining the services needed by them from the street food vendors. Design of the mobile food cart or kiosk is extremely important as it would facilitate correct practices being followed by the food handlers with regard to hygiene and sanitation of the street foods. In the wake of outbreak of epidemic due to food poisoning wherein hundreds of people were hospitalized and many lost their lives the administrations in respective areas have shut down all the street foods in many cities however, within no time they were back to business. In Delhi also the State as well as the Central Government prohibits street food supply yet they are available in each and every nook and corner of the city. Thus, food safety and the development of quality system in food industry are a joint responsibility of the government, industry and the consumers.

Arun Bhadauria in his paper “Global Trade Practices and Consumer Protection-Agribusiness in Developing Countries”, talks about the inception of WTO and New Economic Reforms in the country in 1995 and 1991 respectively which opened the flood-gates of transformation in globalized trade practices and multi-dimensional development. Terms like MNC and TNC emerged out of this context, which gradually started to take on the job of spreading business premises of the International Club of Trade across developing countries. These trade giants offered multiple business opportunities for domestic players in the developing countries.

The author describes the increasing dominance of TNCs in the agricultural sector which is pulling down small producers in the cobweb where they have to sell for less than fair prices and have to purchase at more than what they were paying earlier, reason being the international standards and quality fads. The risk of being excluded from the system both as producers and as consumers leaves them with no option. TNCs are the sole winners of their increased buyer power, while farmers are being marginalized in the agro-food

chain, agricultural workers are suffering unfair working conditions, and consumers are questioning their benefits.

Further in the paper it is stressed that the component of agriculture research is also considerably important for reducing agricultural cost and increasing production and productivity, but this area of vital importance has so far been ignored. For increasing production and productivity, farmers should be made available, improved seeds at fair prices in an adequate quantity. The dream of sustainable agriculture can come true only with strong and resourceful producer and rational and healthy consumer. This paper brings out the issue of dual role of the farmer as a producer and as a consumer in the national and international forum as to draw attention of the policy-makers, academicians and researchers. The paper introduces the theme, focuses on contemporary research work in this area and mentions various observations in the related field.

Aditya Bijan Brahmhatt and Karan Sachdev in their paper “Consumer Protection and E-Commerce” highlight that electronic commerce has emerged as the latest trend of conducting business as about 1/5th of the e-commerce transactions are online purchases by the consumers. For a consumer to be secure in an E-Commerce transaction there has to be proper laws and regulations to ensure Secure Payment Systems, redressal mechanisms in international transactions, privacy, fair business, etc. The paper looks into the Consumer Protection Act, 1986 of India and also how far it is equipped to deal with the e-commerce transactions. The advent and spread of e-commerce has thrown up a new challenge for this Act. The judicial interpretation of the Act and the changes required in the present law to make it in sync with international standards are also discussed.

It also discusses the international consumer laws for e-commerce purchases. Since the on-line market place is inherently global and without any international borders, there is indeed a requirement to have a uniform law throughout the world for its regulation. In this context the Report on OECD Guidelines for Consumer Protection in the context of Electronic Commerce, 1999 are discussed and the laws of India and other nations are compared to the same to see whether or not they meet those standards.

The author also suggests that change is required in other spheres of law, to ensure complete security of the consumers. The relevant provisions of the Contract Act, 1872, the I.T. Act, 2000 in the context of e-commerce transactions and the feasibility of India adopting the UNCITRAL Model law on E-Commerce is also dealt in the paper.

“Effectiveness of the Indian Legal Framework to Protect Consumers in the Cyber Market Place” is authored by Yashomati Ghosh and Anirban Chakraborty. The paper highlights that as internet has created new opportunities for business and commerce wherein the whole world can be treated as one single global marketplace or ‘cyber market’. This has created multitude of

opportunities for consumers who at a click of a button can access goods and services from different parts of the world at competitive prices. The sellers or the producers of goods and providers of services have also accepted this new market with extreme enthusiasm because of the possibility to tap vast number of consumers across the world at negligible costs. But inspite of the numerous advantages of electronic commerce (e-commerce) cyber market has failed to develop to its maximum potential.

Therefore, under this backdrop, the present paper brings to light the issues like non-applicability of national laws in the online environment, lack of clarity on jurisdictional issues and dispute on contract formation which have hindered the growth of e-commerce. However, the most prominent factor in limiting the growth of e-commerce is the lack of consumer confidence in online transactions. Absence of adequate consumer centric laws in the online environment and non-application or limited application of the national consumer protection legislations in e-commerce transactions according to the author create a feeling of mistrust in the minds of the ordinary consumers about the new market place. Thus in the absence of specific rules and guidelines, consumers and users of digital technology are most apprehensive about their rights and freedoms in the online environment. The paper also highlights the present practices of the entertainment industry like use of DRM technology and anti-circumvention laws have infringed the traditional rights of the consumers like doctrine of first sale, fair use, sharing of materials between friends and families etc. All these factors highlight the causes of limited growth of e-commerce inspite of the manifold advantages it has to offer to both the sellers and the buyers. In this context the paper tries to re-look the Consumer Protection Act 1986, identify the existing lacunae and propose changes with help of EU and OECD guidelines so as to build consumer confidence in e-commerce transactions.

"Digital Rights Management Technologies (DRM)- Challenges to the Indian Consumer Protection Regime", a paper by Paresh Bihari Lal and Ram Krishan Nigam, analyses the correlation between DRM and Consumer rights. It is an attempt to analyze the pros and cons of DRMs from the perspective of a consumer. Further the various consumer rights eroded by the use of such techniques are dealt with exhaustively. It has been endeavored to explain as to why is Consumer Protection Law the best mode to tackle the current problems. The paper further examines the efficacy of the Consumer Protection Act as an effective tool to deal with the menace posed by DRMs. Special emphasis is given to ways of strengthening the position of consumers both in and outside the copyright field. Global standings in relation to the problem at hand are discussed and their implementation in the Indian milieu is dwelled upon. Possible changes in the Indian Consumer Protection regime are mooted and other possible solutions to the challenge at hand are debated on. Finally a model amendment to the existing laws is proposed and its utility in tackling

the unique problem of DRMs is considered. The paper is an attempt in furthering the interests of the consumers against the increasing use of DRMs and that it may arouse the authorities to the new challenge at hand.

The paper on “Organic Trends in India- Need to Educate Consumers” by K. Soundararajan and G. Vedanthadesikan discusses the introduction of synthetic fertilizers and chemicals as an application for soil fertility, pest and disease control. It has a wide acceptability and is also easily available as well as affordable through government schemes and subsidized commercial sector activities. As a result of the increasing intensity of usage of chemicals its ill effects on human health, the environment and the ecology of these countries is quite evident. Human and animal illness from chemical-related disorders, soils degradation, a significant decrease in the diversity of agricultural systems, pest and disease resurgence and resistance, a resulting decrease in yields, are some of the negative impacts which are widely acknowledged.

The authors opine that despite the impact of the green revolution, particularly over recent decades, and the introduction of synthetic fertilizers and agrochemicals, agriculture in India is still largely based on the traditional methods, characterized by no or little use of external inputs, but driven by the timeless wealth of indigenous knowledge (such as for natural pest and disease control, soil management and crop/livestock production) which is still paramount in the majority of the rural communities within the region. Further it has become evident to many that the green revolution is not the panacea. This widespread realization has given rise to an increasing return to the husbandry led farming practices, combining traditional knowledge and modern technology resulting in what is now formally termed as “Organic Agriculture”, promoting environmentally, socially and economically sound production of food and fibers. The study aims at increasing the involvement of rural people in organic agriculture and also creating awareness about ‘Green Marketing’.

“Ecological Quality of Products and Consumer Protection – Lessons from European Directive” by Ankur Khandelwal and Pariru talks about the ecological rights which are in relation with both product safety and the environmental quality. These are strongly associated to each other because modern product regulation takes into consideration safety, health and ecological characteristic of goods moving without restraint in the market. The authors are of the opinion that the ecological aspects play an imperative role in community policies. As far as the European Economic Community, (hereinafter EEC) is concerned, product safety and ecological quality were among the EEC objectives from the beginning and this can be seen in the Article 36 of it as well. Further the Maastricht Treaty on European Union expanded Union competences and includes, among the community activities, a policy in the sphere of the environment and contribution to the strengthening of consumer protection.

This paper focuses on how consumer protection and ecological quality

can be made part of the objectives of the Community, drawing an example from the European markets and the European treaties. The European experience is a lesson for the global economy to treat consumer protection as a part of the Community Obligations, particularly ecological quality. This includes within its scope, access to safety and environmental quality, which means that it is the duty of the producer and also to a lesser extent of the supplier to market only safe products in the community and the role of the Community Directive 92/59 in ensuring the same.

Further the authors opine that safety requirements should not differ significantly from one state to the other and free movement of goods can be secured only if this is taken care of and the Directive 85/357 on product liability is also important as it confers individual rights on the consumers. The paper thus seeks to take into consideration all these aspects and how further, learning a lesson from the European experience can help the global economy to ensure consumer protection and the ecological safety in a better way.

“Globalisation and Green Consumerism: A Case Study of Chhattisgarh” by R.N. Pati is based on the one year field investigation focused on developing viable mechanism for documenting traditional botanical knowledge as related to the dynamics of market forces regulating production to consumption chain of herbal products in Chhattisgarh. The study conducted over 57 shamans, 29 bone setters and 167 community elites and tribal healers of 35 forest villages examines the sensitive dimensions of sustainable use of medicinal plants as related to the consumer behavior. The author opines that the General Agreement on Tariffs and Trade (GATT) and Trade Related Aspects of Intellectual Property Rights agreement (TRIPs) fail to address the challenges encountered by tribal shamans and herbalists in developing countries of the world. The growing demand of the consumers worldwide has led to the corresponding growth of business sectors manufacturing herbal food supplements, cosmetics and agro products both in national and international market. Describing the biological resources in the indigenous territories of Chhattisgarh which consist of various natural sources of agricultural, medicinal, ecological, veterinary and cosmological potencies, it ensures the equilibrium between local environment and social health of the tribal communities inhabiting in the forest villages. The forest dwelling tribes interact with plant and animal diversity in a natural supportive way. The biological resources influence the customary practices, cultural resources and local knowledge systems not only among Gond and Halba communities but also among other indigenous communities.

Further the paper talks about the cultural practices, both customary and non-customary, prevalent among Gond and Halba tribes of Chhattisgarh which are not only inherited territorially but also continue to evolve under the influence of individual innovations and local environment. The author is of the opinion

that the scope for integrating the modernization and commercialization of indigenous knowledge towards greater social and economic benefits in the sectors of cosmetics, food, handicrafts, aromatics and pharmaceuticals has not been appropriately explored so far and without appropriate advocacy intervention, the health bureaucracy has not recognized traditional health care system and provided room for integration into the primary health care system.

“Labeling of Genetically Modified Food” by Vinitha Johnson and Geetanjali Sharma deals with the ‘informed consent’ of the consumer – the right to refuse to purchase certain goods in the market after knowing the ingredients present in them. The paper portrays the manner in which the State has responded to the concerns of the informed consumers by setting up a framework of laws and an efficient mechanism.

The authors argue that due to the lack of transparency and legislation the community may not give Genetically Modified Foods any consideration. The Genetic Engineering Approval Committee (GEAC) has been party to disputes regarding it, having to stop issuing sanction for GM foods after the Bt Cotton issue. Further the reluctance exhibited on being asked to submit necessary data on transgenic food crops by the Central Information Commission does not guarantee people of transparency. Apart from regulations stressing compulsorily labeling of the Genetically Modified Foods allowing the consumer choice of goods, a proper regulatory system with a well defined procedure along with documentation similar to the USA structure which can be revealed at any time with transparency are necessary.

Further the author opines that it must be backed by a proper legal system for relief laid down by the clear cut principles on Product Liability in Tort Law in case of consumer grievances with the GM foods, and Trespass to Chattel with regards to the gene transfer and other related issues. With these legal formulations, backed by transparent regulations the people will be free to make an informed choice on whether GM foods are necessary or not.

“(Lack of) Concern for Environment Under Law of Consumer Protection in India: A Black Hole in the Universe of Rights Jurisprudence” by Debasis Poddar assess the growing concern for environment in terms of unscrupulous activities of producers and service providers to the detriment of habitable environment. As the environment being a primary condition for sustainability of *homo-sapiens* and all life forms on the Earth, the author opines that the consumer as a community cannot remain beyond universal human obligations to help protect and preserve human environment. Along with producer and service provider, the consumer is also a stakeholder to participate in combined struggle for existence to remain in the world of survival against an increasingly hostile environment leading to climate change and consequent global warming.

The paper describes that as there are legal restraints on producer and service provider for protection and preservation of the environment, therefore, emerging law of consumer protection ought to introduce duty of consumers,

not to encourage condemned products or services which may be instrumental to degradation of the environment. The paper suggests that appropriate provisions for civil action or/and criminal proceeding must follow substantive provisions for the protection and preservation of environment under the law of consumer protection. The recent jurisprudence of fundamental duty introduced by the Constitution of India may be taken care of to address such cleavage between environmental law and the law of consumer protection so that application of the rule of law may be equitable to one and all, excluding none under the Sun.

“Consumerism, Environment and Sustainable Development” by K. N. Bhatt analyzes the interlinkages between consumerism, environment and sustainable development. It examines the design defects of the modern economic development process and consequences of over consumption, mass production and environmental resource extraction on unlimited scale. A search for intrinsic values, well-being and happiness attempted and the available policy options to ensure conservation of the basic natural resources for sustainable development are presented.

The paper clearly brings out that sustainable livelihood is the top priority for the large numbers of the world’s poor over marketed goods which depends on clean air, available soil and clean water. Therefore, it is suggested that these basic resources need utmost care and protection for ensuring sustainability of development in future. Today, the earth has lost enormous amount of tree cover, large areas engulfed by desertification, thousands of plants and animal species extinct, large quantity of top soil lost, and the world population touching around 7 billion marks. If present trend continues, we face the prospect of a global collapse. There remains a clear choice for the world community between rapid and uncontrolled decline in food production, industrial capacity, population, life expectancy or a sustainable future. The author opines that basically, the three factors are having direct impact on the environment - population, consumption and technology - which decide how much space and resources are used and how much waste is produced to meet the consumption needs of the ever growing human numbers. The most positive aspect that emerged out of the environment debate today is that the people are increasingly taking the environment into consideration. This awareness produces the basis for a new hope for our planet and for the future of humanity.

BEST PRACTICES IN CONSUMER PROTECTION—GLOBAL SCENARIO

MAMTA PATHANIA AND AMIT KUMAR SINGH

Introduction

Globalization has been a much discussed topic in recent years. It involves greater interaction across national boundaries and affects many aspects of life: economic, social, cultural and political. However, in order to manage the global networks; service facilities, including transport and communications; a variety of professional business and financial services and furthermore the knowledge of their working patterns in different organizations are required to be studied. In the same way greater openness in the economies of the region in the face of current trends towards globalization and regionalization offers promising opportunities for infusing greater dynamism into their domestic economies. However, this entails risks which countries must be aware of and must develop the capacity to manage them. These capacities differ widely across large number of countries. It is for sure that globalization, liberalization and privatization has enabled the entry of several traders, including the large multinationals, who have transformed the economy into a vibrant, rapidly growing consumer market. This has in a way flooded the market with different kinds of goods and services, affecting the purchasing patterns of the consumer. Under this backdrop, it is quite clear that in a market economy with different products and services coupled by competition, the consumer is in a dilemma as how to come to a wise decision while buying products and hiring services.

The answer lies in framing laws that protect the consumer from being cheated and exploited at the hands of sellers and also generating awareness about it. Though, the consumers in almost all the countries have been provided with various safety measures against their exploitation, still the sellers and

producers are hoarding and black marketing the essential goods. Therefore, it is widely realized that the fate of consumers cannot be left to the market forces. In this endeavour governments of most of the countries have come up with some or the other laws related to consumer protection, but there is a dire need to frame a system which is equipped with the initiatives and policies which are and which would serve as a strong base for an efficient and effective consumer protection regime.

In a globalised world the consumers are at the mercy of the market forces.¹ Through out the world and particularly in the third world countries the ills of globalization and liberalisation are visible as a result; both the consumers and the law makers are equally worried. A net of legal protections provided to the consumers have proved to be insufficient to redress their problems. Apart from this the institutional mechanism set up to protect the consumers and promote consumer welfare are also inadequate and to a large extent, unable to protect the consumers from exploitation. Globalization has posed new challenges to the governments throughout the world and new mechanisms and instrumentalities are being set up to protect the consumer. Consumer protection and consumer welfare has emerged as a key component of good governance. Consumer protection as a movement has yet to take off in the real sense. There are laws which have proved to be inadequate in protecting the consumer. Moreover law can only protect the consumers through rules, which are essentially national and can only be enforced within national frameworks. The Consumers are now seeking protection through legislations that have a global reach because the general laws and market forces have proved to be inadequate to protect them. Many consumer protection laws either relate to the terms and conditions of contracts that consumers make with suppliers for the supply of goods and services, or intended to encourage the making of such contracts (marketing, packaging, advertising and provision of information). Since 1960 most developed countries with common legal system and most recently the countries of Asia have enacted significant consumer protection legislations. However, such laws are national and operate only within the geographical limits of the enacting jurisdiction.

Consumerism is a process through which the consumers seek redress, restitution and remedy for their dissatisfaction and frustration with the help of their organised and unorganized efforts and activities.² It is in fact a social movement seeking to protect the rights of the consumers in relation to the producers and providers of the services. In its wider perspective it is an item on the agenda of administrative reforms for greater accountability, responsiveness and transparency through the technique of decentralisation, debureaucratisation and devolved planning process. It's a part of the ongoing debate for good governance, which recognizes the Right to Information as a prerequisite. In many of the developed countries consumerism has over the

time developed into a sound force designed to aid and protect the consumer by exerting legal, moral and economic pressure on the producers and providers of the services³. A major problem is that the availability of information itself is very difficult, as most of the information is scattered and there is no systematic compilation of the available information about the consumer protection laws and legislations.

In the present scenario there is a need to learn from the practices and experiences of other countries as to the mechanisms they have evolved to protect the consumers. There is a need to identify the good practices and try to incorporate them in a framework for consumer protection. The present paper is an effort to fill this gap. It is an effort to educate and inform the consumers about various systems and sub systems that exist to protect the consumers. It exhibits the existing consumer protection and welfare laws and rules of some of the select countries.

The present paper deals with best practices in select countries like Australia, Belgium, China, European Union, Indonesia, Japan, Malaysia, Mexico, New Zealand, Sri Lanka and Thailand.

Consumerism: Cross Cultural Experiences

The consumer movement in the developed countries has matured and the consumers are well protected. In the USA, for instance, the Executive Office (President) has provided strong and explicit support for consumers' interest and many legislations supporting the consumers have been sponsored by the President. During the 1960s there was a visible concern for consumer care, which forced the Congress to pass a series of legislations. The Consumer Product Safety Commission (CPSC) is a powerful body created by law. Ralph Nader pioneered the fight against the monopoly and unethical practices of large companies in the United States. He initially took up cudgels against the automobile industry for violating safety standards and control laws and gradually extended his fight to other issues in which the consumer was receiving a raw deal. Similar is the case in Britain with lesser legislation but greater social awareness the situation is equally good. So is the case with Japan, Italy, France and Germany. Among the developing world the experiences have been mixed. Many countries have developed a legal framework to protect the consumers but in most of the countries the situation is not as it should be. The consumer protection is not a priority agenda among most of the governments. In this area India has taken a lead over most of the developing world, as far as policies and programmes relating to consumer protection are concerned. Various instruments have been put in place to protect the consumers. Due to education and awareness, various stakeholders are now making their presence felt.

Framework for Consumer Protection

U.N. Guidelines for Consumer Protection

During the 1980s the global concern for consumers' protection was visible. This period also saw the emergence of strong interest groups promoting the cause of the consumers in various parts of the world. The UN mandate gave an impetus to consumer protection world over and the General Assembly adopted Guidelines for Consumer Protection by consensus on 9 April, 1985. The guidelines provided a framework for governments, particularly those of developing countries, to use in elaborating and strengthening the consumer protection policies and legislations. They also recognise and encourage international co-operation in this field.

The origin of the guidelines can be traced to the late 1970s when the Economic and Social Council recognized that consumer protection had an important bearing on the economic and social development. In 1977 the Council asked the Secretary General to prepare a survey of national institutions and legislations in the area of consumer protection. The Council requested a comprehensive report containing proposals for measures on consumer protection for consideration by the governments. In 1981, the Council aware of the need for international policy framework within which further efforts for consumer protection could be pursued, requested the Secretary-General to continue consultations with the aim of developing a set of general guidelines for consumer protection, taking particularly into account the needs of the developing countries. Based on extensive discussions and negotiations among governments on the scope and contents, the guidelines for consumer protection were adopted in 1985.

The objectives of the Guidelines for Consumer Protection are⁴:

- (1) To assist countries in achieving or maintaining adequate protection for their population as consumer;
- (2) To facilitate production and distribution patterns responsive to the needs and desires of consumers;
- (3) To encourage high level of ethical conduct for those engaged in the production and distribution of goods and services to consumers;
- (4) To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers;
- (5) To facilitate the development of independent consumer groups;
- (6) To further international co-operations in the field of consumer protection;
- (7) To encourage the development of market conditions which provide consumers with greater choice at lower prices;

The guidelines put enormous responsibility on the government to protect the consumers. It states that the Government should develop, strengthen or maintain a strong consumer protection policy, taking into account the guidelines set out. For doing so each Government must set its own priorities for the protection of consumers in accordance with the economic and social circumstances of the country, and the needs of its population, and bearing in mind the costs and benefits of the proposed measures. The legitimate needs that the guidelines are intended to meet are the following⁵:

- (a) The protection of consumers from hazards to their health and safety;
- (b) The promotion and protection of the economic interests of consumers;
- (c) The access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs;
- (d) Consumer education;
- (e) Availability of effective consumers redress;
- (f) Freedom to form consumer and other relevant groups or organizations and the opportunity of such organizations to present their views in decision-making processes affecting them.

The Government should also provide or maintain adequate infrastructure to develop, implement and monitor consumer protection policies. Special care should be taken to ensure that measures for consumer protection are implemented for the benefit of all sections of the population particularly the rural population. Apart from these, the guidelines also provide that Government should establish or maintain legal or administrative measures to enable consumers or, as appropriate, relevant organizations to obtain redress through formal or informal procedures to take particular account of the needs of low income consumers.

As a follow up the member nations have set up some kind of mechanism to protect the consumers in their country. The focus has been on educating the consumers about their rights and obligations.

Consumer Education: Empowering Consumers

Consumer education and awareness is very important element in dealing with consumer protection. The present situation calls for greater efforts to increase public knowledge and public participation. Consumer protection to a large extent depends upon the support of an informed and alert public opinion, governmental and non- governmental organisations. Equally important is education and awareness. In fact, the provision of effective consumer education information programmes must be an essential concern of a wide - ranging consumer policy.

Consumer education is concerned with the skills, attitudes, knowledge

and understanding necessary to become an effective consumer.⁶ It equips people with the skill to make discerning choices, to sort out problems effectively and to seek further information and help appropriately. While markets may change, these skills will enable people to become effective consumers. It sets out to change behavior, strengthen responsibility, and motivate to participate and to empower the consumer. Consumer education encompasses the responsibility of consumers as well as their rights. This entails taking a shared view of society as a whole as well as the individual concerns of the consumer. It focuses on issues such as the environment, the conditions of producers, globalisation and sustainability. Informed, articulate and demanding consumers are likely to be more effective individuals.

Information enhances our awareness and knowledge of our rights and responsibilities. Armed with information, consumers can make good choices and wise decisions. When faced with problems or particular needs we can use and analyse the information and become responsible consumers. The confident person knows his or her rights, how the market operates and how to find information about what they are buying. They will be skilled enough to negotiate where ever necessary, to budget for what they are buying and be able to sort out problems before they escalate. Moreover, in this era of globalisation and liberalisation consumer confidence can help shape an effective business and social environment. The mass media can play a very important role in reaching consumers who may not be reachable by other methods. Television and radio can be particularly useful for consumers who are illiterate or have low levels of literacy and radio can have a very far-reaching impact on rural communities. The media has a responsibility to inform the public about the need to understand their rights as consumers. This will save the consumers from exploitation. As consumer education is very important, it to a large extent depends on the information that the consumers and policy-makers have.

Consumer Rights

In most of the countries the United Nations Guidelines serve as a commonly accepted basis upon which consumer protection and welfare policy advocacy groups, worldwide develop programmes in order to meet the expectations of the communities in which they work. However, some of the countries have adopted the same with slight variations. For example, in Australia, the Trade Practices Act⁷ implies certain promises into all consumer contracts that they make, which are often referred to as Consumer's 'Statutory Rights' or implied warranties and conditions. Statutory Rights are consumer rights by law and cannot be refused, changed or limited by the seller. There are two types of Statutory Rights: Statutory Conditions and Statutory Warranties. (i) Statutory Conditions are essential terms of a contract—they 'make or break' the deal. If a statutory condition is breached, one is entitled to a refund. (ii) Statutory

Warranties are also important, but they are not regarded by law as essential terms of the contract. Breaking a statutory warranty may, however, give rise to other remedies.

In China, apart from consumer's right to safety, choose, information, education and redressal, consumers also enjoy four distinct rights⁸, they are; (1) right of fair trade, according to which consumers have the right to quality assurance, reasonable prices and accurate measurements and other terms of fair trade, as well as the right to reject business operators' coercive trade behavior, (2) right to exercise supervision over commodities and service, and over the work of protecting their rights and interests, (3) right to demand respect of their personal dignity and national customs and habits in purchasing and using commodities and receiving service (4) right to form social groups in accordance with the law to safeguard their legitimate rights and interests.

The Indonesian Consumer Act⁹, 1999 is the foundational law that integrates and strengthens the enforcement of consumer protection law in Indonesia. This Act offers nine rights to the consumer. This Act also gives a right to the consumers to be treated or served justly and truthfully as well as indiscriminatively.

In Malaysia¹⁰ as well as in Sri Lanka¹¹ eight rights have been given to the consumers. Among them, six rights are almost similar to the CP Act, 1986 of India. However, the Malaysian CP Act provides two distinct rights to their consumers; (1) the right to basic needs which guarantee survival, adequate food, clothing, shelter, health care, education and sanitation. According to this, consumers have every right to look forward to the availability of basic and prime commodities to consumers at affordable prices and of good quality (II) the right to a healthy environment which is the right to live and work in an environment which is neither threatening nor dangerous and which permits a life of dignity and well-being. According to this right consumers can write to the local officials and to the consumer organizations if they are aware of any kind of environmental destruction being committed in their area. They can organize an earth-friendly group in their locality. The main task of it is to ensure that surroundings have clean air and clean water.

One of the striking features of the consumer protection laws in Mexico¹² is the provision of twenty five rights for the benefit of the consumers. Some of the distinct rights are: right of non-discrimination of consumers, right to receive guaranties in clear and precise terms, right to participate in the benefits that is stipulated in the promotions and offers, right to personal integrity of the consumers and when the purchase is made outside the commercial local and there is a decision not to acquire the goods or services, the operation can be withdrawn within five business days as from the delivery of the goods or the signing of the contract, whichever comes last.

In Thailand¹³ apart from other rights consumers are provided with two distinct rights – (i) the right to receive a fair contract and (ii) the right to have

the injury considered and compensated in accordance with the laws on such matters or within the provisions of this Act.

Under the New Zealand's¹⁴ Consumer Guarantees Act, consumer rights are expressed as a series of "guarantees" that a seller automatically makes to the consumers when they buy any good or service ordinarily purchased for personal use. The rights are (i) rights and remedies for faulty goods (ii) rights and remedies for service failures (iii) rights and remedies for consequential loss. Consequential loss is a loss (normally one that costs consumer money) that consumer suffers as a result (consequence) of something going wrong with the goods he/she has bought or a service received.

Redressal Mechanism

The effectiveness of any system depends upon the fact that to what extent the manpower manning the system is efficient and devoted to the set up. Different countries exhibit different frameworks as far as the redressal machinery is concerned but there is a dire need of a uniform system which incorporates in it the best practices of different countries. Although the Indian redressal mechanism is equipped with three –tier set up for the convenience of consumers but there are various other distinct points of other systems which if incorporated can work wonders and also lead to speedy disposal of grievances of consumers.

According to the Australian Competition and Consumer Commission (ACCC) Guidelines consumers have different options to resolve their problems. In the first step, Consumers can contact the business to explain the problem. They can ask for remedies what they want e.g. a refund or exchange. If this step does not work, consumers can write letter directly to the business or email to the manager or the company's head office and can set out what he or she is complaining about and also the wanted outcome (as in step 1). One can ask for response from the business within two weeks. If steps 1 and 2 don't resolve consumer's complaint, he/she still has several options. The best place to go will depend on consumer's circumstances. For that the ACCC Info Centre can refer to the appropriate state and territory government department, industry ombudsman or dispute resolution scheme, Small Claims Courts and Tribunals or other private legal action.

Looking at the redressal mechanism of Belgium¹⁵, where consumer organizations or consumer centers do not limit themselves to merely providing legal advice; they also try to find a solution by addressing the seller. At first, the Ombudsman tries to reconcile the parties. If it doesn't succeed, it gives a non-binding recommendation. Further the mediation board by appointing an expert tries to solve the matter but if he does not succeed then he draws up a binding expertise report. If the consumer opts for an arbitration procedure, he/she can no longer, go to court, except for a procedural issue. If all the above-mentioned options fail to solve the matter then only option is court

proceedings. Another distinct feature here is the several options which the authorities can follow or take up, such as:

Issue an Informal Warning: It is, however, typically used where a trader negligently violates the law, but where no damage to third parties has occurred and where the trader immediately agrees to rectify the problem.

Issue a Formal Warning: is issued to the perpetrator within three weeks after the facts have been authenticated by registered mail. It indicates the time period within which the trader has to comply and the actions that will be taken on non-compliance. The procedure is usually used for a first offence, where there is no harm to a victim and when the co-operation of the trader can be expected.

Draft a Pro Justitia: This is a report in which an officer instituted with investigating powers formally asserts that the trader has committed a violation. The document that can later be used as evidence in the criminal court has to be addressed in principle to the public prosecutor.

As far as European Union¹⁶ is concerned there is a provision of secondary legal aid and is only available to persons whose income is insufficient. Depending on the degree of one's insolvency, legal aid is partly or entirely free. Another striking feature here is legal expenses insurance in which the consumer can take out legal expenses insurance, which covers litigation costs and solicitor costs. Similarly the ADR which stands for Alternative Dispute Resolution is an alternative way to settle disputes. It consists of a series of extra-judicial tools allowing for quick and less costly resolution of disputes between consumers and professionals/companies. According to EU recommendations, the basic principles of this procedure are: independence, transparency, adversarial system, effectiveness, legality, liberty and representation. For companies in particular, the only alternative procedure used until recent years, was arbitration. Nowadays, the alternative resolution procedures are:

Mediation: Transaction that is carried out with the contribution of a third party that improves dialogue between disputants helping them to analyse all possible solutions. Without taking a formal position in favour of one or other solution, the mediator helps to reach an agreement that is favourable to both parties. If an agreement is reached, it will be compulsory only once both parties have agreed on its effectiveness.

Conciliation: A form of dispute settlement in which parties reach an agreement with the contribution of a neutral third party (the conciliator) who has no capacity to take decisions. It differs from mediation because the conciliator is generally a public body and the resolution is reached making use of legal rules.

Arbitration: It differs from the other two procedures, which are quite similar, because in this case the third party (the arbitrator) has the power to settle the dispute and his decision has the same value and effectiveness of a

judgment. This procedure is mainly used in business-to-business disputes, given the higher costs and the necessary qualification of the arbitrator.

ADR procedures can be applied very easily and at quite reasonable prices. One of the two parties refers to an ADR body declaring the will to settle the dispute through extra-judicial procedures, providing all necessary documentation and the economic quantification of the dispute. The ADR body then contacts the counterpart, inviting it to take part to the attempt of settling the dispute. If both parties agree, service charges are paid, a conciliator (or arbitrator) is named and the date for the initiation of proceeding is defined. If an agreement is reached, the conciliator draws up a conciliation document that both parties will have to subscribe. In case of no agreement, a document of failed conciliation will be drawn up and parties will be free to bring the case before the Court.

Beyond this form of conciliation, there is another common practice, “parity conciliation”, in which a Conciliation Commission is formed including a representative of the Consumers Organization, on behalf of the consumer, and a representative of the company/professional. In this case, there is no need for a third party, since the resolution of the dispute should be reached inter parties. This kind of conciliation is very effective in disputes between consumers and utility companies.

The reason why the Alternative Dispute Resolution is convenient and more suitable than a judgement in consumer cases is that the trader and consumer can find a friendly settlement together, with the support of a qualified third party, expert in consumer law. The relationship between them can be preserved, the procedure is much shorter, very cheap and accessible without the legal assistance of a lawyer. It is easy and less exhausting than a judgement and is particularly suitable for cross-border disputes, through online procedures.

In China¹⁷, if a dispute takes place between consumers and producers over purchased goods or hired services, the Product Quality Law of the People’s Republic of China and other relevant laws and regulations provide different options to the consumers to resolve their disputes with business operators over their rights and interests. These are: (1) Negotiate a settlement with the business operator; (2) Request a consumer association to mediate; (3) Complain to the relevant administrative department; (4) Apply to an arbitral body for arbitration in accordance with the arbitration agreement reached with the business operator; or (5) Institute legal proceedings in a People’s Court.

In China special power has been given to the relevant administrative departments of the People’s Governments at all levels to take appropriate measures, in accordance with laws and statutory regulations and within their respective powers and functions, to protect the legal rights and interests of the consumers. The relevant State authorities can penalize, in accordance with laws and statutory regulations, business operators for illegal and criminal acts that infringe upon the legal rights and interests of the consumers during

the provision of commodities and services. Apart from that the People's Courts adopt measures to facilitate the institution of legal proceedings by consumers. Disputes over the rights and interests of consumers that meet the conditions for instituting an action under the Code of Civil Procedure of the People's Republic of China is accepted and promptly heard.

Taking the case of Japan¹⁸, there is a specific consumer redressal mechanism for consumer claims and that comprises of Negotiation and Prosecution. Further if the negotiation fails, and the sub-Committee considers and agrees that the cases should be filed in the court, the concerned authority will summarize the case and propose to the Consumer Protection Board for consideration and decision. Another provision of quick counselling and redress is provided for consumers who encounter problems using products or services. The Consumer Counselling Team provides counselling and handles complaints related to various fields such as automobile, daily articles, housing and facilities, publications, service, agriculture, textile, finance and insurance, law and medicine. Redress is provided based on recommended conciliation between parties involved in the dispute in accordance with the Compensation Criteria for Consumers' Damages. If parties fail to reach an agreement, the case is referred to the Consumer Dispute Settlement Commission (CDSC) for mediation decision. There is also an expert committee to investigate the cause of consumer victimization. The Consumer Product Safety Association in Japan gives approval to affix the Safety Goods (SG) mark on a product when the product conforms to the standard. When a defective product bearing the SG mark causes an accident, the consumer is entitled to compensation under the remedy system.

In the case of Indonesia¹⁹ there are three types of Consumer Protection Organizations, which are mandated by the Consumer Protection Act in order to effectively support their development for the consumer interest. They are (1) National Consumer Protection Agency (NCPA) at National Level, (2) Consumer Dispute Settlement Board (CDSB) and (3) Non-Governmental Organization for Consumer Protection. CDSB is a non structural organization, which is located in all the districts and cities. In the settlement process CDSB adopts three dispute settlement mechanisms - (A) Conciliation in which CDSB forms a council as a passive facilitator and lets the disputers to settle their dispute entirely by themselves and when a settlement is achieved, it puts into the reconciliation agreement strengthened by CDSB's decision. The settlement takes twenty one working days at the most, (B) Mediation in which CDSB forms a council and functions as an active facilitator to give directions, advice and suggestions to the disputers and (C) Arbitration in which the disputers choose CDSB council as the arbiter in settling consumer dispute and both sides entirely let the council to settle their dispute by which CDSB makes a binding final settlement and the settlement needs to be completed in twenty one working days at the maximum. When both sides are not satisfied on the

settlement, they can complain to the state court, fourteen days after the settlement been informed. If both sides are not satisfied on the court's decision/settlement, they are still given the opportunity to have a concurrent jurisdiction to the Supreme Court within fourteen days. The Supreme Court Justice Council is obligated to give the settlement in thirty days.

In Malaysia²⁰ government has established a number of institutional mechanisms for aggrieved consumers to seek redress. (I) The Tribunal for Consumer Claims- it is established under the Ministry of Domestic Trade and Consumer Affairs. There is only one tribunal at National level which conducts hearings throughout the country. It is an independent body and most active entity of the Consumer Protection Act, 1999. (II)The Small Claims Court set up in 1987 which restricts claims to a maximum of RM 5,000 (III) The Industry-Initiated Ombudsmen Schemes for Banking and Insurance (IV) The Tribunal for Homebuyers Disputes.

Importantly before taking the case the Tribunal gives right to both parties to negotiate a settlement either by themselves or with the assistance of presiding judge (President). If necessary, a private mediation session is held and if matter is settled at any stage, consumer can withdraw their claims. Where no complete settlement is reached, the Tribunal lays down an award to determine the claim. A party against whom an award is made is given 14 days to comply with the award. Within 14 days parties are free to further negotiate the terms of the awards but only between themselves and on a voluntary basis. Where the terms of the award are not complied with as set out in the award and the parties have not agreed to the same by consent, the aggrieved party may lodge a complaint of non-compliance, and then this non-compliance case will be handled by the Enforcement Division, Ministry of Trade and Consumer Affairs. The complaint is investigated and where non-compliance established, the trader or opposite party can be prosecuted in the Magistrate court for criminal offence.

Similarly, consumer protection in Mexico²¹ is based in two institutions: the Ministry of Economy, (formerly the Ministry of Trade and Industrial Development) and the Federal Consumer Attorney's Office (PROFECO). According to the Mexico's Federal Consumer Protection Law the consumers must have i) access to administrative instances, ii) means for the defense of their rights, and iii) mechanisms for solving disputes between suppliers and consumers. In the year 2000, the settlement mechanisms were modernized and two main provisions were made. (I) Conciliation - it is considered as the best way to solve most of the matters brought to PROFECO. The conciliatory procedure has a maximum duration of 30 working days. However, there is also an immediate conciliation procedure by telephone, with a maximum duration of 5 days. (II) Arbitration - it is another procedure established by the Federal Consumer Protection Law in order to solve consumer controversies, although it has been less used than conciliation. To promote the use of this

procedure, the Ministry of Economy and PROFECO continued to promote arbitration as an alternative means to solve problems arising in the consumer relations especially in those cases not solved by conciliation.

In Thailand²², the Office of the Consumer Protection Board (OCPB), a government agency and principal body looks after the consumer issues. The Board is entrusted with a wide range of functions. It establishes three ad hoc committees, to be known as the Committee on Advertisement, the Committee on Labels and the Committee on Contract. The Board and the ad hoc committees are empowered to hear complaints on all the matters considered to be infringing the rights of consumers and in particular about advertisements and labeling. As far as Consumer disputes redressal mechanism is concerned, it consists of two course of action. Firstly consumers are encouraged to look for negotiation with sellers or businesses and for that officials of OCPB help the consumers. If the negotiation fails, and the above mentioned sub-Committee considers and agrees that the case should be filed to the court, OCPB summarizes the case and proposes to the Consumer Protection Board for consideration and decision. In Thailand an alternative dispute resolution mechanism for specific matters is also set up as Consumer Protection Information Center.

In Sri Lanka²³ the consumer protection law safeguards the rights of not only the consumers but also the trader who are subjected to injustice. Both the goods and services come within the ambit of the Act. Sri Lanka's Act, No 9 of 2003 provides for a Consumer Affairs Authority and a Consumer Affairs Council, the latter functioning primarily as a higher body before which the decisions of the Authority could be brought for review. Apart from other powers in carrying out investigation, the Authority has the powers of a District Court.

Variation in Relief and Compensation

Different countries exhibit special criterion for giving relief to the aggrieved consumers. According to the Australian Competition and Consumer Commission (ACCC) guidelines once the loss is established, the type of remedy and quantum of damages awarded is decided on the type of damage and/or loss suffered and what the Court considers appropriate in the circumstances. The remedies can be loosely classified in two streams (A) Preventive or corrective orders are non-monetary orders which include: i) a propitiatory injunction (preventive), ii) a mandatory injunction (corrective), and corrective advertising (corrective). These Non-monetary orders are primarily directed at preventing or correcting misleading conduct rather than redressing damage caused by a breach. B) Compensatory orders include: i) a monetary award and/or orders to prevent or reduce loss or damage. Compensatory orders are aimed at redressing individual losses caused by contraventions of the Trade Practices Act (TPA) of Australia. The ACCC is also very strict in bringing the

court actions against companies that breach the TPA. Penalties for non-compliance of the TPA can be quite severe. The companies that do not comply with the restrictive trade practice provisions of the TPA, may be fined by the Federal Court.

In Belgium²⁴ different kind of legal costs have to be paid by complainant; for example cost for instituting proceedings, the solicitor cost, case entry cost in the register and other costs, such as the drafting charge for certain judicial acts and the charge for certified copies. However, if complainant wins the case the judge will reward litigation cost. In principle this compensation covers all materials acts of one's solicitor such as the costs for the summons, the deposit of conclusions, etc. Another important feature of the Belgium Law is that a consumer can be wholly or partly relieved of paying litigation costs for example the cost of a bailiff if the consumer's income is not sufficient. This concept is known as secondary legal aid (*pro Deo*). It is worth knowing that the consumer can take out legal expenses insurance, which covers litigation costs and solicitor costs. This can be separate insurance or a legal expenses option in the framework of another insurance policy, such as the car insurance.

In China²⁵, as far as the relief is concerned it has to be provided according to the problems or loss that consumer has suffered. A business operator that causes bodily injuries to a consumer in providing a commodity or a service must pay expenses such as medical treatment expenses and nursing expenses during the treatment period and income lost due to absence from work. Where physical disability is caused, expenses such as assistance expenses for the tools of disabled people, living subsidies, disability compensation funds and living expenses necessary for the dependents of the disabled must also be paid. Where a criminal offence is constituted, criminal liability must be pursued in accordance with the law. In case of death of a consumer, his heirs must be paid expenses such as funeral costs, death compensation funds and the living expenses necessary. In case of damage to the property of a civil liability must be imposed on businesses by means of repair, redoing, replacement, return of goods, making up the quantity of a commodity, refund of payment for the commodity and the service fee or compensation for losses, at the request of the consumer.

For a smooth implementation of Consumer Protection Act in Indonesia²⁶, Consumer Dispute Settlement Boards are established at the district level. The Consumer who has suffered damages may file charges here against the entrepreneurs. The important feature of the Indonesian consumer dispute redressal procedure is the time bound obligation to render a decision at every level. The consumer dispute settlement agency is obligated to render a decision at the latest within 21 days after the charge is received. The aggrieved party may submit an appeal to the District Court at the latest within 14 working days after receiving the notification of the said decision. The District Court is

obligated to make a decision at the latest within the period of 21 days upon receiving the appeal. Against the decision by the District Court the parties may submit a cessation to the Supreme Court of the Republic of Indonesia at the latest within the period of 14 days. The Supreme Court of the Republic of Indonesia is obligated to render a decision at the latest within a period of 30 days upon receiving the cessation petition. Further the efforts to promote the settlement of consumers' disputes outside the court; charges can only be filed in the court if the said efforts are declared unsuccessful by one of the parties or by both of the parties in dispute.

Whereas in Malaysia²⁷ the Tribunal for Consumer Claims, where practicable, makes its award within sixty days from the first day the hearing before the Tribunal commences. Every agreed settlement recorded by the Tribunal and every award made by the Tribunal is final and binding on all parties to the proceedings. The award made by the Tribunal is also deemed to be an order of a Magistrate's Court and be enforced accordingly by any party to the proceedings in a Magistrate's Court having jurisdiction in the place where the award was made. Again if a party who after fourteen days fails to comply with an award made by the Tribunal commits an offence and should be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding two years or to both. In the case of a continuing offence, the offender shall, in addition to the penalties above, be liable to a fine not exceeding one thousand ringgit for each day or part of a day during which the offence continues after conviction.

In New Zealand²⁸ if something goes wrong, consumer has the right to insist that the seller fixes things. The retailer who sold the goods or services must sort out the problem. However, if the consumers have trouble with the seller, they also have the right to get the goods fixed elsewhere and claim the cost from the seller. If the problem cannot be fixed, or cannot be put right within a reasonable time, or is substantial, the consumer can reject the product or cancel the service contract and claim a full refund or replacement. Sellers cannot offer a credit note only. If the consumer wants cash back, he/she is entitled to it. Alternatively, consumers may claim compensation for any drop in the value of the product or service, or claim for any reasonably foreseeable extra loss that results from the initial problem.

The important aspect of Thailand Consumer Protection redressal is the punishment and penalty to the businesses and seller for infringing the consumer's right. If a businessman who intentionally creates misunderstanding among the consumers for the origin, condition, quality, quantity or other essential matters concerning goods or services, makes advertisements or uses a label containing a statement, which is false or know or should be known to cause the misunderstanding shall be liable to imprisonment for a term not exceeding six months or fine not exceeding fifty thousand Baht, or to both. If the offender commits the same offence again, the offender shall be

liable to imprisonment for a term not exceeding one year or fine not exceeding one hundred thousand Baht, or both. Apart from that any person who sells the label-controlled goods without having labels displayed thereon or having labels incorrectly displayed thereon or sells goods bearing labels which the Committee on Labels has prohibited the use is liable to imprisonment not exceeding six months or fine not exceeding fifty thousand Baht, or both. If a manufacturer or importer for sale commits the act repeatedly, the offender shall be liable to imprisonment for a term not exceeding one year or fine not exceeding one hundred thousand Baht, or to both.

Again if a businessman fails to deliver the contract within the period of time as agreed is liable to imprisonment for a term not exceeding one year or fine not exceeding one hundred thousand Baht, or both.

Conclusion

The above discussion clearly highlights some distinct features of certain mechanisms as far as consumer protection is concerned. The need of the hour is to knit a system which is self sufficient and ready to incorporate best practices suiting its environment. In spite of consumer protection being on the agenda of the governments in the globalised world, yet a lot needs to be done because exploitation of the consumers is rampant. The problem is more rampant in the developing countries. Taking advantage of ignorance, lack of education, the consumers are lured into the trap of the exploiters. Moreover consumerism in itself has brought about a number of innovative methods to cheat the consumers. The institutional mechanism for consumer complaints redressal has its own limitations.

In the prevailing situation, governments' world over, need to take more steps to protect the consumers. Although consumer protection has essential social and ethical dimensions, it also has a vital economic impact as well. In a situation where prices are rising, quality and reliability have decreased, it is time to build a strong consumer movement and a strong resistance to unhealthy practices, so that the voice of the consumers are heard by both the Government as well as the business sector. The business community also needs to come up with some self-regulatory mechanism to help the consumers.

The role of NGOs in this sector is of prime importance. No doubt there are a large number of credible organizations working to protect and provide relief to the consumers but their area of operation and influence is very limited. The mass media has also played a significant role in exposing a number of malpractices and warning the consumers well in advance. In this era of globalization the consumers cannot be left to the market forces. It is the responsibility of the state and the society to ensure that justice is delivered promptly to an aggrieved and harassed citizen. The institutions responsible for consumer protection need to be strengthened and their role must be recognized by the society.

The existence of a strong and active consumer movement assists Governments in their efforts to improve the position of the ordinary people both in providing a perspective different from and where necessary countervailing the well-organised and powerful interest groups and also in playing a very practical role in helping to implement policy goals. In fact, it is here where the voluntary agencies operating in the field can play a vital role. They can educate the consumers on various aspects that would help them. In a country like ours, where consumer policy is yet to mature, consumer organizations can help perform certain important functions that government cannot. At present the consumer movement and associations are confined to the metropolitans in India. The need is for strong NGOs to diversify and enter the scene where they are needed most. Government efforts alone cannot protect the consumers; there is a need for popular participation and mass movement against unethical exploitation. No doubt other instruments are required to protect the consumers but ultimately public opinion is the major force that will shape and modify the existing policies in favour of the consumers where the consumer will be the king.

Firms and consumers need to have all the relevant information if markets are to behave as the competitive model. Lack of information on the part of consumers may result in the market outcomes that deviate significantly from the competitive norm. Information is the most powerful instrument for consumer protection, as it allows consumers to make informed choices and lead to better and most efficient decisions. By studying the structures, systems and framework of different nations relating to consumer protection and welfare, one can easily underline and figure out the strengths and weaknesses of each system. Every nation has a particular set up, certain boundaries under which the scenario of consumer protection is working. Global best practices thus work as a platform where the strengths can be molded out in the form of a strong pillar, a model framework which suits each and every individual as a consumer and furthermore each and every nation as a representative of a consumer.

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EMERGING REGULATORY REGIME IN INDIA - NEED TO PROTECT CONSUMERS' INTEREST

SAPNA CHADAH

Introduction

Political preference in the last two decades emphasise private sector autonomy and non-governmental or market solutions to the problems and difficulties of all descriptions. Since 1980s major changes have occurred in the world politics and the influence of market is growing fast. The changes introduced in 1980s are also described as Liberalisation, Privatisation and Globalisation (LPG). Since 1991 these changes are having impact on our country too under the garb of 'economic liberalisation'. The impact of market ideology on government are broadly described as the new way of governance, government by the market,¹ reinventing government,² new public management,³ sharing power,⁴ slimming of state,⁵ the hollowing out of the state,⁶ really

¹Peter Self, *Government by the Market?* London, U. S. Westview Press, 1993; see also R.A.W. Rhodes, "The Hollowing Out of the State: The Changing Nature of the Public Service in Britain", *The Political Quarterly*, Vol. 65, No. 2, April-June 1994, pp. 138-54

²David Osborne and Ted Gaebler, *Reinventing Government: How the Entrepreneurial Spirit the Public Sector from School House to State House*, City Hall to Pentagon Reading, MA, Addison- Wesley, 1992; see also Ronal C. Moe, "The Reinventing Government Exercise: Misinterpreting the Problem, Misjudging the Consequences" *Public Administration Review*, Vol. 54, no. 2, March-April, 1994, pp.111-22

³"The Changing Role of Government: Administrative Structure and Reforms" *Proceedings of a Commonwealth Roundtable*, Sydney, Australia, February 24-28, 1992, p. contd....

reinventing government,⁷ downsizing, right sizing etc. This has led to the emergence of new phase in administration / governance characterised as the phase of deregulation and re-regulation of socio-economic activities in the developed as well as developing societies.

Since 1980s deregulation and contracting out of governmental functions, services and responsibilities have reverberated around the world under the impact and influence of liberalization, privatization and globalization (LPG). Main thrust of the changes introduced under the impact of liberalization, privatization and globalization on the system and sub-systems of governance has been seen from the perspective of economy, efficiency, effectiveness, ethics and equity.⁸ Most of the developed as well as developing countries have gone further in the direction of a customer/contractor structure, with diminishing core ministries and a large amount of privatization, creation of executive agencies and contracting with the private sector under the influence of the market ideology. This has thrown open a large number of areas to market forces to transact heretofore governmental business.⁹

But privatization and liberalization has not resulted in complete withdrawal of the state from the market; the state has merely reformed. To the reformation it has assumed a more overt regulatory role vis-à-vis economic power. There has been a shift in the perceived role of government from acting as the principal vehicle for socio-economic development to guiding and facilitating that development. Accordingly, while policy formulation remains one of the main functions of government, the role of the government in implementing policy decisions is changing. It has been observed that economic liberalization brings with it an increased requirement for regulatory activity. What we see is not that total retreat of the state, but rather the substitution of one form of involvement by the state in the economy for another. It is, therefore, performing the functions of supervision and monitoring, as the process of deregulation, required to be regulated with more care and caution.

With privatization and liberalisation an array of regulatory agencies has spawned which carry with them rule-making and rate-making powers,

contd...

20; See also Norman Lewis, "Reviewing Change in Government, *New Public Management and Next Steps*", *Public Law*, Spring 1994 pp. 105-13

⁴Donal F. Kettl, *Sharing Power-Public Governance and Private Market*, Washington DC, Brooking Institute, p. 157.

⁵Peter Self, *op. cit.*

⁶Rhodes R. A. W. "The Hollowing Out of the State: The Changing Nature of Public Service in Britain", *The Political Quarterly*, Vol. 65 No. 2, April- June, 1994 pp. 138-54

⁷Drueker, Peter, F. "Really Reinventing Government", *SPAN*, December 1995, p. 11

⁸S.S.Singh and Suresh Misra, "Public Law Issues in Privatisation Process", *Indian Journal of Public Administration*, 1994, Vol XL, No. 2, pp. 396-410

⁹"The Changing Role of Government: Administrative Structure and Reforms" Proceedings of a Commonwealth Roundtable, Sydney, Australia 24-28, 1992, p. 20

grievance redressal powers in addition to their general powers of promoting competition and efficiency. Access to justice and resolution of grievances is beginning to be seen as an inherent feature of regulation. The countries like U.K. and New Zealand or for that purpose the member countries of European Union, are beginning to witness participation in standard setting. To the Indian context the increased role played by the consumer courts in the area of improving the quality and standards of goods and services may be seen in this perspective. Access to justice has become far more closely involved with regulatory activity. However, the experience in other countries reveals that the privatization programme has not served to minimise the role of the state and to augment the private sector. On the other hand it has effected a confusion of public-private, has produced more comprehensive regulatory activity by public authorities and has introduced access to justice as an inherent part of that regulation.

Deregulation or Re-regulation

The 1980s was an age of deregulation. By the early 1980s, the US and the UK were in the middle of a significant drive for deregulation, corporatisation and privatization. Other developed countries also moved, in varying degrees and speeds, towards deregulation and in general reduction in government involvement in the economy, through spending cuts, sales of state assets (if not wholesale privatization), introduction of more 'commercial' criteria into the operations of public enterprises and welfare provision, and the introduction of more 'market-oriented' methods of regulation. Simultaneously there was a significant reduction in the 'developmental' activities of the government in many developed countries.

Although regulatory reform in 1980s went under the slogan of 'deregulation' regulation was massively extended in some areas, notably safety and pollution.¹⁰ Far from living in an age of deregulation, we live in golden age of regulation.¹¹ From environmental protection to consumer protection, safety and health, labour standards and social justice rules, no governmental activity has grown faster since 1980 than governmental regulatory functions. During the administrations of Reagan and Thatcher, the quintessential "deregulation", the quantity of regulations measured in number of rules and their length increased both in USA and UK. Regulatory standards have never been higher in the developed countries than they are today. International standards are also increasing rapidly.¹² The number and scope of government (domestic and international) regulations have increased so rapidly in almost all OECD

¹⁰see Ayres and Braithwaite, *Responsive Regulation*, Oxford University Press, New York, 1992, pp. 7-12

¹¹Jacobs, Scott, "The Second Generation of Regulatory Reforms", paper presented at IMF Conference on Second Generation Reforms, November 8-9, 1999, Washington D.C.

¹²See *OECD Regulatory Co-operation for an Independent World*, OECD, Paris, 1994

countries that the term “regulatory inflation” was coined by the OECD in the early 1990s.¹³ And even in areas of regulatory reform, what happened was not so much a complete withdrawal of government interest in areas such as telecommunications or aviation, but rather a change in the way the public authority was used to shape these markets. Many have pointed out that ‘re-regulation’ would be a more accurate term.¹⁴

With the move towards network liberalization and privatization in most public utilities, the major policy focus is on the role of the old monopolies. In this process, the role of state owned enterprises is changing. Most have been commercialized, some are partly or fully privatized, and new entrants emerge, changing the face of competition. New regulatory institutions and traditional antitrust institutions aim to control monopoly power and facilitate entry as competition is emerging.

Independent Regulation or ‘New Style’ Regulation

The nature of regulatory powers or functions that traditional administrators enjoy involves drafting of clear and concrete rules and regulations concerning the subject and implementing or enforcing them. It thus involves only legislative and administrative powers. It does not confer judicial powers. However, opposed to the old-style regulation, the independent regulatory commissions which came into existence in mid-1990s wield regulatory powers with legislative, executive and judicial jurisdiction and are termed as quasi-judicial authorities. Thus contrary to the basic principle of separation of powers in governmental functioning, a commission assumes the task of an administrator, a judge and a legislator.

Independent regulation has been practiced in USA longer than anywhere else. This concept of government has its origin and beginning in the USA. But it has been successfully used in UK for electricity and gas sectors and has further extended itself to many other countries. An important justification used for creation of independent regulatory agencies is that they enable complex matters to be considered without discrimination between parties. A variety of disciplines have to interact for reaching a conclusion. The task is, therefore, delegated to a group of experts, who concentrate on such matters to the exclusion of others. The need for expertise sometimes accompanies the requirement for rule-making, decision-making or adjudicative functions that may be inappropriate for government department or a court. Because of their expertise and narrow focus, these new agencies may bring in economy, speed in decision-making, quick adaptation to changing conditions, and freedom

¹³See Jacobs, Scott, et al “*Regulatory Quality and Public Sector Reform*”, in the *OECD Report on Regulatory Reform: Sectoral and Thematic Studies*, OECD, Paris, 1997

¹⁴Majone G. (ed.), *Deregulation or Re-regulation*, London, Pinter, 1989, q. in C. Hood, *Explaining Economic Policy Reversals*, Open University Press, Buckingham, 1994, p.20

from technicality and procedural complexity.

Independence lies both in relation to the individual and institution. In case of the individual, it would rest on an objective, open and fair selection process; in the terms of appointment being similarly done so as to ensure that the best people are appointed; in ensuring that the terms of office are specified; and that the members of regulatory body cannot be removed without an overwhelming cause. At institutional level, independence can be ensured by financial independence. The funding of the body must be independent of government or legislative vote. The regulatory body should be able to prepare its budget, authorize its expenses, decide on the type of staff it needs and recruit them, and use consultants as and when required. Taking these characteristics of independent regulatory bodies into account, the idea of such bodies is still evolving and yet to take its roots in India. Every new legislation which creates a regulatory body brings more restraints on the body instead of ensuring higher degree of independence.

Regulatory Regime in India

Indian experience with regulation is not new. There have been endless restrictions and regulations like industrial licensing, import licensing, export assistance, size restrictions etc. under various laws. Till recently all sectors of the economy were highly regulated. In the infrastructure sectors, the governments or their instrumentalities owned, operated and regulated services. The deep rooted belief at that time was that only public sector can provide the basic infrastructure facilities. Therefore, the entry of the private sector should be strictly regulated if it cannot be altogether prevented. There was no attempt to distance the government's role as the policy-maker and protector of public interest from its role as operator or provider of services. In this form of set up, efficiency, productivity and consumer interests were not relevant. Further, it was believed that accountability to the government and through the government to the Parliament and legislature was sufficient to ensure accountability and transparency and disclosure to public was not necessary. This form of regulation led to unlimited discretionary power to the service provider, inefficiency, and poor quality of service, lack of transparency and accountability, negligible flow of private capital, financial mismanagement, and lack of protection of consumers' interests.

However, the infrastructure was recognized as a major constraint on economic development and growth, requiring vast investments. The government did not have such huge funds for investment. The entry of private investment – both domestic and foreign was thus inevitable and most essential in addition to public investment. The investors who would be required to bring in large funds required a regulatory environment which is independent, transparent, consistent and predictable. Such environment was not available within the constraints of government departments. The independent regulatory

mechanisms were thus mooted as the solution and such independent regulators were created for telecom, electricity, insurance, port and other service sectors.

Regulation of Securities Market

Strong regulation of securities market is vital for market development, financial stability, and growth. In India the regulatory and supervisory developments in 1990s in respect of the capital markets were mainly on the basis of the recommendations of the Committee on Financial System (1991) which advocated in favour of making the Securities and Exchange Board of India (SEBI) the official market regulator. Prior to this the capital market was regulated by the Controller of Capital Issues which fixed the equity issue prices in the primary market. Transactions in the secondary market were regulated by the Securities (Contracts) Regulation Act, 1956. In April 1988, the Securities and Exchange Board of India was set up but without statutory powers. In 1992, the SEBI obtained statutory powers following the passage of the SEBI Act, 1992.

The Securities and Exchange Board of India Act, 1992 (the SEBI Act) has been enacted for the establishment of the Board with the object of protecting the interests of investors in securities and to promote the development and to regulate the securities market and for matters connected therewith or incidental thereto. The Central Government shall establish a Board by the name of the Securities and Exchange Board of India.¹⁵ The Board shall consist of a Chairman;(b) two members from amongst the officials of the Ministry of the Central Government dealing with Finance and Administration of the Companies Act, 1956; (c) one member from amongst the officials of the Reserve Bank; (d) five other members of whom atleast three shall be the whole-time members, to be appointed by the Central Government.¹⁶ The Chairman and members referred to in clauses (a) and (d) of sub-section (1) shall be appointed by the Central Government and the members referred to in clauses (b) and (c) of that sub-section shall be nominated by the Central Government and the Reserve Bank respectively.¹⁷

Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit. Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for –

- (i) regulating the business in stock exchanges and any other securities markets;
- (ii) registering and regulating the working of stock brokers, sub-

¹⁵The SEBI Act, 1992, Section 3

¹⁶*Ibid*, Section 4(1)

¹⁷*Ibid*, Section 4(4)

- brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with securities markets in any manner;
- (iii) registering and regulating the working of the depositories, participants, custodians of securities, foreign institutional investors, credit rating agencies and such other intermediaries as the Board may, by notification, specify in this behalf;
 - (iv) registering and regulating the working of venture capital funds and collective investment schemes, including mutual funds;
 - (v) promoting and regulating self-regulatory organisations;
 - (vi) prohibiting fraudulent and unfair trade practices relating to securities markets;
 - (vii) promoting investors' education and training of intermediaries of securities markets;
 - (viii) prohibiting insider trading in securities;
 - (ix) regulating substantial acquisition of shares and take-over of companies;
 - (x) calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market intermediaries and self-regulatory organisations in the securities market;
 - (xi) calling for information and record from any bank or any other authority or board or corporation established or constituted by or under any Central, State or Provincial Act in respect of any transaction in securities which is under investigation or inquiry by the Board;
 - (xii) performing such functions and exercising such powers under the provisions of the Securities Contracts (Regulation) Act, 1956, as may be delegated to it by the Central Government;
 - (xiii) levying fees or other charges for carrying out the purposes of this section;
 - (xiv) conducting research for the above purposes;
 - (xv) calling from or furnishing to any such agencies, as may be specified by the Board, such information as may be considered necessary by it for the efficient discharge of its functions;
 - (xvi) performing such other functions as may be prescribed.¹⁸

The Act also provides that the Central Government shall, by notification, establish one or more Appellate Tribunals to be known as the Securities Appellate Tribunal to exercise the jurisdiction, powers and authority conferred on such

¹⁸*Ibid*, Section 11

Tribunal by or under this Act or any other law for the time being in force. The Central Government shall also specify in the notification the matters and places in relation to which the Securities Appellate Tribunal may exercise jurisdiction.¹⁹ Any person aggrieved, - (a) by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder; or (b) by an order made by an adjudicating officer under this Act, may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter. However, no appeal shall lie to the Securities Appellate Tribunal from an order made - (a) by the Board on and after the commencement of the Securities Laws (Second Amendment) Act, 1999; (b) by an adjudicating officer, with the consent of the parties. Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Board or the adjudicating officer, as the case may be, is received by him and it shall be in such form and be accompanied by such fee as may be prescribed. However, the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

Regulation in the Telecom Sector

The National Telecom Policy of 1994 (NTP 94) heralded a new era in the Indian telecom sector with the intention to promote the expansion and improvement of India's basic telecommunication infrastructure, particularly to the underserved rural areas. In order to overcome the difficulties of NTP 94, and in view of the new developments, the government announced the National Telecom Policy 1999 (NTP 99) in March 1999. This policy made several adjustments to the telecommunication regulatory framework. One of the biggest impediments to the success of NTP 94 was the lack of an effective and autonomous regulatory authority, with clear lines of jurisdiction, for implementing the telecom policy. Hence, a comprehensive Bill, titled Telecom Regulatory Authority of India Bill, 1995, was prepared and TRAI came into being in 1997. After amendment to the TRAI, 1997 by TRAI (Amendment) Act, 2000, TRAI was reconstituted and a smaller body without judicial powers was formed. A clear distinction was made between its advisory and regulatory functions. The amendment to the TRAI Act made it mandatory for the government to seek recommendations of TRAI on issues like the need and timing of new service providers and the terms and conditions applicable to them. However, such recommendations would not be binding on the government. TRAI's orders on tariffs and the terms and conditions of interconnectivity would, however, be binding, irrespective of anything contained in license agreements issued prior to the ordinance. A separate

¹⁹*Ibid*, Section 15 K

dispute settlement and appellate body the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) was set up to adjudicate any dispute between a licensor and a licensee, among service providers, and between a service provider and a group of consumers. It would also hear and dispose of any appeals against the decisions of the new TRAI.

The TRAI Act, 1997, establishes Telecom Regulatory Authority of India with a view to ensuring fair competition between different service providers and protecting consumer interests.²⁰ TRAI consists of a chairperson, not less than two whole-time members, and not more than two part-time members, to be appointed by the Central Government.²¹ Its head office is at New Delhi.²² The chairperson and members are appointed from amongst persons who have special knowledge of, and professional experience in, telecommunication, industry, finance, accountancy, law, management, or consumer affairs.²³ Notwithstanding anything contained in the Indian Telegraph Act, 1885, functions of TRAI shall be:

(a) to make recommendations, either *suo motu* or on a licensor's request, on the following matters, namely:

- i need and timing for introduction of new service provider;
- ii terms and conditions of license to service providers;
- iii revocation of license for non-compliance of terms and conditions of licence;
- iv measures to facilitate competition and promote efficiency in operation of telecommunication services so as to facilitate growth in such services;
- v technological improvement in services provided by service providers;
- vi type of equipment to be used by service providers after inspection of equipment used in the network;
- vii measures for development of telecommunication technology, and any other matter relating to telecommunication industry, in general; and
- viii efficient management of available spectrum.

(b) to discharge the following functions:

- i ensure technical compliance of terms and condition of licence;
- ii fix terms and conditions of inter-connectivity among service providers, notwithstanding anything contained in the terms and

²⁰TRAI Act, 1997, Section 3 (1)

²¹*Ibid*, Section 3 (3)

²²*Ibid*, Section 3 (4)

²³*Ibid*, Section 4 as amended by the TRAI (Amendment) Act, 2000

- conditions of the licence granted before commencement of the Telecom Regulatory Authority of India (Amendment) Act, 2008.
- iii ensure technical compatibility and effective inter-connection between different service providers;
 - iv regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication services;
 - v lay down standard of quality of service to be provided by service providers, ensure quality of service, and conduct periodical surveys of such service provided by service providers, so as to protect interests of consumers of telecommunication services;
 - vi lay down and ensure time periods for providing local and long distance circuits of telecommunication between different service providers;
 - vii maintain register of inter-connect agreements and of all such other matters as may be provided in regulations;
 - viii to keep register maintained under cl (vii) open for inspection to any member of the public on payment of such fee and compliance of such other requirement, as may be provided in the regulations;
 - ix ensure compliance of universal service obligations.

(c) to levy fees and other charges at such rates and in respect of such services, as may be determined by regulations;

(d) to perform such other functions including such administrative and financial functions as may be entrusted to it by the Central Government or as may be necessary to carry out the provisions of this Act.

The TRAI Act, 1997, has included provisions for settlement of disputes and appeals against decisions of the TRAI.²⁴ Appeals in this regard lay to the High Court.²⁵ The TRAI (Amendment) Act, 2000, provided for establishment of an appellate tribunal called the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) to: (i) adjudicate any dispute: (a) between a licensor and a licensee, (b) between two or more service providers, and (c) between a service provider and a group of consumers; and (ii) hear and dispose of appeals against any direction, decision or order of the TRAI.²⁶

To create conditions for growth of telecommunications in the country and to provide a fair and transparent policy environment which promotes a level playing field for all the stakeholders and facilitates fair competition. TRAI has issued from time to time a large number of regulations, orders and directives dealing with various issues. These regulations and orders relate to tariff,

²⁴*Ibid*, Section 14

²⁵*Ibid*, Section 18

²⁶*Ibid*, Section 14

consumer protection and grievance redressal, consumer education and protection fund, metering and billing, quality of services, etc.

Regulation of Electricity Sector

Since the early 1990s, the power sector in India has been going through a process of reforms and restructuring. In the first phase of reforms, beginning 1991, the focus was on the induction of private investment into power generation. The second phase of reforms began in the mid-1990s when there was widespread realization that more comprehensive reforms were required, including changes in the regulatory set-up to tackle the problems facing the sector. The Electricity Act, 2003, notified on June 2, 2003 and brought in force from June 10, 2003, has replaced the three existing Acts, namely the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948, and the Electricity Regulatory Commissions Act, 1998. The conceptual framework underlying the new legislation is that India's electricity sector must be opened to the competition. Thus the Electricity Act, 2003, has consolidated the laws relating to generation, transmission, distribution, trading, and use of electricity, and for generally taking measures conducive to development of electricity industry. Other purposes of the Act are promoting competition between generators, transmitters, and other players in the industry; protecting interests of consumers; supply of electricity to all areas; rationalisation of electricity tariff; ensuring transparent policies regarding subsidies; promotion of efficient and environmentally benign policies; constitution of central electricity authority and regulatory commissions; and establishment of an appellate tribunal.²⁷ The Act provides for two commissions, namely Central Electricity Regulatory Commission (CERC)²⁸ and State Electricity Regulatory Commission (SERC)²⁹. A Joint Commission may be constituted by an agreement to be entered into (i) by two or more governments of states, or agreement (ii) by the Central government in respect of one or more union territories and one or more governments of states.³⁰

The functions of the CERC and SERCs under this Act are different from those under the 1998 Act. There are three distinct roles that ERCs have to play.

- 1 **Core role:** This role includes tariff regulation, monitoring quality of service, adjudication of disputes, enforcing licensing conditions, monitoring compliance, and redressing grievances.
- 2 **Recommendatory role:** If approval (of licenses, for example) does not come under its jurisdiction, the ERC can give its recommendations to the concerned authorities.

²⁷The Electricity Act, 2003, Preamble

²⁸*Ibid*, Section 76 (1)

²⁹*Ibid*, Section 82 (1)

³⁰*Ibid*, Section 83 (1)

- 3 **Advisory role:** In this role, the ERC provides to the government, on request, information and advice on matters of importance to the sector.³¹

Under section 110 of the Electricity Act, 2003, an appellate tribunal for electricity is to be established by the Central Government to hear appeals against orders of adjudicating officers or appropriate commissions (central, state and joint electricity regulatory commissions) established under the Act.³² Any person, aggrieved by an order made by an adjudicating officer or appropriate commission, may prefer an appeal to the appellate tribunal for electricity.³³

Regulation of Competition in the Market

In 1990s the MRTP Act, 1969 attracted sharp criticism as it proved to be ineffective in achieving the objectives stated in the Act. The Act failed in curbing concentration of economic power or regulating the diverse monopolistic, restrictive and unfair trade practices. Further as the focus of the MRTP Act was more on the control of monopolies and the prohibition of monopolistic and restrictive trade practices, it was felt that the MRTP Act has “become obsolete in certain respects in the light of international economic developments relating more particularly to competition law, and there is need to shift the focus from curbing monopolies to promoting competition”³⁴. Hence the Government decided to enact a new law for bringing competition in the Indian market. Therefore, the Central Government, constituted a high level committee in October 1999 under the chairmanship of SVS Raghavan, to go into the aspects of competition policy and the related law. The committee submitted its report in May 2000. On the recommendations of the Committee a new law called the Competition Act was enacted in 2002 and received assent of President of India on January 13, 2003. On the observations of the Hon’ble Supreme Court of India, the Act was amended by the Competition (Amendment), Act, 2007.

By the amendment the Government of India introduced provisions to constitute a judicial appellate authority while leaving the expert regulatory space to the Commission. The Competition Act, 2002 as amended, provides for setting up of the Competition Commission of India (CCI) comprising of a Chairperson and a minimum of two and maximum of six Members. In addition, it also provides for establishment of a Competition Appellate Tribunal to hear and dispose of appeals against the order of the Commission and also to adjudicate on the claims of compensation that may arise from the findings of

³¹S.L. Rao, *Governing Power*, TERI, 2004, p.164

³²The Electricity Act, 2003, Section 110

³³*Ibid*, Section 111(1)

³⁴Statement of Objects and Reasons of the Competition Act, 2002

the Commission or orders of the Appellate Tribunal.

In accordance with the provisions of the Amendment Act, the Competition Commission of India and the Competition Appellate Tribunal have been established. The provisions of the Competition Act relating to anti-competitive agreements and abuse of dominant position have been brought into force from 20th May, 2009 and the Commission has started dealing with cases under these provisions. The MRTP Act and Commission established thereunder have been repealed on the Competition Commission and Appellate Tribunal becoming fully operational.

The Act provides that the Central Government may, by notification, establish the CCI.³⁵ Section 8 as substituted by the Competition (Amendment) Act, 2007 and provides that the Commission shall consist of a Chairperson and not less than two and not more than six other Members to be appointed by the Central Government. The Chairperson and every other Member shall be a person of ability, integrity and standing and who has special knowledge of, and such professional experience of not less than fifteen years in, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters, including competition law and policy, which in the opinion of the Central Government, may be useful to the Commission. The Chairperson and other Members shall be whole-time Members. The function of the CCI is to eliminate practices having an adverse effect on competition, to promote and sustain competition in markets, to protect interests of consumers, and to ensure freedom of trade carried on by other participants in markets in India and matters connected therewith or incidental thereto.³⁶ To achieve the above objectives the major areas of focus under the Act are:

- (i) Prohibition of anti-competitive agreements;
- (ii) Prohibition of abuse of dominance;
- (iii) Regulation of Combinations (acquisitions, mergers and amalgamations of certain size); and
- (iv) Competition Advocacy.

Regulation of Insurance Sector

The insurance industry requires a high degree of regulation to protect the interest of policyholders both in life and general insurance sector. For that it was recommended by the Malhotra Committee in 1994 to set up an autonomous Insurance Regulatory Authority which found wide support. In view of the general support received, the then Government decided to bring in a legislation to establish an independent regulatory authority for the insurance Industry. The Insurance Regulatory and Development Authority Bill having passed by

³⁵The Competition Act, 2002, Section 7 (1)

³⁶*Ibid*, Preamble and Section 18

both the Houses of Parliament received the assent of the President on 29th December, 1999. As per Preamble of the Insurance Regulatory and Development Authority Act, 1999, the objective of the Act is to provide for the establishment of an authority to protect the interests of the holders of insurance policies, to regulate, promote and insure orderly growth of the insurance industry and for matters connected therewith or incidental thereto. Under the Act the Central Government has been mandated to establish an authority to be called “the Insurance Regulatory and Development Authority”.³⁷ The Insurance Regulatory and Development Authority shall consist of a Chairman and other members not exceeding nine of whom not more than five shall be full time and not more than four shall be part time to be appointed by the Central Government from amongst persons of ability, integrity and standing and who have knowledge or experience in life insurance, general insurance, actuarial science, finance, economics, law, accountancy, administration or any other discipline which would be useful to the Authority.³⁸

The Authority shall have the duty to regulate, promote and ensure orderly growth of the insurance business and re-insurance business.³⁹ The powers and functions of the Authority shall include:

- a) issue to the applicant a certificate of registration, renew, modify, withdraw, suspend or cancel such registration;
- b) protection of the interests of the policyholders in matters concerning assigning of policy, nomination by policyholders, insurable interest, settlement of insurance claim, surrender values of the policy and other terms and conditions of contracts of insurance;
- c) specify requisite qualifications, code of conduct and practical training for intermediary or insurance intermediaries and agents;
- d) specify the code of conduct for surveyors and loss assessors;
- e) promoting efficiency in the conduct of insurance business;
- f) promoting and regulating professional organisations connected with insurance and re-insurance business;
- g) levying fees and other charges for carrying out the purposes of this Act;
- h) calling for information from, undertaking inspection of, conducting enquiries and investigations including audit of the insurers, intermediaries, insurance intermediaries and other organizations connected with the insurance business;
- i) control and regulation of rates, advantages, terms and conditions

³⁷The IRDA Act, 1999, Section 3 (1)

³⁸*Ibid*, Section 4

³⁹*Ibid*, Section 14(1)

that may be offered by insurers in respect of general insurance business not so controlled and regulated by the Tariff Advisory Committee under Section 64 U of the Insurance Act, 1938;

- j) specify the form and manner in which books of account shall be maintained and statement of account shall be rendered by insurers and other insurances intermediaries;
- k) regulating investment of funds by insurance companies;
- l) regulating maintenance of margin of solvency;
- m) adjudication of disputes between insurers and intermediaries or insurance intermediaries;
- n) supervising the functioning of the Tariff Advisory Committee;
- o) specifying the percentage of premium income of the insurer to finance schemes for promoting and regulating professional organizations referred to in clause (f);
- p) specifying the percentage of life insurance business and general insurance business to be undertaken by the insurer in the rural or social sector; and
- q) exercising such other powers as may be prescribed.⁴⁰

The powers and functions mentioned under the Act enable the Authority to perform the role of effective watchdog and regulation for the insurance sector in India. Pursuant to its powers under the IRDA Act, the IRDA has framed atleast 27 sets of Regulations on various topics like Protection of Policyholders' Interests, Insurance Advertisement and Disclosure, Licensing of Insurance Agents, preparation and submission of actuarial reports, obligations of insurers to rural and social sectors, registration of Indian insurance companies, preparation of financial statements and auditors report of insurance companies, form of annual statements of account and record, insurance brokers, etc. These regulations are important constituents of the regulatory regime.

The Insurance Regulatory and Development Authority has also set up a Grievance Redressal Cell to look into complaints from policyholders. Complaints against life and non-life insurers are handled separately. This Cell plays a facilitative role by taking up complaints with the respective insurers. Policyholders who have complaints against insurers are required to first approach the Grievance / Customer Complaint Cell of the concerned insurer. If they do not receive a response from insurer(s) within a reasonable period of time or are dissatisfied with the response of the company, they may approach the Grievance Cell of the IRDA.

⁴⁰*Ibid*, Section 14(2)

Emerging Regulatory Framework

In addition to the above sector specific regulators there are a number of other regulatory bodies created under various statutes to regulate a range of industries and sectors. The regulatory body for the petroleum and natural gas has been set up by the Petroleum and Natural Gas Regulatory Board Act enacted in 2006. The Petroleum and Natural Gas Regulatory Board Act, 2006, provides for the establishment of Petroleum and Natural Gas Regulatory Board to regulate the refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas excluding production of crude oil and natural gas so as to protect the interests of consumers and entities engaged in specified activities relating to petroleum, petroleum products and natural gas and to ensure uninterrupted and adequate supply of petroleum, petroleum products and natural gas in all parts of the country and to promote competitive markets and for matters connected therewith or incidental thereto.

The Airports Economic Regulatory Authority of India Act, 2008, was notified on December 5, 2008. The Act authorized the establishment of an independent body to regulate tariffs and monitor the performance of airport areas that were previously under the purview of the Airports Authority of India. Pursuant to the Act, on May 12, 2009 the Airports Economic Regulatory Authority was established and its chairperson was appointed on June 17, 2009. The new regulatory authority will seek to remove anomalies that were prevalent during the Airports Authority of India's dual reign as service provider and regulator of domestic and international airports in India, where often the charges for aeronautical services did not match the quality of services provided. Without an independent regulator, India lacked the necessary professional environment for the development of an airport infrastructure that met global standards.

Earlier the food sector in India was governed by many laws under different ministries. This multiplicity in law in food sector resulted in many problems in the area of food standards maintenance. Need for a single regulatory body and an integrated food law was recognized as a remedy for this multiplicity of laws. The Food Safety and Standards Act, 2006, has been enacted by the Parliament on 23rd August 2006. The Act is to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto.

Then there is regulation of the service sector through service sector ombudsman. The Reserve Bank of India introduced the Banking Ombudsman Scheme on 14 June 1995 thereby creating a redressal system of grievances against deficiency in banking services of all commercial banks, regional rural

banks and scheduled primary co-operative banks. The latest revised Scheme has come into force from January 1, 2006. The Scheme envisages expeditious and satisfactory disposal of customer complaints in a time bound manner. It provides a free, fair and speedy forum free from procedural hurdles to consumers.

The Government of India, Ministry of Finance, Department of Economic Affairs, Insurance Division, under section 114(1) of the Insurance Act, 1938, has framed the “Redressal of Public Grievance Rules, 1998”, for appointment of Insurance Ombudsman, which came into force with effect from 11-11-1998. The Insurance Ombudsman has started functioning from 1999, to provide for efficient, cost effective and impartial settlement of claims and grievances of any person against a Life or General Insurer in public and private sector.

The Securities and Exchange Board of India (SEBI) under section 30 read with sub-section (1) of section 11 of the SEBI Act, 1992, has framed the SEBI (Ombudsman) Regulations, 2003, which were notified on 21-08-2003. The Regulations provide for the establishment of the office of Ombudsman to redress the grievance of investors in securities and connected matters. The provisions of Ombudsman Regulations have been incorporated in the code of conduct of various market intermediaries for effective compliance of the Ombudsman award. The listed companies and registered stock market intermediaries have to disclose the name, address and other particulars of Ombudsman in their office for the benefit of investors. The Electricity Regulatory Commission, under section 181 read with sub-section (5) of section 42 of the Electricity Act, 2003, issues guidelines for establishment of Forums and Ombudsman for redressal of grievances of electricity consumers.

Conclusion

The reform experience of the last three decades has provided evidence to show the difficulty of government regulation and the challenges of regulatory reform. There is no one best way to resolve the many problems of government regulation because of the different nature of the economic and social problems involved. To address these problems, policy-makers need to consider not just the implementation of deregulation strategies, but also the development of an integrated and balanced regulatory system. The balanced approach requires regulators to balance various interests between public and business groups as well as different concerns between economic and social factors. It also includes the considerations of new reform policies that encourage compliance-oriented regulation, in addition to the traditional control requirements. The new approach emphasizes voluntary compliance by businesses and attempts to achieve the regulation purposes through enforced self-regulation and incentives.

To make the regulatory agencies more consumer friendly and effective in providing redressal to the grievances of the consumers, it is necessary to

provide more teeth to these bodies. These bodies should be provided with judicial powers and mechanism to settle consumer disputes quickly and effectively. Further to make these regulatory commissions more effective the penal powers should be substantially increased to have a deterrent effect on the wrong-doer. As far as possible government's interference and continued dominance in the areas under the jurisdiction of these regulators should be avoided. There should be clear delineation of responsibilities and understanding between the regulators and the government. The government should retain the authority to give policy directions to the regulator confirming to the objectives of the relevant regulatory legislation. They should relate to the policy matter and not to the technical and administrative matters. The regulatory system must operate transparently so that investors and consumers know the terms of the deal. When regulators regulate in secret, consumers tend to assume the worst-that the regulator or government has been "bought out" by new private investors and that consumers will end up paying for this "secret deal." The regulator should ensure level playing field for all the players and a fair return on the investments made by them. In areas where there are still natural monopolies, the regulator has to ensure that those in monopolistic position do not exploit this power.

DOES ‘MAXIMUM’ IN MRP REALLY MEAN ‘MAXIMUM’ – A STUDY OF VIOLATION OF CONSUMER RIGHTS

PRATEEK BHATTACHARYA

Introduction

The consumer has always been in a conundrum of sorts in any market or departmental store. The varieties of products available, all of which perform the same function, are countless. Dozens of hair care and bath products, several cooking oils and cleaning solutions, rows filled with dental care and the like are available. It takes years of trial and error, of weighing one against the other, of doing a cost benefit analysis for a person to determine which shampoo, toothpaste and detergent a person is most comfortable with. This is of course after analysing which product burns a smaller hole in the consumer’s wallet.

Until 1990, the consumer used to find himself in more of a state of confusion as he was befuddled not only with the differing prices of different commodities but also the difference in price depending on where he was. Different states often charged different rates depending on local taxes as a result of which the price of the exactly same item usually differed from state to state and, even within a state, from region to region.¹ Thus the consumer now had the added confusion of deciding “Where should I buy this from and

¹N.B. Grant, “*Maximum Retail Price — For Whose Benefit?*”, *The Financial Express* (published April 15, 1999), available at: <http://www.expressindia.com/news/fe/daily/19990415/fex15017.html>, (last visited September 29, 2009)

will I get it for a cheaper price there?” Things have in fact become far more regularised since the introduction of the concept of MRP or ‘Maximum Retail Price’ due to which the price of any commodity remains the same throughout the country. So while retailers are free to sell the goods for prices lower than the quoted price, charging a price higher is strictly prohibited. But this does not always seem to be the case. There appears to be some exceptions to this rule of MRP concerning bottled products like mineral water and aerated drinks such as Pepsi and Coca Cola. There are the local stalls which tend to charge 2-3 rupees extra on the grounds of ‘refrigeration charges’, a practice which most of these small shop owners are probably aware is illegal, and also because most of their customers don’t protest paying the additional rupee.

Secondly, and a more noteworthy is the overpricing by upper class hotels and restaurants. It is quite common for a consumer to walk into a restaurant or a hotel and ask for a bottle of water or an aerated drink, only to find that he is paying an amount which is several times the quoted MRP. The question that then arises for the poor consumer is whether or not such overpricing is legal? This is where the legal conundrum lies. The consumer is aware that a bottle of water in a normal grocery store or supermarket would cost him only ₹ 10-15 while a five star hotel charges up to ₹ 100 or even more for the same. In such a conflicting situation any person would be confused and helpless, left to wonder as to whether the hotel is fleecing him or not.

This paper analysis whether or not hotels, restaurants, movie theatres and other such establishments are legally justified in charging a higher price for a product than its MRP? Is MRP really the maximum price which can be charged for a bottle of Pepsi or are there circumstances in which this maximum limit can be vaulted? This paper proposes to first deal with the conceptualisation of MRP, its standing and interpretation in law. It then deals with the development of legal jurisprudence on the matter by examining case laws related to the topic. It shall lastly deal with relevant provisions of the Consumer Protection Act, and whether such activities by establishments are legally sound under the Act. This paper aims at making a case for the everyday consumer by highlighting the illegality of overpricing and also the need for the judicial system to realise the rights of the consumer and protect the same.

What is MRP?

As already stated above MRP stands for Maximum Retail Price. It is a concept which developed with the aim of protecting the interests of the consumer. Many countries introduced laws for MRP to encourage competition and to prevent any collusion between manufacturers or retailers. If this concept did not exist in India, different players in an area could come together and agree upon to charge more than is justified for a commodity and the consumer would be forced to pay such an exorbitant amount because it wouldn’t be illegal activity on the part of the retailers. This obviously would present a considerable problem to the consumer since the price which the manufacturer

or distributor would think is appropriate to sell the product would not have to be the price which the retailer has to stick to. Manufacturers are not even bound to suggest a price to the retailer though in some areas, as a substitute to MRP, some manufacturers recommend a price, frequently marked as MSLP or Manufacturers Suggested List Price on the package. Then it becomes slightly more difficult for a retailer to sell the product at a higher price than its MSLP since the consumer now knows that the retailer is fleecing him. However, consumer awareness is pointless in places where all the retailers have colluded to charge higher prices and the consumer is at their mercy.²

Development of MRP in India

Upto December 1990, manufacturers of packaged commodities in India, had the option to print the price of the commodity on the package in two separate ways – retail price ₹..... (local taxes extra) and maximum retail price ₹..... (inclusive of all taxes). In the year 1990, the Ministry of Consumer Affairs, Food and Public Distribution and its executive wing, the Department of Legal Metrology, decided to change the Standards of Weights and Measures Act and the Packaged Commodities' Rules thereunder making it mandatory for all manufacturers had to print the maximum retail price, inclusive of all taxes.³

The Ministry had received several complaints from consumers and consumer organisations alleging corrupt overcharging by retailers who were charging at prices higher than the printed price under the guise of high local taxes whereas in reality the local taxes were much lower. Furthermore in a consumer market where different products had different rates of taxes within the same city itself, it became very difficult and confusing for consumers to be able to tell if the retailers were actually charging the correct amount of local taxes or not.

Due to the above change, all manufacturers now print a tax inclusive price on all packaged goods. This system has ensured the elimination of corrupt and unscrupulous practices on the part of retailers and there are now fewer complaints by consumers on the issue of overcharging by retailers. However, the introduction of the MRP scheme has led to other issues coming up, particularly in the area of undercharging by retailers. Local taxes in India comprise the following taxes:

- Central Sales Tax - by the union government.
- State Sales Tax - by the state.
- Entry Tax - by the state.
- Octroi - by the municipal or gram panchayat authority.
- Luxury Tax - by the state.

²Wiki Answers, http://wiki.answers.com/Q/Meaning_of_maximum_retail_price (last visited September 30, 2009)

³*Supra* note 2

As per N.B. Grant⁴:

“It is physically not possible for manufacturers to manufacture their product specifically for any one market which has a unique tax rate. Consequently, they have to manufacture the product with one single rate which is applicable all over the country, and which must be a legal rate in every single state, municipality and gram panchayat.

Manufacturers use three methodologies to do the same:

1. They print a weighted average price. This system works if a manufacturer accepts that his profit margin will vary from state to state and municipality to municipality. This is normally unacceptable to any manufacturer.
2. The manufacturer prints a price, exclusive of tax, and reimburses the actual taxes paid to his distributors, retailers etc. Thus, the so called nil tax price actually includes an element of tax built-in. Once again, the manufacturer has to accept varying rates of profitability from state to state.
3. The manufacturer prints the price prevailing in the market with the highest tax rate. The problem with this is that it means consumers in markets with lower tax rates have to pay a price which they are not intended to pay. The only persons who gain in such a scenario are members of the trade. Very often, due to competitive pressures, members of the trade pass on this so called additional margin to the consumers by charging the consumers a price lower than the print price.

In addition to state and local taxes, another factor which determines changes in price from state to state, are accepted retail margins. Retailers in large cities, with very high overhead costs due to municipal taxes and land prices, require a higher percentage margin than retailers in smaller towns. Manufacturers, however, are not permitted to charge differential rates when making their sale. Consequently, they build-in a margin normally equivalent to the higher required margin, into their products. Retailers in smaller towns or those retailers who are willing to work with a lower margin, then sell to consumers at prices lower than the printed price. These are the main reasons why products are usually sold below printed price in India.

Instances of Charging Beyond MRP

1. In May 2006, the Monopolies and Restrictive Trade Practices Commission (MRTPC) pulled up mineral water company, Himalayan Packaged Mineral Water, and PVR Cinemas for indulging in restrictive trade practices by selling mineral water at

⁴*Supra* note 2

a higher price than what is available in the retail market. It was found that the company had been pricing 750 ml bottles of the brand at ₹ 25 in the multiplex as against the availability of one litre bottles of the same brand at ₹ 18 in the retail market. This has, however, led to the manufacturing of an “Establishment specific” form of bottle packaging on which the MRP itself is higher than the value of the quantity of water (if one were to calculate it on the basis of the cost of normal sized bottles available in markets). This new packaging is basically a differently sized bottle which is not marketed in departmental stores, local shops and supermarkets.⁵

2. Domino's Pizza rakes in 65 percent of its revenues through home delivery, 50 percent of which comes from the sale of soft drinks. It retails 600-ml Coca Cola bottles, which are not available at local stores, costs ₹ 30. On considering that a 2-litre bottle of Coke in the market is available for ₹ 50, the price translates to ₹ 15 for 600 ml, half of what Domino's is charging. However, they claim that “We don't charge above the MRP.” And they aren't wrong; because the MRP printed on a bottle of Coke at Domino's is indeed ₹ 30. The same goes for a McDonald's outlet in New Delhi, which sells similar bottles, made “especially for them”.⁶
3. Popular Delhi based food joint Nirula's, which used to charge ₹ 35 for a bottle of soft drink with an MRP of ₹ 15 was pulled up by the consumer court due to a complaint filed by a student who was awarded compensation. Since the court verdict Nirula's changed its policy and does not charge its customers above MRP.⁷
4. More recently the Raigad Consumer Forum was approached by a consumer who had been charged an amount for bottled water which was in excess of the printed MRP by a Karnala branch of the Kamat chain of hotels. The court awarded the consumer compensation of ₹ 5000. The reasoning of the court was that “A branded product of a company can't have two different prices”.⁸

⁵The Hindu Business Line, “MRTPC pulls up PVR Cinemas, Himalayan Mineral Water Co.”, (published May 25, 2006), available at: <http://www.thehindubusinessline.com/2006/05/26/stories/2006052602581000.htm> (last visited September 30, 2009)

⁶Janhavi Abhyankar, “More than Maximum”, *Business World*, Issue 8-14 July 2008, (published July 4, 2008) available at: <http://www.businessworld.in/index.php/Retail-FMCG/More-Than-Maximum.html>, (last visited September 30, 2009)

⁷*Ibid*

⁸Raigad Case No. 1341, Suit No. 19/2009 decided on May 8, 2009; Prafulla Marpakwar, *Alibaug man makes hotel, firm pay for every drop of water*, The Times of India Mumbai

Development of Law on MRP through Judgments

Though the Consumer Protection Act, 1986 brought Consumer Forums into existence which provide remedies and reliefs to consumers who have been wronged. These forums usually exercise jurisdiction over an individual matter and decide them specific to the facts and circumstances of the case. When the question of the legality of a practice by establishments arises, it becomes the responsibility of the mainstream Indian judiciary, i.e. the High Courts and the Supreme Court of India to adjudicate on the matter. This is because the matter is no longer specific to a particular instance, it is a question of law of general importance which affects the lives and livelihood of the common Indian consumer. It is, therefore, important to analyse the judicial precedents which have been established by our courts.

The only judgment which has specifically and exclusively dealt with the issue of MRP in hotels and restaurants is the Delhi High Court in the case related to *The Federation of Hotels and Restaurants Association of India v. Union of India*⁹. This case has itself relied upon a judgment of the Supreme Court – *Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi*¹⁰. The latter shall be dealt with here first.

Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi

The issue at hand in this case was whether the service of meals to casual visitors in restaurants and hotels amounted to sale, and therefore, whether it was taxable as sale. It considered as to whether the food and drink supplied to consumers amounted as a sale or service. It held that the supply of meals was essentially in the nature of a service provided to them and could not be identified as a transaction of sale. The Court declined to accept the proposition that the hotel was entitled to split up the transaction into two parts one of service and the other of sale of foodstuffs and it further held that this principle would apply to both restaurants and hotels. The Court abided by the classical legal view that when a number of services are concomitantly provided by way of hospitality, the supply of meals must be regarded as ministering to a bodily want or to the satisfaction of a human need. It therefore, held that the meals in restaurants and hotels count as service. Though the judgment is in itself irrelevant with regard to the issue here but it is important to note for two reasons. Firstly, due to the reliance placed upon it by the second case. And secondly, it is important to note how this judgment deals with an issue which is in fact separate from the issue regarding packaged products which is why

contd.

(published May 29, 2009) available at: <http://timesofindia.indiatimes.com/Cities/Mumbai/Alibaug-man-makes-hotel-firm-pay-for-every-drop-of-water/articleshow/4590873.cms> (last visited September 30, 2009)

⁹139 (2007) DLT 7; MANU/DE/7183/2007.

¹⁰AIR 1978 SC 1591; (1978) 4 SCC 36; MANU/SC/0339/1978.

its judgment cannot and should not be relied upon and interpreted in a way as is being done in the second case. This shall be dealt with in detail hereafter.

The Federation of Hotels and Restaurants Association of India v. Union of India

The question dealt with in this case is whether it is permissible for hotels and restaurants to charge their customers/guests any price over the MRP on mineral water packaged and bottled by third parties. The Court relied heavily on the judgments of the Supreme Court in *State of H.P. v. Associated Hotels of India*¹¹ and *Northern India Caterers* to establish that the supply of food stuff and drinks in hotels and restaurants are not sale but service. Having said this the court went on to consider whether there is any regime established by statute which governs or restricts the prices that can be charged for food-stuffs and drinks supplied to customers in hotels or restaurants.

The counsel for the respondent cited the Standards of Weights and Measures Act, 1976 (SWM Act) and the Rules framed thereunder in response to the same. However, it was held that while this Act under Section 39 made it mandatory to print the MRP of a commodity on it, there was no prohibition from selling it at a price lower or higher than the MRP. To fortify this view the court referred to Section 33 of the SWM Act. It also referred to how Entry 50 of the Union List in the Constitution of India covered packaging whereas Entry 34 of the Concurrent List covered price control to point out the differing nature and concepts of the two. The respondents also cited the Supreme Court judgment of *ITC Ltd. v. Commissioner of Central Excise, New Delhi*¹² to emphasize on the restriction upon retailers from charging beyond the MRP since this case held, *inter alia*, that the dealer or retailer cannot charge in excess of the quoted MRP on the grounds that the MRP is unreasonable. However, the Court defeated this contention of the respondents on the basis that the above observations in *ITC Ltd* were made without any reference to *Northern India Caterers* and that when deciding the case the assumption was that the transaction being referred to was 'sale of goods' and not 'services' as is the case in the present issue at hand. The Court, therefore, held that the SWM Act would be inapplicable in the issue of MRP in hotels and restaurants as the matter was pertaining to a question of service not sale.

Lastly on the contention of the respondents that Section 2(1)(d) of the Consumer Protection Act expressly barred charging of prices in excess of MRP, the Court again referred to *Northern India Caterers* to state that the supply or service of eatables and drinks in hotels and restaurants does not partake the nature of a 'sale' in common legal parlance. Hence, when a person goes to a hotel or restaurant and while he is there orders and consumes such

¹¹AIR 1972 SC 1131

¹²(2004) 7 SCC 591

commodities this does not fall within the definition of consumption as contained in the Consumer Protection Act. The Court, therefore, holds it completely legal for hotels and restaurants to charge in excess of the MRP. Their view is that the customer does not enter a hotel or a restaurant to make a simple purchase of these commodities. It may well be that a client would order nothing beyond a bottle of water or a beverage, but his direct purpose in doing so would clearly travel to enjoying the ambience available therein and incidentally to the ordering of any article for consumption.

The Consumer Protection Act, 1986

As stated above the Consumer Protection Act under Section 2(1)(c)(iv) expressly provides that “ “complaint” means any allegation in writing made by a complainant that—

- (iv) a trader or service provider, as the case may be, has charged for the goods or for the service mentioned in the complaint a price in excess of the price –
 - (a) fixed by or under any law for the time being in force;
 - (b) displayed on the goods or any package containing such goods;
 - (c) displayed on the price list exhibited by him by or under any law for the time being in force;
 - (d) agreed between the parties;”

The above clearly implies that in the event any trader or ‘service provider’ is charging in excess of the price displayed on the package, it amounts to a valid complaint and the same can be filed before a consumer court. Such practices amount to an actionable claim and they are against the provisions of the law. It is for this very reason that Nirula’s was made to compensate the consumer who complained against them.

The Standards of Weights and Measures (Packaged Commodities) Rules, 1977

Rule 23(2) provides that once the commodity comes into the market under a particular printed price, packers and retailers cannot make any alteration to it. In Fact even the manufacturer cannot increase the price on the commodities which have already been put into the market.¹³ Rule 23(4) makes it obligatory to announce by advertisement, etc., any increase of or variation in price by reason of taxes.¹⁴ The rules are clearly very strict about pricing norms and regulate the increase and decrease in prices of commodities and ensure compliance with the rules.

¹³*Cadila Laboratories Ltd. v. James Ambroies*, 2 CPJ 68 Pondi, taken from Dr. Avtar Singh, *infra* note 14, at p.523, 1995.

¹⁴Dr. Avtar Singh, *Law of Consumer Protection: Principles and Practice*, Eastern Book Company, Lucknow, 2005 at p. 524.

The SWM Act also, as stated above requires manufacturers and packers to print an MRP on packages. This translates to a mandatory requirement of providing and printing a maximum price at which a commodity in packaged form can be sold to the ultimate consumer. Such maximum price is inclusive of all taxes, local or otherwise, freight and transport charges, as well as charges for advertising, delivery etc.¹⁵ All in all the MRP is to be inclusive of all charges which a retailer may otherwise have to pay if no concept of MRP existed.

Criticism of Federation of Hotels and Restaurants Association of India v. Union of India

First, it is most important to note that since the judgment is only a Delhi High Court judgment it is applicable only in the National Capital Territory of Delhi and holds merely a persuasive value in the other states. There is, however, a need for the Supreme Court to adjudicate on such a matter to settle once and for all the position of charging beyond MRP by hotels and restaurants.

Second, the Court seems to have relied upon *Northern India Caterers* to an extent to which it is no longer applicable. Upto the point that the Court relies upon the judgment to distinguish between sales and services, it is relevant but it becomes immaterial when sorting out the central issue. *Northern India Caterers* was a case about whether the supply of meals, i.e. cooked or specially prepared meals, comprising food and drink would constitute sale or service. And it was rightly declared that it is service. Any restaurant or hotel should not be begrudged the credit that they would rightly deserve for their catering services and their culinary skills. If a restaurant invests a lot of money and time into keeping high levels of cleanliness, hiring good and experienced chefs and waiters, buying expensive cutlery and furniture, and refurbishing the ambience of the restaurant altogether, then it is completely justified to consider it as service. That is because it is very definitely a service which is being provided, whether it is good or a bad service. This case, however, is not about the serving of meals but the providing of a sealed bottle of water or aerated drink which does not involve any preparation in order to serve it. It is a simple service of opening it and pouring it into a glass, and sometimes not even this much. Does this really constitute as 'service' to the extent to which these establishments are allowed to charge such exorbitant prices? After all the chain of events leading to your consuming the product is no different than it would be if you had bought the bottle at its MRP from a store – with of course the minor difference maybe that someone else is serving it out on a glass while you are seated comfortably enjoying the ambience. This author agrees that there is some form of service involved but it should not be blown

¹⁵S. Krishnamurthi, *Consumer and Law: Redressal of Grievances*, Vinod Law Publications, Lucknow, 2001 at p.76

out of proportions to an extent to which the basis for charging ₹100 for a ₹15 bottle of water is completely arbitrary and unaccountable. There must be remedies to avoid such arbitrariness which shall be subsequently dealt with in the suggestions.

Third and last, the Court's dismissal of the provisions of the Consumer Protection Act should be frowned upon. The Court has gone against the very nature and purpose of enactment of the Act and has completely trampled over the consumer's rights in its blind reading of the provisions of the Act. If the statement of the Bare Act be referred to, it clearly indicates that both traders and service providers must adhere by the MRP. The section may, on strict reading come to mean that service providers must adhere to the MRP only where the service they are providing has a quoted MRP on it, but the section must be read liberally. Service providers must also adhere to MRP with respect to goods in the same way that a trader would be obliged to follow the MRP of any service. The basic point being made is that an MRP has been quoted as maximum for a reason, and it must be adhered to by traders and service providers alike.

Suggestions

Based on the analysis of various laws and judgments of the courts a few suggestions if implemented will help protect the consumer.

1. Hotels and restaurants must be barred from charging exorbitant rates for products with a quoted MRP on them. The MRP limit should be strictly followed by all establishments.
2. As in the case of PVR cinemas all bottled water and aerated drink manufacturers must manufacture a new form of packaging which will be universally applicable to all hotels, restaurants and other establishments. If necessary there may even be grades or categories which establishments will be divided into depending on which a differently packaged product will be provided to them for sale at their establishment.¹⁶ For example a more expensive bottle at five star and four star hotels than at two star hotels.
3. Manufacturers of bottled products must be approached by the establishments with the Government acting as an intermediary

¹⁶The installment of this newly packaged product must also be carried over to those hotels which provide fridges in the rooms of their residents. More often than not, the items in these fridges are regular items such as packaged chips, aerated drinks, juice tetra packs and cans for which hotels charge beyond the MRP if it finds that the items have been opened or consumed. Since it is understandable that there is a certain amount of convenience involved in the ready availability of the items, the hotel should be allowed to charge at a higher price but in doing so, it must make use of the establishment-specific packaging of the products.

to come to an agreement as to category, price and quantity of such new form of packaging.

4. These measures will ensure the protection of the rights of the consumer as well as the satisfaction of the interests of the establishments. The fact remains that even though they are providing goods which are readily available in the market at a price much higher than the market price, there should be some consideration for the ambience and aesthetic services which are being provided. After all, no one walks into a five star hotel just to buy a bottle of Pepsi. It is merely a component of the other services which are being provided to him. So there is some rationale to the ambience and aesthetic service argument which the Delhi High Court held above, but it needs to be curtailed. So therefore, while they should be allowed to charge higher prices, they should do so by providing bottles with a higher MRP specifically made for them. Otherwise the hiking of prices, as is currently done is completely arbitrary, unfair and unreasonable. A hotel can quote any price it wants for a bottle of water, thus infringing upon the rights of the consumer.
5. The Consumer Protection Act must be strictly adhered to in the interests of consumer rights. These measures will regulate the pricing of products by establishments and make them accountable. The establishments should follow MRP irrespective of whether it would fall within the ambit of sale or service. The consumer should always come first. After all what is the point of establishments in the first place if the consumer feels disgruntled and cheated by them?

Conclusion

Consumer rights should come before rights of the establishments. This is a simple and basic principle which must be followed because it is a simple logic that an establishment exists only because of its consumers. It is, therefore, prudent if establishments themselves take the initiative to protect their consumer's rights. The government, as always, has a significant role to play. It is given the responsibility of framing and formulating the rules and regulations to have consumer friendly establishment prices for packaged products, and it must do so in collaboration with the representatives of hotels, restaurants and other establishments and the representatives of consumer rights and consumer activist groups. It is important to arrive at a consensus on this issue since it plagues the common consumer on an everyday level. These establishments must adopt some semblance of corporate social responsibility in the interests of their own customers. It is also a fact that they reserve the right to be compensated for the services and ambience they are providing. However,

their right should not be upheld so arbitrarily that it infringes upon the rights of the consumers. As for the manufacturers, they have already begun pricing at one scale in PVR cinemas, so why not branch out to other establishments and increase their sales. This proposition only seems fair in the interests of all parties concerned.

John F. Kennedy rightly said that “If a consumer is offered inferior products, if prices are exorbitant, if drugs are unsafe or worthless, if the consumer is unable to choose on an informed basis, then his dollar is wasted, his health and safety may be threatened, and national interest suffers.”¹⁷ The government must protect the rights of the consumers.

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¹⁷John F. Kennedy during his Speech when the Bill for Consumer Rights was moved in the US Congress, March 15, 1962, available at: <http://www.cuts-international.org/Consumer-Rights.htm> (last visited September 30, 2009)

CONSUMERS' HEALTH AND DRUG MARKET

BANHI CHAKRABORTY

Introduction

The Constitution of India directs the State to regard the improvement of the public health as among its primary duties. The Five Year Plans have been providing the framework within which the Centre and States have developed their infrastructure for health services and programmes. Since, independence considerable progress has been achieved in the promotion of the health status of the people of India as reflected in the eradication / control of diseases like small pox, malaria, reduction in mortality rate, and rise in expectancy of life. In addition, attainment of "Health for All by 2000 A.D" as a universal provision for comprehensive primary health care, has already been endorsed as World Health Organisation's commitment in reaching the services to every citizen of India. Our country has contributed 8% to global production of drugs and pharmaceuticals and 2% to the world markets.¹ This has been contributed by innovative capacity in generic production during 60's as well as in bringing in biotechnology in the pharmaceutical industry, in recent years.²

In spite of these developments, it is unfortunate that our country still lacks a comprehensive health care system which includes providing essential and life saving drugs and vaccines of proven quality, ensuring health care services through availability of essential medicines at reasonable prices which may help in supporting basic health needs of the people. But reality speaks

¹Government of India, (2008) *Strategy for Increasing Exports of Pharmaceutical Products*, Report of the Task Force, Ministry of Commerce and Industry, Department of Commerce.

²*The World Medicine Situation*, WHO, 2004, www.scaro.who.int

differently. At present the domestic markets in India are flooded with large number of medicines, the size of which is estimated at US \$ 10.76 billion in 2008 and expected to grow further at the rate of 9.9% until 2010³, but two third of our population is yet to get full health care, especially in terms of medicines required for remedies. This is real irony that India, despite being one of the leading producers of generic medicines, fails to provide benefits to the majority. In India the expenditure on health in percentage share to GDP is one of the lowest in the world. It was only 1.05%, during 1985-86, that is before the market was opened and promulgation of TRIPS, which has further gone down to 0.9% in recent years.

The present study examines the drug pricing mechanism and the interplay of market forces and how the consumers are taken for a ride. Consumers in the drug market are quite different from consumers of durable and other than durable goods as the market relations are entirely different from each other. Consumers in the market for consumable articles other than medicines are at their will and the decision to purchase is linked with one's need, capability as well as choice. These three aspects are equally important and the consumer finalizes his/her purchase decisions based on these aspects.

The present market is only having few drugs under DPCO which approximately covers 40% of the total pharmaceutical market only. Beside this, over the year's price changes have further constrained the availability of medicines at a rational cost. It is also reported that mechanism of price control order is yet to be effective in controlling the violation by various agencies.⁴ This is quite unlikely for the country like India which is already heavily burdened with majority of poor and under-privileged people while many other countries including UK, Canada and Japan, drugs are provided mostly through public funded institutions and health insurance mechanisms.⁵ However, VAT which has recently been implemented since April 2007 is expected to bring down the maladies.

Unfortunately, this has acted in a reversed way by constraining the availability of medicines at a rational cost. It is not that medicines are not available in the market but rather are abundant as most of the medicines are beyond the reach of common people because of their high prices. However, there also exist low-priced drugs which are hardly known to the common

³Centre for Legislative Research and Advocacy, Policy Brief : "*Access to Medicines in India : Some Immediate Concerns*", Centre for Trade and Development, New Delhi, New Delhi, July, 2009

⁴Chaudhury, Sudip(2005), "*WTO and India's Pharmaceutical Industry*", Oxford University Press, UK.

⁵Sengupta, Amit, Joseph Reiji K., Modi, Shilpa and Syam Nirmalya, *Economic Constraints to Access to Essential Medicines in India*, Report by Society for Economic and Social Studies, New Delhi and Centre for Trade and Development, New Delhi, in collaboration with WHO Country Office for India.

people. In fact Indian drug market is flooded with a large number of brands for each single medicine. This complicates the situation for common consumers who have least knowledge about brand differences and buy only those medicines which are prescribed by the doctors or physicians. Further, the doctors in most cases are influenced by the drug companies, or the sales agents who, are *de facto* emissaries of brand propagation in market. But the irony is that the brand variations which was expected to bring down the prices of medicines through stiff competition among the manufacturers, has failed altogether to do so. It is observed that the drugs which are not controlled under DPCO (1995) are not only sold in the market with great differences in prices but also the DPCO controlled drugs vary significantly priced. Thus the question arises regarding the affordability of the consumers even in case of "essential drugs" which are also listed under DPCO. The Report of National Sample Survey, 55th round (2004-05) suggests that about 12% of the total non-food expenditure is spent on health, and out of that about 70% (in urban) goes out-of-pocket expenditure leaks for buying medicines only.⁶ A further estimation on price variations among one group of alimentary system of medicines shows about 51% variation in one single year (MIMS, 2005) while over the years (MIMS, 1990-2005) the estimation shows 74% variation.⁷

The second important issue the consumers face is the unjustified biasness of the prescribers towards the high-priced medicines in comparison to low-priced one. This obviously is the result of market mechanism, where physicians, in liaison with pharmaceutical companies play a great role in prescribing the high priced drugs. This reveals the existing intricacies of market mechanism confronting the consumers every day. Larger manufacturing houses taking advantage of their market opportunity sell drugs under contract from original brand innovators who are multinationals based outside India using the brand name which helps to market the drugs with higher mark up price. Supply of drugs in generic names with lower mark-up prices which, however, could make the medicine supply easier and cheaper, is yet to make dent in midst of the brand competition.

The third factor which is responsible for the present situation is the consumer himself who, always insists upon the doctors for quick recovery. This results in over-prescription of drugs. Confrontations arising from different corners thus silently destabilize the public health sector by limiting the accessibility of medicines for the common people who basically are ignorant about this aspect. To understand the state of consumers in the drug market there are a number of issues that evolve and revolve around the drug markets not only in India but also in other developing nations. Though issues of

⁶Centre for Legislative Research and Advocacy, Policy Brief : "*Access to Medicines in India : Some Immediate Concerns*", Centre for Trade and Development, New Delhi, New Delhi, July, 2009.

⁷MIMS 2004, 2005.

accessibility of medicines has already been dealt by a number of organizations, which harped upon the price mechanism as well as the loosely structured regulatory mechanism as the most important factor yet the problem of availability of medicines is yet to be solved. In understanding this, the economic policies of the Government as adopted through TRIP agreement cannot be kept aside.

However, one can compromise the ‘choice’ factor if his/her capability does not permit; while the ‘needs’ is the relatively varying aspect which ranges from one level/kind to another, depending on the cultural, social and geographical characteristics of a particular community. Except for minimum basic needs, all others are of variable strength and magnitude, where one can alternatively select or reject amongst a host of options. Even a step further in explaining for basic needs which are food, shelter and clothing – comprising the basket of ‘security of living’, the scale varies widely from a bare minimum fulfillment to a point of maximum. At the minimum point of scale, choice is not the governing factor while upward with the scale, choice and need become size positive. For instance, it may be conceived that there is a need of at least one simple dwelling unit where one family can live in secured manner with no natural and social interference from outside; while the same family may opt for a better housing and gradually may scale up to large apartment with all sorts of modern amenities for living whenever it is affordable. Needless to mention the other needs whose payment ranges widely in the market and have definite income – positive relationship. Here lies the absolute difference between consumer of consumables and consumer for disease remedies. The choice factor does not operate in this case as disease remedy is closely linked with the prescriber’s choice, while role played by the latter is directly dependent on the pharmaceutical market.

However, even if the consumer is unable to assume the level of satisfaction or dissatisfaction from the point of view of cognitive assurance in case of drug purchase based on prescriptions, there is no other alternative for drug purchaser than being compelled to purchase a specific drug.

Therefore, the market of drug is more directive and less selective for consumer unlike in the case of other consumer goods. In the case of consumable articles, consumer may run a rat race for achieving certain goods of his/her liking which may presume to bring either comfort, or status or self fulfillment of requirements that actually leads to rising of demand for more and more consumable articles and helps the entry of a number of producers in a competitive manner. Whereas, the entry of the market operators of drug and pharmaceuticals are not supposed to be of same kind which on the contrary are the real players in the drug markets.⁸ Any medicine irrespective of generic

⁸Centre for Legislative Research and Advocacy, Policy Brief : “*Access to Medicines in India : Some Immediate Concerns*”, Centre for Trade and Development, New Delhi, New Delhi, July, 2009.

brands or innovators' brand is channeled through a defined path i.e. wholesalers or distributors to retailers and then through physicians to patients. This is the simplest method by which medicines reach to any consumer. Adding to or winning of consumer wisdom does not arise for pharmaceutical companies.

Pricing of Drug

Pricing of drug is in itself a very intricate procedure. Because of essentiality, and demands for drugs being a national priority, India had its own policy which in-fact, the country to arrive at a self-sufficient state in generics' production and in supply for the domestic market as well. Not only this, the country could adopt its own policy on price control – the need of which emerged just after the war with China in 1962. By 1979 India could promulgate the first National Drug Price Control Order (DPCO), based on the National Drug Policy of 1978, formulated by the Hathi Committee. The 1970 Indian Patent Act was one of the major instruments in bringing stimulus in pharmaceutical production through allowance of process in place of product patent. However, the Hathi Committee recommendation not only helped in the reduction of prices of essential medicines (33 in number) along with imposition of a ceiling of 150% over cost on the price of all medicines while for essential drugs falling in category I and II, it was 40% and 50%, but also instigated the states to undertake the responsibility in providing support for R & D for new drugs based on the prevalence of diseases (such as anti-helminthives, antileprotics, antifilarials and antimalarials). For non-schedule category of drugs there was no definite limit.

The pricing procedure as formulated by the DPCO, 1979 already contained high mark-up prices, which has undergone further changes and now covers 150-200% as MAPE or (Maximum Allowable Post-manufacturing Expenses). Even this hike in the MAPE was not an acceptable proposition by the industrial houses as well as the CSIR. Their argument against this hike was on the ground of non-remunerative especially with reference to category I & II formulations.

However, since last three decades, the Drug Price Control Order has been renewed and reformed to keep parity with the overall market situation as well as with the country's policy changes in the industrial sectors as a result of the economic reforms. As a consequence, DPCO 1979, was followed by 1986, 1994, and 1996 Orders while 2002 Order somehow was not materialized which otherwise would have caused further rise in prices. In spite of the fact a constant rise in prices is observed for last two decades not only in case of DPCO category of drugs but Non-DPCO drugs too. (Figures 1 and 2)

There is still ample scope for evading the Drug Price Control Order. One of the instances relates to the shift of industries' focus from controlled drugs to those not under price control. The second escape route to manipulate and evade price control by the industries is the shift of production towards

FIGURE 1: PRICE VARIATION OF DRUGS UNDER PRICE CONTROL

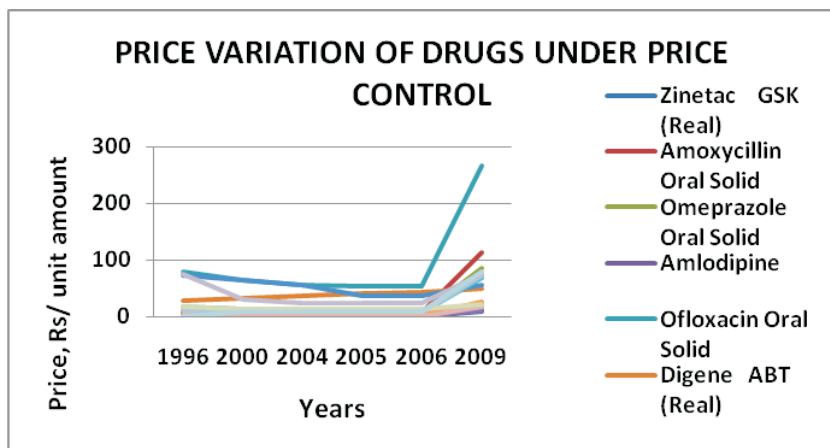
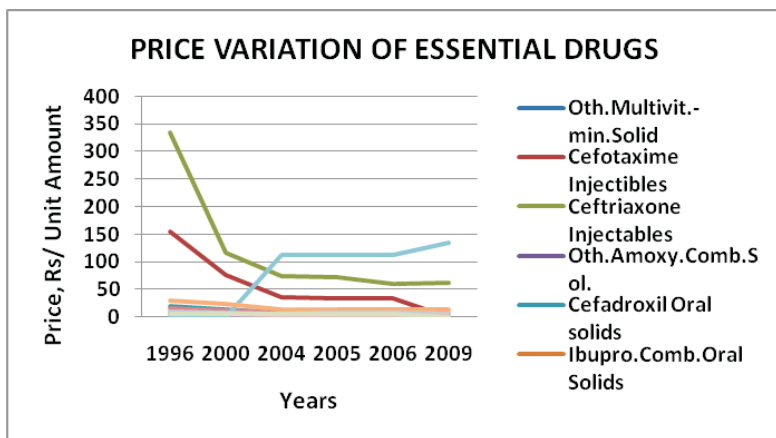


FIGURE 2: PRICE VARIATION OF ESSENTIAL DRUGS



combination drugs or formulation where one of the ingredients of bulk drugs are not under control. Doxycycline is under DPCO, but once combined with lactobacillus, it goes out of control – proves the evidences of evasion of control order. The entry of such new drugs in the market could be successfully achieved because the large industrial houses employed such strong promotional capacity of their produce by mixing with vitamins or antibiotics or antacids. Apart from these, import of bulk material where cost is assumed to be based on ultimate landed cost, provided another opportunity due to absence of proper mechanism in recording or tracking the right information on exact volume and actual cost.

Further, serious gap in the price control policies led to the absence of price control on substitutes and its quality. Hence, this also provided scope for the manufacturer to opt for low quality substitutes. The example is the

substitution of pseudoephedrine by phenylpropanolamine or PPA by Glaxo in making cough and cold drug named as Actifed to evade the controlled Pseudoephedrine. The Phenylpropanolamine has propensity to increase the risk of cerebro-vascular accidents.⁹ Such substitution by inferior ingredients and its implication is yet to come under the knowledge domain of even the scientific community, forget the common people.

These lapses in the overall mechanism through which ultimately the drug reaches to the hands of the consumer present a series of gaps in the total process. Nevertheless, the implication of intricacies involved in the pricing of medicines, which is the retail shops through which the medicines reach to the patient-consumer, forms the central area of the problem. At this juncture, there arises a question regarding the role of the medicine prescribers or physicians.

Based on the preceding discussions, the important emerging issues are –

- a) a large number of brands exist for a single medicine.
- b) prices range widely among the so-called brands with no explicit declaration on quality and composition.
- c) availability is strictly determined by the local retail shops, whose stocks are controlled by different mechanism i.e. by the medical practitioners either in latent way by prescribing certain medicines which are not procured by the hospital stores or in manifestation i.e. doing private practices.
- d) the kind of medicines to be procured in the retailers' shop is highly influenced by the above mentioned procedure where doctor-manufacturers close understanding play underneath.

Field Study Observations

Considering the above mentioned issues, an attempt has been made to examine the situation, for which three different areas have been selected. The logic behind selection of three different areas is that local as well as regional economy has strong bearings on determining the size and types of drugs to be disbursed from the industries. This is because industries always attempt to concentrate in areas where the market will be remunerative, hence, the location of hospitals, health centers, nursing homes are considered as the most favourable locations for both retail business as well as the manufacturing industries so that products can be marketed through their publicity mechanisms (medical representatives) conveniently.

⁹Gulathi, Chandra(2004), "Drug Price Control Principles, Problems and Prospects", Medico Friend Circle Bulletin; 305 : 1-6

The Study Areas

The study area includes the following:

- Kolkata as Mega City with Bengal's Wholesale Medicine Market*– at three locations i.e. shops in the area around Calcutta Medical College and R G Kar Medical College and shops in non-specific area (where no hospital or medical centre is located),
- Siliguri as Major Business Node* – three different locations i.e around North Bengal Medical College, area on the major arterial road i.e. Hill Curt Road and area around Municipal health clinic (only for women).
- Kharagpur as Sub-Divisional Town*- four different locations, one around State Sadar Hospital, another location is around primary Health Centre, third one around private nursing-home and fourth one with no such favourable characteristics (see Table 1).

TABLE 1: LOCATION OF THE CASE STUDY AREA

Case Study	Area	Location Characteristics	No. of shops
I	Kolkata	Calcutta Medical College	5
		R G Kar Medical College	4
		South Kolkata (Tollygunj)	2
II	Siliguri	North Bengal Medical College	4
		Sadar Hospital, Private Nursing-homes	3
		Municipality Maternity Care Centre	4
III	Kharagpur	Sadar Hospital	5
		Primary Health Centre	2
		Private Nursing-home	4
		IIT market	1

Source:

- Data for Siliguri area was taken from unpublished MSc Thesis on "Market Mechanism in Drug Availability" from INSPARK, Kalyani University, Nadia, West Bengal.
- Rest of the information is based on survey data during July-August, 2009.

Based on the available data the following aspects have been examined:

- locational advantage and consequent influences on drug availability,
- inter-area differences in brand variations and associated price differences,
- trends in prescribing of medicines by the doctors and its' consequence on the sale.

a. Locational Factors and Drug-Brand Variations: The availability of the number of brands per generic for Kolkata and Siliguri area is shown in figure 3. The prospect of market is closely associated with its location and associated advantages. This has been taken into consideration in selection of chemist shops in all the three places. Not only that, the maximum number of brands characterize the Siliguri market in comparison to other areas. (Table 2 and Figure 3) However, intra-area classification also shows differences in brand stocks except few drugs like *Erythromycin*, *Glipizide* and *Salbutamol*. The shops adjacent to hospitals or clinics are the larger stock holders while the shops away from such advantageous position have less stock availability. This not only holds true for brands but also for areas as established by the obtained results (cv%) where between brand stocks variation is significant at 5% level while inter-area differences is significant at 1% level.

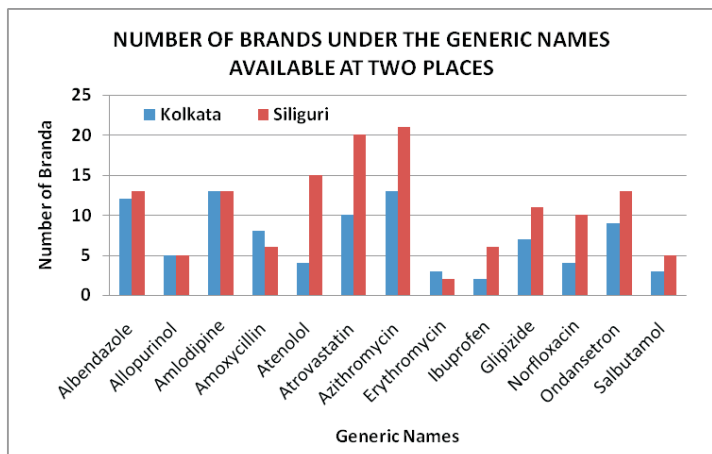
TABLE 2: RANGE OF PRICE VARIATIONS AT THREE DIFFERENT LOCATIONS

Generic Names	Kharagpur		Kolkata		Siliguri	
	PR(%)	BS(nos.)	PR(%)	BS(nos.)	PR(%)	BS(nos.)
Albendazole	35	4	31	12	77	13
Amlodipin	39	4	40	13	191	13
Amoxicilin	12	4	12	4	111	15
Atenolol	13	3	13	3	121	15
Atorvastin	245	3	109	12	174	18
Azithromycin	154	5	168	10	27	18
Norfloxocin	318	3	336	5	365	9
Ondonsteron	36	2	158	3	250	5
Correlation						
Coefficient(r)		-0.0885		-0.1744		-0.7012
t-Value:		0.226		0.439		2.414*

Note: PR, Price Range in %, BS, Average Number of Brand in Stock

(a) **Influence of Brands on Price Variations:** The range of price differences among same brands in different locations. It is to be noted that not only price differs significantly from one brand to another but also there exists large differences between areas. In Siliguri, where most of the shops maintain stocks of large number of brands for almost all types of drugs, the intra-area price also differs significantly. Size-negative relationships of brands and prices indicate that with the presence of large number of brands, least is the range of price differences which is assumed to reap benefits for the consumer. However, the trend of variation is

FIGURE 3: NUMBER OF BRANDS UNDER THE GENERIC NAMES AVAILABLE AT TWO PLACES



existing in other two case study areas but not significantly. Hence, the observed asymmetry in brand-related price differences, further, indicates that the drug market is not uniform for consumers as a whole. Moreover, the presence of larger number of brands in the market indicates greater propensity of intervention by the drug companies where Siliguri markets stands as evidence at the top. (See Table 3)

(b) **Influence of Medical Practitioners on Brand-Mix:** This is one of the most important determining factors. The medical practitioners from both Government hospitals as well as from chemist shops were interviewed in order to estimate the influence on brands by the former. It is expected that patients visit depends on the number of doctors attachment with the shops, which indirectly influences the sale of medicines. Observation of chemist shops opposite to State Sadar Hospital, at Kharagpur, where on an average 6-8 doctors per shop carry on private practices and also are the biggest crowd pullers. The estimation in this regard was done by calculating the per hour visits of patients-customers (where number of patients entering plus leaving the shops are summed up)¹⁰ to gauge the extent of practice by the physicians. The result obtained gives an indirect indication of the possible influence of the doctors on the magnitude of the number of brands available.

¹⁰Results on Patients' visit (Per hour study) : 3 shops (Sudha Medical, Dandapat Pharmacy, Dhannantwary Medicine) located opposite to Sadar Hospitals, Kharagpur, have on an average 20-30 customers during peak hours in week days (peak hours being the time of medical practitioners and hospital out-door times) while in the week-ends it varies from 12-15 per hour. At the shops located near Primary Health Centre, capacity varies from 12-15 per hour during peak hours and 7-8 during off-peak hours).

TABLE 3: RANGE OF PRICES OF SELECT AVAILABLE DRUGS

Brand Names	Kharagpur				Mean	± SD	Kolkata
	S-I	S-II	S-III	S-IV			
Rantac	5.00	5.00	5.00	9.50	6.13	2.25	5.00
Zintac	5.00	5.00	5.00	15.00	7.50	5.00	-
Ranitidin	5.00	5.00	0.00	15.00	6.25	6.29	-
Zental	17.00	16.90	17.00	16.90	16.95	0.06	17.50
Nowavm	16.60	16.60	15.00	14.80	15.75	0.98	17.00
Sidose	13.16	13.50	13.00	13.50	13.29	0.25	0.00
Ben	14.90	15.00	15.00	15.00	14.98	0.05	10.00
Albend	17.50	17.00	13.00	13.50	15.25	2.33	0.00
Zyloric	27.00	26.50	29.00	29.50	28.00	1.47	29.00
Amlodac	11.00	10.50	17.00	17.00	13.88	3.61	23.00
Stamlo	44.00	45.00	43.00	42.00	43.50	1.29	48.00
Amlopres	0.00	0.00	22.50	23.00	11.38	13.14	0.00
Mox	0.00	0.00	143.00	142.00	71.25	82.27	5.00
Wymox	8.50	128.00	134.00	135.00	101.38	61.99	5.00
Aten	2.25	21.00	0.00	42.00	16.31	19.54	39.00
Atorva	11.20	110.00	0.00	0.00	30.30	53.40	89.00
Lipikinol	0.00	0.00	32.00	32.00	16.00	18.48	32.00
Starves	0.00	0.00	93.00	93.00	46.50	53.69	105.00
Agithrol	24.00	70.00	88.00	88.00	67.50	30.22	92.00
Azithromycin	11.20	11.20	0.00	0.00	5.60	6.47	70.00
Azisorff	65.00	65.00	64.00	65.00	64.75	0.50	0.00
Erythromycin	4.65	43.80	0.00	0.00	12.11	21.24	25.00
Althrocin	38.00	38.00	72.00	74.00	55.50	20.22	40.00
Ibrufen	6.00	6.00	3.80	4.00	4.95	1.22	7.00
Combiflam	12.00	12.00	12.00	12.00	12.00	0.00	8.00
Ibugesic	7.50	7.00	12.00	13.00	9.88	3.07	6.00
Glizida	6.50	66.00	58.00	60.00	47.63	27.63	40.00
Glynose	11.00	10.50	6.67	6.67	8.71	2.36	5.00

Further, the influence of the practitioners on the sale of drug-brands has also been examined by conducting the Instant-recall survey in all the three areas (Table 4). The expected outcome of this interview is supposed to yield the preferences for the top-selling brands by the prescribers. It is interesting to note that the medicines under priority are all of costly varieties. This was

TABLE 4 : RESPONSES (IN PERCENT) ON FIRST RECALL SURVEY

Generic Name	Brand Name	CMC	RGK	NBMC	SH(KGP)	PH(KGP)
Erythromycin	Althrocin	44	64	46	76	60
	Enthrocin	14	14	36	24	40
	E-mycin	2	0	4	0	0
Ibrufen	Brufen	84	74	88	79	68
	Ibudesic	6	12	4	21	32
Glipizide	Glynase	24	0	22	42	39
	Glipy	14	22	20	0	0
	Glicin	0	10	0	0	0
	Glizide	0	0	0	68	61
Norfloxacin	Norfloxx	86	88	80	88	75
	Normox	0	0	6	0	0
	Norilet	4	0	0	0	0
	Alflox	0	0	0	12	25
Sulbutamol	Asthalin	69	70	64	92	95
	Salbetol	0	2	0	0	0
	Semil	0	0	0	8	5
Albendazol	Zentel	54	60	58	92	80
	Noworm	15	16	12	5	9
	Bondy	8	0	10	0	0
	Sidose	0	0	0	3	11
Allopurinol	Zyloric	74	56	78	89	90
	Ciploric	4	0	0	5	3
	Aloric	0	0	4	0	0
	Allnol	0	0	0	6	7
Amlodipine	Stemlo	40	42	24	35	29
	Amlodac	20	18	28	62	60
	Amlopress	8	2	6	2	7
	Amlokind	6	0	4	1	4
Amoxycelin	Mox	42	58	22	68	53
	Waymox	34	20	56	30	40
	Novamox	4	14	2	2	7
Atenollol	Aten	70	80	76	92	95
	Tenolol	6	6	10	4	3
	Tenoromin	8	2	8	4	2

Atorvastin	Atorva	28	32	36	51	65
	Avas	0	6	14	0	0
	Atocor	14	8	2	0	20
	Storvas	4	10	6	48	12
Azithromycin	Azithrol	58	42	54	79	82
	Azce	16	34	8	11	14
	Azithro	0	0	16	0	2
	Aziwak	12	2	6	9	1
	Azisift	0	0	0	1	1
Ondentron	Zofar	40	40	32	0	0
	Emigo	4	4	8	79	95
	Onden	0	0	0	21	5

Note: CMC, Calcutta Medical College; RGK, R.G. Kar Medical College; NBMC, North Bengal Medical College; SH= State Hospital, Kharagpur; PH= Primary Health Centre, Kharagpur

established by the study of Siliguri¹¹ market as well as Kolkata and Kharagpur markets.

However, the degree of price variations significantly denotes one issue that higher the number of brands entry, greater is the intensity of competition amongst the drug manufacturers. The case of Siliguri can be cited in this respect. The possible explanation is that there are two separate whole- sale centers located in the town and this has influence on the supply of large varieties of medicines.

By corroborating the findings, it is summarized here that :

- i) distribution of medicines varies in brands over areas depending on the proximity to the nodal centers like hospital, doctor's chamber or clinics,
- ii) higher the propensity of more number of doctors attached with the chemist shops, greater is the scope of entry of more number of brands in the market,
- iii) Most of the doctors irrespective of observed differences in location, prefer to prescribe more costly medicines (in both DPCO and Non-DPCO drugs) as supported by the result of instant recall survey (Table 4),
- iv) However, price variations which were anticipated to rise with the increase in number of brands though could not be established here; but also cannot be substantiated as a proof otherwise. This

¹¹Debjani Chatterjee, *Market Mechanism on Drug Availability*, an unpublished M. Sc Thesis, 2007, INSPARK, Kalyani, Nadia, West Bengal

is because the transfer of medicines to consumers from shops moves through a defined path where particular types of drug and the volume of each of these largely determine the consumers' benefit in reality.

Here, comes the question whether the medicines of brands which are of cheaper and lower prices go to the majority of the consumers or not? In fact, the information on most selling brands as obtained through the survey reveals contradiction. Most familiar brands of almost all medicines of higher price tags recorded greater sale. It is also to note that drugs of generic names which have now been made mandatory by the Government are still non-existent in the study areas.

Conclusion

Therefore, corroborating the above mentioned facts it can be concluded that:

- 1) Consumers in the drug market are yet to have any inkling about the price of different brands and whether there really exists any difference in quality. In fact, according to drug control rule, no drug can get approval unless it fulfills certain quality criteria, hence, the differences in price variations as claimed by the manufacturer on the ground of superiority in quality and sold in the markets through doctors or prescribers stands unjustified.
- 2) Medicines in the market having multiple brand versions with differential price tags may enable the availability, but yet to have proof in terms of efficiency in therapeutic nature.
- 3) In spite of existing price control mechanism, there is no appropriate control mechanisms to check the infiltration of numbers as well as volume of less essential or unethical medicines, flooding the market and ultimately reaching the common consumer. This exposes the unjustified and malafide intervention by the drug companies.
- 4) Policy approaches for the essential medicines under the Drug Price Control Order appears to have less impact in maintaining the supply of quality medicines and right prices. This is not possible unless drugs are brought under Essential Commodities Act.
- 5) Manufacture of drugs or medicines is in the hands of private players or industrial houses and its growth assumes great significance for national economic development. The industrial progress cannot be met without having economic gain and therefore, the question of safety of citizens' health comes under scrutiny.

- 6) The very purpose of health safety which should not be compromised for the sake of profit and economic interest is seriously impeded.

However, considering the severe constraints that exist in the drug market it is yet to be established that the drug market is totally fair for the consumer. The claim made by the Assocham that Health Care Services are only for consumers consumption sounds void. The services both in terms of medical advice by competent physicians as well as quality medicines are only available to a few minorities who can afford to pay hefty amount or enjoy institutional support. But what about the common people?

It is, therefore, suggested that there is a need to change the approaches adopted by different Ministries including that of Consumer Affairs so far and to consider the consumers of drugs as an entirely separate segment and not to compare them with consumers of common goods. The pharmaceutical industry should not look from profit point only but with an eye on humanitarian goals. Institutionalizing the use of "generic names" in addition to brand names (similar to that of USA, UK, Canada) must be made mandatory through regulatory control on the pharmaceutical market.

Hence, at this juncture a few suggestions can be made. Firstly make drugs accessible to the common consumer and secondly awaken and empower the consumer through consumer education. As the drugs are not common consumables but are items of universal need, it must be made available within common man's knowledge domain when the drugs are to be released in the market in generic names instead of brand names.

Once the drugs are available in generic names, chances of price variation on the ground of superiority through brand-image are likely to be thwarted. Policy of price control mechanism must be reformed where application of bi-modal checks i.e. price-cut and profit-cut may possibly help in bringing down arbitrary price rise. Inclusion of tax regime on "publicity cost" may also be another alternative measure in curbing the cost on account of MAPE. In fact this will also be an indirect check on the entry of brand-managers to capture the market through unethical practices or manipulation (bribing of doctors). In addition, a thorough auditing of accounts on publicity expenditure of drug manufacturers as well as scrutiny of corresponding growth in sales is also required to be done with the help of CAG. Policy of drug production also needs to be reviewed based on the line of a "Health Services Act".

As far as the empowerment of the consumer is concerned, the consumers should be made aware of their rights in availing the drugs at reasonable prices. They must be educated about the myth that "costly drugs are no proof of efficacy" and hence, they should not insist on the physicians to prescribe costly brands. They should also be careful in noting the MRP inscribed on the label and in no case pay more than that. They should not be provoked to buy any medicine merely by viewing an advertisement either in visual or print

media. In the event of any such evidences, one must bring to the notice of the concerned Government department or forum or the organisation dealing with consumer rights.

Further, the voluntary organizations working in the field must come forward to educate the consumers and also give wide publicity. The electronic media particularly “Jago Grahak Jago” must carry this message so that the consumers are educated.

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6

SAFE FOOD - MUST FOR THE CONSUMERS

ABHA KHETARPAL

Introduction

Food is one of the most important necessities in life. Fortunately, many advanced and several developing countries have abundant supplies of fresh, safe and nutritious foods. Yet, despite many precautions and processes in place to ensure a safe food supply, microbial contamination is still a concern, even in advanced countries. Food borne illness usually arises from improper handling, preparation, or food storage. Good hygiene practices before, during, and after food preparation can reduce the chances of contracting an illness. There is a general consensus in the public health community that regular hand-washing is one of the most effective defenses against the spread of foodborne illness. The action of monitoring food to ensure that it will not cause foodborne illness is known as food safety. Recognizing the importance of the issue, each country has specified certain norms of processing, packaging and testing, and certain standards of quality that must be maintained.

At the international level, WTO has specified some sanitary and phyto-sanitary measures that need to be followed for international trade of food products. The SPS Agreement under the WTO seeks to lay down the minimum sanitary and phyto-sanitary standards that the member countries must achieve. This is to ensure the safety of life and health of humans, animals and plants. Specification of certain minimum standard in the agreement implies that the countries have the freedom to set a higher standard if they can justify it. The only requirement is that the set standard should not be trade distortionary and should be scientifically achievable. The agreement also defines the process of imposition and the factors that must be taken into account before imposing

any standard.

There are a number of food processing tools available that provide additional protection for the foods we consume. One very promising tool is food irradiation, which is a process of imparting ionizing energy to food to kill the microorganisms. Sometimes it is referred to as “electronic pasteurization” where electricity is used or as “cold pasteurization” as an insignificant amount of heat occurs in the treated food. Just like traditional heat pasteurization of milk, food irradiation can enhance the safety of foods such as meat, chicken, seafood, and spices, which cannot be pasteurized by heat without changing their nature to a cooked, rather than a raw form. It is not a substitute for safe food handling and good manufacturing practices by processors, retailers, and consumers alike, since bacteria could be reintroduced later. Food irradiation is the process of exposing food to an ionizing energy to kill harmful bacteria and other organisms, and extend shelf-life. The approved irradiated foods include fruits, vegetables, meat, poultry, fish and seafood, roots and tubers, cereals, legumes, spices and dried vegetable seasonings. When food is irradiated, it passes through an enclosed irradiation chamber where it is exposed to the ionizing energy. This can be in the form of gamma rays from specific radioisotope sources, or x-rays or electron beams from machine-made sources.

All three types of ionizing energy have the same ability to inactivate spoilage and disease-causing microorganisms without causing harmful changes to the food. In all instances food remains uncooked and free of any residue. Only certain ionizing energy sources can be used for food irradiation. Permitted gamma sources are the isotopes cobalt-60 or cesium-137. Cobalt-60 is used in food irradiation because it is widely available. The Gamma rays are a form of electromagnetic energy, just like radio waves, microwaves, X-rays and even light. They have the ability to penetrate well into a food. Machine-generated X-rays have similar properties. More recently, electron beams (e-beams) have become available as a source of ionizing energy in the USA and other countries. Like X-rays, e-beams are machine-generated using ordinary electricity and can be powered on and off at the touch of a switch. E-beams offer extremely rapid and cost-effective processing, but in some cases sacrifice penetration depth depending on the product density.

Electronic Irradiation

Treatment of food using either X-rays or electron beams are occasionally referred to as “electronic pasteurization” or “electronic irradiation” because they are derived from electricity. Regardless of the source of ionizing energy, the food is treated by exposing it to the energy source for a precise time period. In the case of e-beam, food is irradiated in just a few seconds, while it takes gamma and X-rays considerably longer. The food is never in contact with the energy source; the ionizing energy merely penetrates into the food but does not stay in the food. It takes very little energy to destroy harmful

bacteria. At these levels there is no significant increase in temperature or change in composition. Irradiation does not make food radioactive nor does it leave any residues. The most significant public health benefit of food irradiation is that it stops the spread of food borne disease. It greatly reduces or eliminates the number of disease-causing bacteria and other harmful organisms that threaten us and our food supply. Many of these organisms, including *Salmonella*, *Escherichia coli* and *Staphylococcus aureus* have caused many outbreaks of food borne illness. When food is irradiated, the penetrating energy breaks down the DNA molecules of the harmful organisms. The food is left virtually unchanged, except that it is much safer because the number of harmful organisms is greatly reduced or eliminated. An added advantage is that food can be irradiated in its final packaging—fresh or frozen, which prevents the possibility of contamination in the distribution system, at the store, or even in the home, prior to the package being opened. Although reduction of disease-causing bacteria is of greatest importance to public health and safety, there are other significant benefits of food irradiation. Irradiation can also help keep meat, poultry and seafood fresh longer by reducing the level of spoilage-causing microbes. It also allows consumers to keep certain fruits and vegetables fresh longer. For example, irradiated strawberries stay unspoiled for up to three weeks, versus three to five days for berries that are untreated.

For many developing countries, food spoilage is an ever-present and costly reality, often causing produce spoilage rates in excess of 40 percent. In these countries, irradiation stands to benefit millions by helping more nutritious fruits and vegetables reach consumers. When grains and spices, fresh and dried fruits, legumes and condiments are irradiated, the process eliminates any insects that might be present and can replace the use of chemical fumigants, which could leave residues or harm the environment. For example, irradiation is used as an alternative to chemical fumigation or vapor heat processes for treating fruits from Hawaii to meet quarantine requirements on the US mainland. It also has a potential to meet quarantine requirements for international trade in fresh fruits and vegetables in countries in other regions. It is important to note that toxins, viruses or bacterial spores are resistant to irradiation. Therefore, it is essential that irradiation be used in conjunction with all other established safe food handling and good manufacturing practices. Food borne illness outbreaks have been associated with almost every food commodity: dairy products, eggs, meats, seafood, poultry and fruits and vegetables. Outbreaks can occur because of cross contact during food handling, processing and home preparation. A growing concern for many health officials is the emergence of new strains of bacteria and other organisms. One example is *E. coli* which was unknown 25 years ago; this virulent bacterium can be life-threatening to children, older people and those with compromised immune systems. Food irradiation can be a boon for consumers and have a phenomenal impact on the safety and growth of the global food supply. Research has

shown that consumers are enthusiastic about purchasing clearly labeled irradiated food for themselves and their families, including children, after they have been informed of the safety and benefits of the technology. Consumers also indicated that, for irradiated foods, safety and taste were more important than price, and they believed that eliminating harmful bacteria was a more valuable benefit than extended shelf-life. Market tests conducted in the past decade, have indicated that consumers were willing to purchase irradiated foods when they understood the benefits. Nevertheless, more education is necessary for consumers to become more familiar with the process and its benefits. Some segments of the population, such as astronauts, hospital patients and immuno-compromised individuals have been taking advantage of the safety benefits of irradiated foods to protect them from potential food borne disease. Consumers learned to accept quickly the safety benefits which irradiated food brought to them.

Irradiation is Environment Friendly

Over the past 40 years, several national food control authorities have extensively studied this food process under a variety of conditions and found it to be safe and effective. Worldwide, some 170 industrial cobalt-60 irradiators and hundreds of electron accelerators have been processing a variety of goods, including industrial, medical and food products. In the United States, the Food and Drug Administration (FDA), the Department of Agriculture (USDA), Department of Defense (DOD), and National Aeronautics and Space Administration (NASA) are among the governmental organizations to either approve or establish guidelines for food irradiation. Several of these organizations have studied the irradiation process to determine any possible risks to public safety. These tests and others conducted by independent researchers in the field of industrial radio-active materials transportation and plant worker safety have consistently concluded that employees at food irradiation plants as well as citizens in nearby communities face a very minimal risk of radioactive contamination. In fact, the safety record of this technology is excellent. Irradiation is environment friendly since it reduces the need for harmful pesticides in produce disinfestations.

It is easy for consumers to determine if a food has been irradiated. Regulations require that irradiated food be labeled as such and often it may be accompanied by an international food irradiation logo. The current labeling includes statements such as “treated with radiation” or “treated by irradiation.” In some countries positive labeling for consumer information is acceptable, such as “Irradiated for safety” or “Treated by irradiation to reduce harmful bacteria”. Food has been irradiated in several countries for many years resulting in products that are safer for consumption than the untreated original foods. According to the WHO, the renowned global authority on public health, “Food irradiation is a thoroughly tested process and when established guidelines and

procedures are followed, it can help ensure a safer and more plentiful food supply.” A number of compounds are formed when food is irradiated, just as there are when food is cooked or exposed to other processing methods. However, based on hundreds of scientific tests, there is broad agreement among scientists and health agencies that these compounds are not a human health issue. In fact, more chemical changes occur when toasting bread or barbecuing steak than when irradiating food. Food irradiation provides an added layer of protection to food without significant changes to the taste, nutritional value, color or texture. Since irradiation does not substantially raise the temperature of food or “cook it,” taste and nutrient losses are small and considerably less than other methods of preservation, such as canning, drying or heat pasteurization.

The carbohydrates, fats and proteins are the main components of food, and a wide body of research has shown that these nutrients do not change significantly during irradiation. Some vitamins, most notably the B vitamins, have some sensitivity to irradiation, but processors can minimize nutrient losses by irradiating food in an oxygen-free environment or a cold or frozen state. While food irradiation is an important process that promotes food safety, it is not a substitute for safe food handling by processors, retailers and consumers. Although food irradiation may kill many organisms in food that is already spoiled, it cannot suppress odours or other signs of spoilage, and thus cannot be used as a means to “hide” or “cover up” spoiled food. The potential for food irradiation to reduce the incidence of worldwide food borne illness is enormous. An extensive review of scientific studies on food safety indicates that irradiation is a safe and effective solution to food contamination by harmful bacteria and other microorganisms. It will bring public health benefits to solid foods, e.g. meat, poultry, seafood, spices, fruits and vegetables, in the same manner as pasteurization has effectively done for milk and fruit juices, in the past century. Pesticides are a group of chemicals designed to control weeds, diseases, insects, fungi or other pests on crops, landscape or animals. The most commonly used pesticides are insecticides (to control insects), fungicides (to control fungi) and herbicides (to control weeds). Prudent use of pesticides has played a vital role in feeding the world’s growing population by dramatically increasing crop yields. A careful and judicious use of pesticides can minimize these losses, help produce a safe and abundant food supply and keep a variety of fruits, vegetables, breads and other foods on your table year-round at affordable prices. When improperly used or stored, pesticides can potentially be harmful to humans, wildlife and the environment. Over time, some pests may develop a resistance to pesticides, just as naturally present bacteria may develop a resistance to certain drugs or medications. If not handled according to the instructions on the label, pesticides can pose risks to individuals who mix, load or apply. Most pesticides begin breaking down with exposure to sunlight, rain and other elements soon after they are applied. However, to

provide an added measure of safety, consumers may select produce that is free of dirt, cuts, insect holes or other signs of spoilage; wash produce in water (not soap), scrub its skin or peel its outer leaves; and eat a variety of foods. The consumers must practice safe food handling techniques, whether the food is irradiated or pesticides are used. It is still possible for bacteria to multiply in irradiated food if it has not been refrigerated properly or if care is not taken to avoid cross contamination with harmful bacteria from other sources.

In modern times, rapid globalization of food production and trade has increased the potential likelihood of food contamination. Many outbreaks of food borne diseases that were once contained within a small community may now take place on global dimensions. Food safety authorities all over the world have acknowledged that ensuring food safety must not only be tackled at the national level but also through closer linkages among food safety authorities at the international level. This is important for exchanging routine information on food safety issues and to have rapid access to information in case of food safety emergencies. It is difficult to estimate the global incidence of food borne disease, but it has been reported that in the year 2000 about 2.1 million people died from diarrhoeal diseases. Many of these cases have been attributed to contamination of food and drinking water. Additionally, diarrhea is a major cause of malnutrition in infants and young children. Even in industrialized countries, upto 30% of the population of people has been reported to suffer from food borne diseases every year. In the U.S, around 76 million cases of food borne diseases, which resulted in 325,000 hospitalizations and 5,000 deaths, are estimated to occur each year. Developing countries in particular, are worst affected by food borne illnesses due to the presence of a wide range of diseases, including those caused by parasites.

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STREET FOOD SAFETY AND THE CONSUMER

SUSHMA GOEL

Introduction

Eating out has now become more common due to change in the lifestyle of the Indian consumer. A life style that has longer work hours than before; an increase in the number of working women and decline in number of large family units, all of which have led to increase in out of home consumption of the main meal. Eating out behavior is on the rise for the Indian consumers and so is the number of eating out options. Most of the street food centers have been mushrooming on the roadside, either on the pavements as temporary structures or as pushcarts parked on the wayside near public places such as railway stations, bus stands, cinema halls, etc.

A mobile food vendor is broadly defined as a person who offers food for sale to the public without having a permanent built up structure but with a temporary static structure or mobile stall. Street food vendors may be stationary by occupying space on the pavements or other public/private areas, or may be mobile in the sense that they move from place to place carrying their wares on pushcarts or kiosks. The street food vendors are those micro-enterprises, which not only provide an essential service to lakhs of urban workers but also grant livelihood to large number of people. Poverty and lack of gainful employment in the rural areas and in the smaller towns drive large number of people to the cities for work and livelihood. It was reported that street food vendors generated about 40,000 jobs in Malaysia alone.¹

¹Simopoulos, A P and Bhat, R. V (ed.), *World Review of Nutrition and Dietetics*, Vol. 86, Karger, 2000.

Each street food enterprise is small in size, requires relatively simple skills, basic facilities and small amounts of capital. They provide convenience of easy access to food to the general public in urban and semi-urban areas by making available large varieties of food at affordable prices. There are many people who stay out for work for long hours and eat outside. The attraction of quick snacks or lunch easily accessible within their means make street foods a fast growing industry.²

The food might be cooked at home and distributed or alternately prepared on the spot depending on the space available. Although people enjoy food from these vendors, in many cases the food is of poor quality and it represents a serious health risk. This is so because the street vendors have little or no access to safe water supplies or sanitation facilities, and they commonly cook and handle food with dirty hands. Raw foodstuffs, too, cannot be kept in safe storage places and are easily contaminated by vermin and insects. The majority of the countries reported contamination of food.³ Moreover, the safety of these foods is a matter of concern mainly for these reasons – (a) the practice of preparation of food too much in advance, (b) storage of food at ambient temperature, and (c) inadequate cooling to prevent microbial proliferation.⁴ The high ambient temperature and humidity prevalent in India are conducive to microbial proliferation and the problem is compounded by the less than satisfactory standards of hygiene and sanitation.⁵

In 1993, WHO through its six regional offices undertook a survey of its member states to assess the current situation of street vended foods in more than 100 countries. It was reported that 74 percent of the countries found street vended foods to be a part of the urban food supply. Types of preparations included: Foods without preparation (65 percent), ready to eat foods (97 percent) and foods cooked on the site (82 percent) and the vending facilities varied from mobile carts to fixed stalls and food centers. The majority of countries reported contamination of food.⁶

Status of Street Food

While it is an age old phenomenon yet rapid industrialization and urbanization brought about a sudden spurt in street food vending throughout the world, particularly in developing countries.⁷ Studies have indicated that there are

²Charkravarty I, Canet C, “*Street Foods in Calcutta*”, *Food Nutr. Agric.* 1996; 17/18: 30-37.

³WHO, *Essential Safety Requirements for Street Vended Foods*, 1996

⁴Abdulla AA, Spencer MJ, “*Hazard Analysis Critical Control Point Evaluation of School Food Program in Bahrain*”, *J Food Prot.* 1995; 59(3) : 282-286.

⁵Aiyar AS, “*Food Safety Considerations in the Context of Globalization*”, *Indian Food Industry*; 20(1): pp. 16-18.

⁶WHO, *Essential Safety Requirements For Street Vended Foods*, 1996

⁷Malik, R. K., “*Ensuring Food Quality and Food Safety– Emerging Challenges*”, *NFI Bulletin- International Friends of Nature*, Vol.17, No.2, pp. 5 – 8, , April 1996.

about 200,000 street vendors in Delhi; Mumbai has the largest number, of around more than 200,000; Ahmedabad and Patna 80,000 each and Indore and Bangalore 30,000 hawkers. The total number of street vendors in the country is estimated to be around 1 crore. Some studies estimate that they constitute approximately 2 percent population of a metropolis. According to Bhowmik, Calcutta has more than 1, 00,000 hawkers and the consumers there spend ₹40-400 (average ₹250) per month on street foods.⁸ About 2500 million people worldwide eat street food. The diversity of street foods is extensive, as they vary widely not only from country to country but also from vendor to vendor.

There is a plethora of food items sold on the streets and in similar public places. There is a variety ranging from 3 to >245. The findings also state that the street-vended foods included foods as diverse as meat, fish, fruits, vegetables, grains, cereals, frozen produce and beverages.⁹

Hygiene, Sanitation and Street Food Safety

Access to good quality food has been the man's main endeavor from the earliest days of human existence. Safety of food is a basic requirement of food quality. Food Safety is the assurance that food will cause no harm to the consumers when it is prepared and eaten according to its intended use.¹⁰ WHO reported in a study that street food poses health hazards in India due to poor safety, and hygiene leading to food contamination and waste disposal issues. Factors implicated in causing contamination include poor food preparation and handling practices, inadequate storage facilities, the personal hygiene of vendors, lack of adequate sanitation and refuse disposal facilities.

The health status of an individual, a community or a nation is determined by the interplay and integration of two factors – the internal environment of man himself and the external environment which surrounds him. Among the external factors, food plays an important role as it not only nourishes but also serves as a vehicle of food borne illness which is a serious threat to public health all over the world, and is a major cause of morbidity. The number of cases of food borne illness (accidental poisoning through eating contaminated food) has steadily increased over the last 20 – 30 years. Most food borne illnesses are mild, and are associated with acute gastrointestinal symptoms such as diarrhea and vomiting. Sometimes food borne disease is much more serious and is life threatening, particularly in children in developing countries, and infection can also be followed by disability. Serious health problems are

⁸Bajaj, P. *Study on Street Foods and their Microbial Quality at a Food Plaza in Delhi*, unpublished Master's dissertation submitted to Lady Irwin College, New Delhi, 2001.

⁹*Ibid*

¹⁰FAO, *Report of an FAO Technical Meeting on Street foods in Calcutta*, India, pp1-23, Medline, 1995.

increasing the world over due to consumption of foods contaminated with pathogens or microbially spoiled foods.¹¹ An investigation was carried out on the bacterial load in different street foods like *Gup Chup* (*Pani-puri* or *Gol Gapa*), *Chat*, *Dahibara*, Ice-cream sold in the city of Bhubaneswar. The highest bacterial load was recorded in *Gup-Chup*, followed by *Chat* and Ice-cream and then *Dahibara*. The predominant bacteria isolated were the species of *Bacillus*, *Staphylococcus*, *Shigella* and *E.Coli*.

Efforts at National Level

Street foods till recently has been always being taken as passing phase and being despised by the local administration never got enough attention from enforcing agencies and have not been controlled.¹² NIN (National Institute of Nutrition) and CAC (Codex Alimentarius Commission) have now prepared a draft code on minimum requirements for sale of street foods in India. Rules and regulations for safe food manufacturing need to be enforced and before any regulation can be established for street vendors, the local authorities need to recognize the importance of street foods. The Bureau of Indian Standards (BIS) has prepared a set of standards for street food vendors who operate in Metropolitan cities. To ensure that quality, hygiene and safety are inbuilt into the product quality assessment has to be carried out throughout the food chain-production, processing, storage, and distribution, and finally upto the sale point. There is a lot to be learnt from cities like Bangkok, Jakarta, or Guangdong (China), where the urban authorities, have worked with the members of street food enterprise associations to remove many of the constraints and ensure hygiene and cleanliness. In these cities, the entrepreneurs are registered, with allotted premises, insurance, and access to necessary infrastructures such as telephone, water and electricity. They are trained in the community health aspects that have relevance to food and water.

A study was conducted to investigate the hygiene and safety practices of food service providers as well as food quality awareness among consumers in Delhi. A total of ninety subjects were part of the study (25 street food units - 25 each of owners and workers in these units; and 40 consumers visiting these food units).

Salient Findings

Socio-Economic Profile of the Food Providers

Most of the food owners were male. They were in the age ranging from 25 to 50 years. Most of them were migrants and had established themselves as street food vendors since ten years or more. It was observed that most of

¹¹Raghuramaiah R. "Indian Food Regulations in the Global Context", *Indian Food Industry* 2001; 20: 2.

¹²NFI & FAO, *A National Strategy for Ensuring Food Safety*, Dec 2003.

the workers were comparatively younger than the owners (15 to 30 years). Workers were involved in the activities related to cooking, serving or cleaning. Most of them were either illiterate or educated up to high school. All the workers were found to be untrained and did not feel the need for it even though training is considered an essential part of the strategy to improve the safety and quality of street food. Most of them had some experience of working with other food providers; however, they did not have any formal training. Therefore, they continued to follow poor work practices rendering the food quality unsafe and unhygienic.

Each street food enterprise was small in size, required simple skills, basic facilities and small capital investment. Street food vending was their primary occupation. It was interesting to note that majority (56 percent) of food owners involved their families in procurement of raw materials, pre-preparation, cooking as well as sale of food. Number of persons working in each unit varied from 1 to 5. They earned around ₹ 600 to 1000/- daily. Workers had the privilege to keep their working hours flexible.

Street food providers were spending 6 to 9 hours and catered to about 30 to 60 consumers' everyday. Number of consumers catered on weekdays was more as compared to weekends probably most of the food units selected for the study was near the offices or the university campus which remained closed on weekends. Stationary and fixed (like, Kiosk or temporary fixed structure) units were licensed whereas mobile units were not (44 percent). Mobile food vendors felt that since they moved from one location to another therefore, there was no need to obtain a license.

Profile of the Consumers

Consumers frequenting the street food vendors were a heterogeneous group who varied in age, literacy levels and socio-economic strata. Most of the consumers were males. Servicemen and daily wage earners regularly consumed street foods probably due to long working hours and absence of balanced and hot food at the workplace. College students and businessmen were also frequent visitors to these food units (twice or thrice in a week). Tourists from other countries also savoured the variety of street foods available in Delhi.

Awareness towards Sanitary and Hygienic Aspects

It was interesting to note that most of the respondents (street food owners and consumers) were aware about the sanitary and hygienic aspects of street foods like –

- Clean hands of the workers;
- Food unit should be away from the sewage;
- Clean food unit;
- Personal hygiene of food workers;

- Good lighting at the unit; and
- Use of disposable containers for serving food.

Street food owners and consumers did not seem to be aware of the following aspects related to sanitation and hygiene of street foods like –

- Provision for disposal of waste within the unit or nearby location;
- Use of disposable towels for wiping hands, utensils, etc.;
- Uncovered food is subject to contamination;
- Water logging near the food unit is undesirable;
- Wearing gloves is important; and
- Dustbin near the food unit is undesirable.

Chi-square analysis showed that older food owners as well as those who had been in this business for more than past 10 years were found to have higher awareness as compared to younger respondents and those who were comparatively new to this occupation, probably the former ones experienced significance of sanitation and hygiene of food quality with higher sales at 0.05 level of significance. Consumers though aware of the significance of sanitation and hygiene in food service yet remained apathetic to the existing practices adopted by the food owners as they felt nothing could be done either by the Government or by voluntary agencies. Therefore, they did not feel the need to pressurize or demand that food providers followed good practices otherwise they would abandon their services.

Sanitary and Hygienic Practices Adopted by Street Food Providers

Food is susceptible to contamination at all stages in the food chain. Raw materials, therefore, are important to the safety of street food because of the hazards that may be introduced to the vending operations which may persist through preparation and processing. These vendors though preferred to buy packed condiments and spices but generally bought them without reading label. Street food providers were quite conscious of maintaining cleanliness for those areas which were visible to the consumers like – cart, storage vessels, serving utensils whereas items like wiping cloth, knife, water for washing utensils, vessel containing drinking water were in a very unhygienic state. Most of the food providers (56 percent) did not use any kind of protective covers while mixing ingredients and did it with bare hands. Very few (12 percent) of the food providers used protective covers like hand gloves and head gears to maintain sanitation and hygiene practices.

Infrastructure Facilities at the Street Food Unit

As regards the infrastructure facilities, 36 percent of the food units had a temporary cover of materials like, tent, polythene sheets, etc. Prime reason for unhygienic practices was lack of basic facilities in the nearby place or at the food cart. Water being a critical resource is required for many street food vending operations. For instance, washing of used plates and glass tumblers

in a single bucket of water was a common practice seen among street food vendors. About 48 percent of the food units used stored water (municipal tap water or hand pump water) for washing of utensils and a similar percentage used running tap water for the same purpose. Due to non-availability of running water, most of the vendors reused the same water for washing and rinsing utensils. Another major issue was disposal of waste water and solid waste. Majority of the food owners discarded waste water on to the streets and solid waste in the municipal dustbins, or in the drains or on to the streets. Convenience, poor monitoring by local authority and lack of consciousness of owners were the reasons for throwing garbage and wastewater on to the streets and drains and making dumping grounds for flies and infestation.

The study reflected that 52 percent of the food units used gas lights during the evening hours and night time. Improper illumination levels at the food units led to unsafe food preparation and handling of food. Even though 28 percent food units used electric lighting system yet the lumen levels at the cart were quite low thereby impacting the efficiency and visibility at the unit. Rest (20 percent) depended on street lights for illuminating their units. Scoring of hygiene and sanitary practices adopted by food owners reflected poor practices followed by them as also observed in the obtained scores by the majority were below median i.e. 35. Analysis represented that 56 percent of food handlers followed poor hygienic and sanitary practices in the street food vending and 44 percent followed good practices.

Buying Behavior of Consumers

Be it urban people or rural, daily wagers or employees in white collar jobs, students with odd eating timings and working women- all sections of consumers depend on street food directly or indirectly. There are number of reasons due to which a large chunk of people eat at these units. The frequency with which the food service units were visited indicated the role it plays in the lives of consumers - whether for sustenance, convenience or pleasure. The study shows that 11 percent customers consumed meals outside on a daily basis and 20.3 percent consumed outside food twice or more in a week, indicating that only 31.3 percent of the customers used food service units for sustenance. 9.3 percent who visited at weekends and 57.3 percent who rarely consumed street foods see it more as a recreational activity rather than sustenance. Street food vendors were visited by specific customers who travel or are in transit. Consumers opted for eating at street food unit because of inadequate timings to cook meal, for change from routine or convenience. Besides this there were other reasons like temporary stay in the city and no other comparable option available. Majority of the respondents gave preference to food service unit following sanitary and hygienic way of food preparation followed by better quality of food supplies. Some of the other factors determining choice of a particular unit included better water, cheaper and

affordable food.

Most of the respondents were aware of the good practices which were necessary to prevent food borne diseases like prevent use of dirty towels, washing of hands before taking meals, keeping surroundings clean by using detergents, etc., reduces growth of germs, contamination and adulteration of food needs to be checked, water was the main source of contamination and was responsible for most of viral diseases and food poisoning. However, some respondents believed that viral diseases cannot spread through contaminated milk and were also unaware of the correct standardization marks on packaged foods. It was observed that despite having good information on food safety aspects, most of the consumers were not following these practices and ignored crucial factors like unclean water, unclean surroundings, use of unbranded spices etc. while consuming food from these units. Eating out being more of a social event most of the consumers ignored the most critical safety aspects and emphasized only on the convenience and entertainment.

The patronage of a food service unit by a customer depends on the perception of quality of the unit and the ranking it is given to it by the customer. Analysis revealed that the food served by street food vendor was ranked fair by 37 percent of consumers, satisfactory by 31.3 percent and 27.7 percent of consumers considered it to be of poor quality. Very few consumers (1.3 percent) ranked street food at mobile units as excellent probably due to unhygienic practices followed by them. It was surprising to find that there were equal number of customers who fell ill after consuming street food whereas other half were not affected after consuming street foods. Among those who fell ill after consuming food from the vendor 85 percent consumers made changes whereas remaining 15 percent did not feel the need for it. Following changes were attempted by those who fell ill after consuming food from vendor:

- More spicy to less spicy food
- Cold to hot food
- Open to packed food
- More oily to less oily
- Changed the unit

Conclusion

The findings exhibit the fact that most of the respondents consumed street food out of compulsion as other comparative options were unavailable. Most of them were not concerned about sanitation and hygiene unless they fell ill. Primary reasons for coming to street food were easy availability, good taste, low cost and variety. The study results further indicate that as consumption of street food is inevitable there is a need to improve the conditions of these food units as well as the quality of food served at these places. Consumers will have to play a pro-active role to demand good quality

food – only then will the vendors comply with their requirement.

International organizations can play an important role in providing advice and expert technical assistance to Governments on food safety, advising member countries with regard to developing legislation and regulations including standard guidelines for food safety as developed by Codex, a subsidiary body of FAO and WHO. There is lot to be learnt from cities like Bangkok, Jakarta, Guangdong (China) where the urban authorities have worked with the members of street food enterprise associations to remove many of the constraints and ensure hygiene and cleanliness. In these cities the entrepreneurs are registered with business premises, insurance and have access to necessary infrastructure such as telephone, water and electricity. They are trained in community health aspects that have relevance to food and water.

To be effective, large number of people must be educated and trained. Technical professionals must be trained either to develop or check a HACCP (Hazard Analysis and Critical Control Points) system. Food stall owners and handlers must be made aware of advantages of HACCP. An integrated plan of action for improving street food involving health and other regulatory authorities, vendors and consumers should address not only food safety but also environmental health management. All these steps would result in enhancing food safety leading to improvement of health status.

Government intervention is necessary. The state government of the capital has to become an active participant by providing the street food vendors with basic amenities like safe water, regular electricity supply and proper waste disposal. Consumers also play an important role in determining the services needed by them from the street food vendors. Regulations for vendors should be realistic, attainable and properly enforced. Control of street foods mainly calls for two types of legal provisions:

- Issue of a license to operate and may include restrictions on the type of food to be sold and on the location where they may be sold.
- Enforcement of specific measures to protect the consumers against health hazards and commercial fraud.

With the changing food habits of the Indian consumers street food is becoming more and more popular. The Food Safety and Standards Authority should come out with specific guidelines relating to hygiene and cleanliness for street food vendors. They must be encouraged to use disposable plates and glasses but also ensure that the waste is disposed of properly. Affordability is one of the reasons for mushrooming of street food vendors, therefore, it is important to ensure that they do not become a health hazard for the consumers.

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GLOBAL TRADE PRACTICES AND CONSUMER PROTECTION – AGRIBUSINESS IN DEVELOPING COUNTRIES

ARUN BHADAURIA

Introduction

The inception of WTO and New Economic Reforms in the country in 1995 and 1991 respectively opened the flood gates of transformation in globalized trade practices and multi-dimensional development. Terms like MNC and TNC emerged out of this context, which gradually started to take on the job of spreading business premises of the International Club of Trade across developing countries. These trade giants offered multiple business sops for domestic players in developing countries. Developing Countries such as India, Brazil and Malaysia looked upon grueling opportunities to withstand the changing face of global trade. Consequently, the flow of new business practices thwarted aspirations of small entrepreneurs, agripreneurs, laborers and farmers from being beneficiary of the revolutionary inception of WTO. In the aftermath of huge round of debate during ministerial conferences it was expected to bring solace for farmers and other agripreneurs.

Empirically, global agricultural trade is highly asymmetric, with a large number of producers being linked to very few traders, who in turn, sell to a large number of buyers. The dynamics of trade between these two important ends is the centre of all problems in global trade practices. Farmers from developing countries deal with Multi National Corporations (MNCs) and Trans National Corporations (TNCs) for supply as well as for purchase. The increasing dominance of TNCs in the agricultural sector is pulling down small

producers in cobweb where they have to sell for less than fair prices and has to purchase at more than what they were paying earlier. The risk of being excluded from the system both as producers and as consumers leaves them with no option.

Trade considered as an activity which has to occur under the dominion of two republics while it actually takes place between two companies. Meanwhile, it is operated across borders where due to intra-firm trade, what looks like buying and selling between countries is the redistribution of capital among subsidiaries of the same parent multinational corporation. The trade dynamics between two subsidiaries of the same MNCs advocates different trade angles for the market driven economies. The variables such as buying power, elaborated product and market positioning system, facilitation of strategic business units etc. play pivotal role in redesigning global market trade dynamics. Here, the two countries which are destined for the outcome of trade relations between two subsidiaries prepare to count number of benefits to their domestic trade. However, the past experiences reveal that developing countries that are predominantly agrarian economy are left to the mercy of the free trade and its implication in future. In this regard, it is observed that TNCs are the sole winners of their increased buyer power, while farmers are being marginalized in the agro-food chain (see notes).¹

In the recent past there has occurred several opportunities for farmers to undergo trade practices in which both will get benefited such as contract farming, agri export zones and special economic zones. The state of farmers in these avenues is not more than a consumer, where farmer is given material on cost-to-cost basis. Nevertheless, farmers are not getting in time and at fair prices the inputs needed for farming. In the document of the National Farmer Policy, a final report on agriculture service and protection, it has been stated that the time has come when we must pay attention to economic welfare of the men and women feeding the nation, instead of focusing on production alone. The report recommends that the agriculture progress must be assessed on the basis of real income of farmer families, not from the point of million tones of food grains produced. This would help in highlighting the reality in place of data.

During the current 11th Five Year Plan, for doubling the income of farmers, the need of the hour is to promote agriculture diversification, processing and marketing. The component of agriculture research is also considerably important for reducing agricultural cost and increasing production and productivity, but this area of vital importance has so far been ignored. For increasing production and productivity, farmers should be made available with improved seeds at fair prices in an adequate quantity. The dream of sustainable agriculture can come true only with strong and resourceful producer and rational and healthy consumer. On this basis we should consider dual role of the farmer i.e. as a producer and as a consumer. This paper is an

effort to bring the issue of dual role of the farmer in the national and international forum so as to draw attention of policy-makers, academicians and researchers.

Unwinding the Agribusiness and Trade Linkage

Agribusiness is a generic term related with core business practices in the agro-processing, agro-forestry, allied activities along with procurement, distribution, marketing and supply chain. It brings every such activity into the frame which is a distal end of the whole business link. These activities meanwhile are performed and owned by various sections of the market economy. In a globalized world these sections are rapidly seeking avenues to come together and to perform common goal of earning profits and expanding the market. With this approach every MNC and TNC prefers to collaborate with local firm to acquire required input and information with ease. Here comes the catch as farmers are disorganized against large organized force of firms and markets.

Farmers are at a disadvantage as they are numerous, unguided, unaware and ill informed, while processors and other agribusiness firms are few but very much guided, focused and adopting innovative practices. Farmers are assured to be treated at par with the other producers and middlemen. They are also asked to grow specific crop and to the desired quantity. Mayhem is created when farmer is ready with produce. The bulk of produce which is more or less perishable is miserably sold at modified procurement price as farmer turns up as price taker with invariably no bargaining power. Firms wielding immense market power squeeze farmers from both sides. The market power of the retailers, processors and grain companies dominate the agro food chain and take the larger and increasing portion of the producer's surplus, making windfall gains. They win both ways – when prices fall as well as when they peak. On the other hand, farmers always bear the brunt, losing out during times of bumper production as well as low yield. Farmer pays more for the same products which was taken from him at very low price.

The farm operations in developing countries have numerous constraints in the form of shortage of funds, low productivity of resources, highly fragmented land, subsistence farming, poor storage facilities, low degree capital formation and dichotomy of system. The presence of agribusiness firms definitely brings plethora of opportunities for farmers and other occupants; however, their low bargaining power again leaves them at the mercy of the firms. They in turn, try to guide things accordingly (see Notes).²

Domestic market is the victim of hierarchical concentration in global food supply chain. It is well known that several world business and research forums are regularly operating in developing countries, thereby inviting various business houses to these countries to take charge of proposed ventures in order to shape up the undeveloped and unharnessed resource base. This somewhere results in high concentration of firms and other members in both

horizontal and vertical line of business organization and market hierarchy (see Notes).³ Market concentration signifies lack of competition, wherein a war of price leadership seldom displayed as hidden restrictions on entry are felt everywhere. In economics, the concentration ratio (CR) can be estimated as the market share of the few largest firms in the industry. A CR of 40 percent or less is generally considered to be a competitive market. In 2005, CR for Australian supermarkets was 89 percent; the CR for soy oil refining in Brazil was 86 percent and CR for most agricultural commodity processing in the US ranges between 50 percent and 83 percent.

Trade Linkage of Value Chain System

Over the past decade in the aftermath of WTO modalities discussed in Ministerial Conferences, the issues came down from regional trade blocs to the importance of value chain. This is indicated in the various rounds of debates and discussions in international forum regarding value addition and value chain system of developing countries. Had it been solitary, it would not have left any imprints of its being there on the surrounding systems. Still it is being established on the very socio-economic foundation of the developing economies. Same is the case for India where value chain system explores its base in the existing socio-economic structure of the society (see Notes).⁴

Trade linkage so far represents complex chain of various trade stakeholders across the nation and maintaining their offshoots at international level. Alongside, Post Harvest Management and value addition activities create multi-stage transaction leading to the creation of dual role of every individual for consumer and seller. This shows utmost requirement of new definitions for consumer laws in this case as these cases are not dealt mere with existent activity specific legislation as available with SFAC. In fact at every step of Value Addition one set of seller-consumer activity is cited which needs to be looked upon for fair trade practices and protection.

Stakeholders as a Consumer in Value Chain

The recent government sponsored schemes and initiatives primarily aimed at attracting private sector participation and investments have enabled the infusion of much-needed vibrancy and a positive perception to the agriculture. Industry estimates indicate that the total turnover of the food market is around ₹ 2500 billion out of which, value-added food products comprise ₹ 800 billion. Among the emerging business avenues and growth options in the diverse Indian agribusiness sector, the food processing sector is particularly promising. The importance of the food processing sector can be gauged from the fact that it contributes to nearly 6.3 percent of the country's GDP, directly employs approximately 13 million people and has the propensity to generate 2.4 times more indirect employment than the direct employment generated. The high growth rate (7 percent p.a.) witnessed by the sector in the last decade and

further improvement in growth rate expected in the years to come, presents innumerable opportunities for investment across the entire agri-value chain. However, it will not be able to attract much of the expected response if it fails to protect masses against age-old practices of adulteration, malpractices and hoarding.

There are several steps in the value chain which are not defined in any consumer legislation such as selling of chopped mango, graded basket of vegetables, carbide-led-ripen banana etc. Once the food crop is harvested, it goes for marketing as per the new vistas of post harvest management and value addition. These steps are meant to woo the consumers. It is here, that the awareness level of consumer is significant so as to protect him from any type of malpractices as mere legislation is not sufficient to do so.

Consumer Protection in Agribusiness

Consumer protection is being practiced from ages, however, it was inimical to account issues related to producer in agribusiness whose identity is taken in disguise. Further, Small Farmer's Agribusiness Consortium (SFAC) enacts several Acts and ordinances to protect the interest of farmers and to regulate the agribusiness operations. However, the existing Acts and ordinances are meant for specific commodity and activity based issues but there is a need of specific laws and legislation for agribusiness.

Establishment of Producer-Consumer Consortium (PCC)

Following the format of SFAC there is a need to establish PCC. PCC will be constituted by State Agriculture, Trade and Consumer Welfare Department. PCC is required to address the issues emerging due to the transactions and business activities among various MNCs, TNCs, local firms and farmers. The role of farmer changes according to the activity thereby giving room for confusion, exploitation and unfair trade practices. Though there are sufficient laws related to the unfair trade practices, they are not adequately drafted as per the requirement of agribusiness. Following is the list of activities pertaining to agribusiness which needs to be defined for clarity in the rules and regulations for consumer protection.

1. Raising the level of awareness of farmers, laborers and other concerned regarding harvesting so that right quality product is managed to supply to the immediate consumer and farmer will get its due in value chain. In fact, farmer is paid less highlighting poor quality of food products encasing unawareness.
2. The recommendation such as establishment of packing room at farm, slicing of the product, measures to protect product from mishandling etc. though appear producer-supplier concern, still the product reaches to consumer who is forced to pay for forced supply and influential market. This is required to make the farmer

aware about these things so that he can understand the immediate requirement and judge the real value addition and his share in the value chain. Consumer Protection in this regard needs to be defined. For example, pressured banana spoils early compared to relaxed banana.

3. Usually the farmer and the middlemen unknowingly do something which damages lots of commodity. They then adopt malpractices in order to recover their investment. Both supplier and consumer need to be very clear about the ground realities. Laws pertaining to consumer protection need to expand their horizon from protection to comprehensive coverage of sustainable business practices.
4. The recent introduction of organized retail in vegetables, juice, and other processed, semi-processed and fresh food products has posed serious threats to the very existence of small retailers as well as low income group of consumers. Even, inflation (especially food inflation) has made it difficult to meet both the ends. PCC should play greater role in redefining the revolutionary changes in the market structure. The consumer and seller must be told about quality, selling mechanism, opportunities of new type of occupations. For example, product sold at mall is more safe and wholesome. (see notes)⁵

Coordination among Existing Consumer Welfare Legislation and Agriculture and Allied Activities

SFAC has many legislations in agribusiness trade practices. Despite existence of such a vast range of rules, laws and legislations nothing is able to save the small farmer, landless, small trader, processor and consumer from exploitation in the hands of firms and organized trade system due to lack of coordination among various laws and legislations. Even the local traders and processors are not aware about the technological innovation in the manufacturing, production, cultivation, harvesting, post harvest treatment and finally selling and marketing etc. The ignorance and lack of awareness lead to the adoption and adaptation of malpractices. Had they known about the good trade practices they would certainly keep themselves out of these activities. The question of nailing down the miscreants is not possible due to the weaknesses of the system. However, the recent media glare about adulteration of mustard oil, sweets during diwali raised alarm on the role and responsibilities of the enforcement authorities. This received a overwhelming response from the public as they preferred to distribute dry fruits and quality assured sweets. This shows that coordination and right approach using every possible resource may give the authorities upper hand.

Following things are useful in this case:

1. Understanding the activities pertaining to agribusiness.
2. Exact idea of the operation and other associated mechanism with agribusiness.
3. Coordination among existing regulations.
4. Awareness campaign for the masses.
5. Strict compliance of norms on account of profit-motive.

Food Safety Laws and Quality Systems

The general response to food safety is very lukewarm even among those who are directly dealing with it. A brief survey through the city's well known processors revealed that they are following HACCP in food safety but at the same time they resort to some amount of malpractice to stay in the market. The application of Good Manufacturing Systems (GMP) and Good Laboratory Process (GLP) are not known to more than two third of the processors. As per their confession, the application of quality assurance will raise cost and customers are not attracted. (See Notes)⁶

The issue of consumer protection needs to be integrated with the level of general awareness among consumers about the products of agribusiness. The reports from Regional Food Research and Analysis Centre, Lucknow advocated the application of quality production, cultivation, handling, processing and post harvest management which gives longer shelf life and a high nutritive value to the products and may be sold at very reasonable price in the open market.

Legislation under SFAC and Consumer Protection

SFAC though has numerous laws under its ambit, yet it is not able to regulate the agribusiness and marketing environment. In fact all the Acts and Ordinances are commodity based. They are age-old and need to be reviewed under new conditions. Moreover, they seldom speak about consumer protection as they consider consumer protection not to be of their concern. They should consider the issue of enhancing the awareness of consumers, producers, traders, processors and other stakeholders.

Small Scale Enterprises and Consumer Protection for Agribusiness

Rural and Traditional Sector Enterprises amongst the unregistered SSEs and non-farm sector contribute to about 15% of the total output of Small Scale Industries and employs about 40% of the work force. These industries are based on traditional skills and simple manufacturing processes that are carried out by making use of mostly hand tools and in few cases by use of simple machines. This also explains the large employment generation opportunities of these units. This represents a clear picture of the potential this sector has. Farmers and other similar occupants constitute the bread

earning class of the country. It is imperative to bring these units in the mainstream so that various issues confronting them could be addressed.

Despite reaching new horizons of development in several spheres, Uttar Pradesh and many other states are still far behind as compared to states such as Punjab, Haryana, Tamil Nadu and Karnataka etc. as far as the condition of farmers is concerned. The policies, which were formulated by various governments from time to time to improve the status of rural masses, proved a boon for a select section of the society as the trickle down of the benefits of development was not uniform. This happened due to the lack of foresightedness among the policy-makers, bureaucrats, practitioners and researchers. These states think that quality systems are not fit for the business as profits are wiped out. They indulge in malpractices as a habit and a lack of confidence in the system as a result both in consumer and in seller resort to the counterfeit and unfair practices.

An effective campaign about quality based systems and technologically and technically driven trade practices may bring revolution in these states where SSEs are employing large part of the population. As mentioned earlier agribusiness practices comprise many sub activities which are needed to make the process smooth. These activities can be established only through SSEs. Therefore, it is important to identify the role of SSEs in enhancing the bargaining power of the consumer.

Poverty Ridden Farmer and Consumer led Market System

All people have the right to a sustainable livelihood, to access the means to fulfill their numerous requirements and to be free from the clutches of hunger and exploitation. Private sector could be part of an equitable and sustainable food system, but instead, the current market structure allows private sector to capture disproportionate benefits while off-loading risk and denying millions of people their rights. The quest for efficiency in corporate business strategy, maximum profits for businesses to reach maximum number of consumers, is leading to increasing market concentration, both vertically and horizontally, in the agricultural business sector. This is probably one of the reasons for the increase in poverty levels in the last two decades. So far the production of inputs are concerned the private sector has a good scope for production of certified seeds and several other inputs, but high cost involved in production, dithers the small farmers from purchasing them. Therefore, adequate arrangements should be made. Lack of marketing network at their end is the major problem faced by the farmers. It is not in the interest of MNCs and TNCs to bridge the inequities of trade. Their interest is to make a profit and they do this by squeezing small farmers on both sides of the production chain. In some cases, the same companies dominate multiple layers of the production chain. Farmers are left without choices, bearing most of the burden in terms of meeting the standards required by the agribusiness

corporations in their production chain as well as the cost.

Owing to the complexities of the controlled economy, the farmers are victims of middlemen. Even at the time when the liberalisation was introduced in the industrial sector, the agriculture sector was ignored. Entangled in the complexities of various rules and laws, the farmers are unable to get a higher remunerative return for their produce. If a proper arrangement for marketing of their produce is made, only then the farmers will be able to improve their lot by freeing themselves from the clutches of middlemen. Here again farmers are not considered as consumers even though they are most vulnerable consumers, (see Notes).⁷

The middlemen take away the difference in prices. The National Farmer Policy, finalised after wide-spread discussion with the concerning parties, states, that “the State Governments have to effect promptly such improvements as they can generate maximum opportunities that help farmers to sell their produce, give concessions to cooperatives including private sector, promote sale directly to consumers and remove hurdles and harassment.” Farmers have to be substantially protected against the market fluctuations. SSEs are actually giving employment to more than half of the population. If data of other states is observed, it reveals that only those states are progressing where adequate number of SSEs are operating. Even in the current scenario when numerous post harvest business activities are generated the performance of SSEs needs to be above par by employing all the available resources. The above discussion regarding the mindset for quality and other innovative aspects would certainly be minimised if SSEs are able to involve the rural masses in one or the other way. Bottlenecks, middlemen, poor infrastructure and sick mindset have only added to the problem.

New Avenues for Consumer Protection in Agribusiness

A collaborative project has been initiated between USAID and the National Institute of Agricultural Management (NIAM) in April 2005 to explore the possibility of Strengthening of Agricultural Marketing System in India for various areas *viz.*, Marketing Infrastructure Design and Planning, Food Safety and Quality, Marketing Extension, Grading and Standards, Market News and Information Dissemination with Capacity Building through Training of Trainers and Technical Assistance. Three states namely Himachal Pradesh, Rajasthan and Karnataka have been selected as pilot states. The team has also submitted its report identifying the major areas of interventions and training needs on marketing to different stakeholders such as farmers, KVKs, APMCs, market functionaries and government officials.

Similarly, Bill and Milinda Gates Foundation in collaboration with Amity University, Uttar Pradesh and World Food Logistics Organization (WFLO) is working for Post Harvest Loss Assessment in several districts of India covering seasonal and regional crops. The objective of this activity is to propagate the

idea and information regarding losses due to poor harvesting, handling and transport. The field workers are also telling cultivators, processors and traders that faulty treatment forces one to adopt malpractice. If you take serious and sincere note of proper handling instruction, losses are minimized. Regional Food Research and Analysis Centre, Lucknow is working with the Department of Agribusiness Management, Amity Business School to spread the information about qualitative practices and their benefits. Moreover, Amity School of Rural and Agricultural Management (Constituent unit of ABS) is conducting rural learning programme for villagers to educate them about the innovative opportunities of livelihood for farming communities.

These collaborative efforts can do a lot to raise the level of awareness of producer, trader and consumer. In nutshell, it is mandatory to have updated and issue based legal system to facilitate smooth and fair agribusiness trade practices. The dual status of farmer and other stakeholders needs to be reviewed. Surprisingly, status of legal enactment for consumer protection is patchy and needs to be revitalized on the pattern of Wisconsin and USDA. Though this highlights just a few problems, there are several avenues which needs to be recognised for immediate attention. The following are noticeable in this regard:

1. Awareness level of all should be raised.
2. Application of innovative practices and their understanding should be propagated to all.
3. Clarity about the activities and their legal implications should be made clear.
4. There is a need to clarify the role and responsibilities of all stakeholders and the enforcement agencies.
5. Transparent system especially designed to promote agribusiness should be developed.

Notes

1. TNCs are the sole winners of their increased buyer power, while farmers are being marginalized in the agro-food chain, agricultural workers are suffering unfair working conditions, and consumers are questioning their benefits. In fact, continuous fall in international basic commodity prices has not translated into cheaper food for consumers. There are serious concerns about quality and safety of industrial food, and clear indications of environmental damage caused by intensive agricultural production and transformation.
2. Poor people living on agriculture would like to reduce poverty and to contribute to economic growth. But in fact, small producers and agricultural workers in developing countries are experiencing a deterioration of their living conditions and

opportunities. They are being paid less for their produce, forced to work under tight conditions, and have no option to negotiate or change that situation. The lack of regulation and the absence of pressure allow agribusiness to squeeze prices down the value chain.

3. There are reports of malpractice by agribusiness firms trying to manipulate the demand-supply situation to their benefit. Some agribusiness firms, on account of their capital position and influence, have been instrumental in the formulation of trade rules and procedures at various multilateral forums. Food and agricultural products have a very short shelf-life, making their processing, post-harvest treatment and assured market options a necessity. Through their scale of operations, agribusiness firms possess the capacity to turn the weaknesses and strengths in trade agreements and flows to their benefit⁴. According to FAO, the dominance of global supermarkets has led to consolidated supply chains in which buyers for a handful of giant food processors and retailers wield increasing power to set standards, prices and delivery schedules.
4. The agriculture market today is characterized by both horizontal as well as vertical concentrations. Both concentrations give these firms a lot of power to influence prices — both paid to producers as well as charged from consumers. Vertical integration helps firms control not just one aspect of food production but the entire process. This entails not just selling seeds, fertilizer and pesticides but also the purchase of crops from producers, their processing, and onward sale to retailers.
5. ‘Purchase of one kg potato at ` 20 gives you really 800 g while at mall full 1 kg is purchased with same quality of all potato in the lot’.
6. In beginning Bisleri was failed to establish in India but they returned with the claim that they will train every Indian to drink with bottle. We must go forward to purchase quality products from malls even if it is expensive (however it is not so)
7. State Advisory Price (SAP) of sugar cane is far below expectation as far as the comparable volume of production is concerned, while, market price of sugar is increasing leaps and bounds. The SAP announced will not be enough for sugarcane farmers whose produce has been affected by droughts and floods. Besides, it may also hit the sugarcane industry and common man.

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CONSUMER PROTECTION AND E-COMMERCE

ADITYA BIJAN BRAHMBHATT, KARAN SACHDEV

Introduction

The contemporary era is marked as the era of consumers. No country can knowingly or unknowingly disregard the interest of the consumers. This can be argued on the basis of quick enactment of consumer protection laws in almost all part of the world. Apart from the consumer protection laws in developed world, we could find the accelerated rate of law-making for consumers in developing countries like Thailand¹, Sri Lanka², Korea³, Mongolia⁴, Philippines⁵, Mauritius⁶, China⁷, Taiwan⁸, Nepal⁹, Indonesia¹⁰, Malaysia¹¹ and other countries.¹² India is not an exception to this rule. The Consumer Protection Act, 1986 is a milestone in the history of socio-economic legislation to protect the interests of the consumers in India. The legislation to protect and advance the interest of consumers in India finally materialized

¹Consumer Protection Act, 1979 of Thailand that was amended in 1998.

²Consumer Protection Act, 1979 of Sri Lanka.

³Consumer Protection Act, 1980 of Korea that was amended in 1996.

⁴Consumer Protection Law, 1991 of Mongolia

⁵Consumer Act, 1991 of Philippines.

⁶Consumer Protection Law, 1991 of Mauritius

⁷Law on the Protection of Consumer Rights and Interests, 1993 of China

⁸Consumer Protection Act, 1994 of Taiwan

⁹Law on Consumer Protection, 1998 of Nepal.

¹⁰Law on Consumer Protection, 1999 of Indonesia

¹¹Consumer Protection Act, 1999 of Malaysia

¹²S.K. Verma and M. Afzal Wani, *A Treatise On Consumer Protection Laws*, New Delhi:

after in-depth study of consumer protection laws operating in other countries and in consultation with representatives of consumers, trade and industrial segments of India and abroad. In order to better serve the interests of the consumers and to settle their disputes, Consumer Council and other adjudicatory mechanism have been established.

The Indian tradition of protecting consumer interest can be traced to its historical past. We can find the references of consumer protection against exploitation by the trade and industry like short weights and measures, adulteration and punishment for these offences in Kautilya's *Arthashastra*. Prior to independence, the main laws under which the consumer interests were considered were the Indian Penal Code, Agricultural Produce (Grading and Marketing) Act, 1937, Drugs and Cosmetics Act, 1940. For Consumer Rights and their effectiveness in India six Consumer Rights i.e. right to safety, right to information, right to choose, right to be heard, right to redress and right to consumer education are enshrined in the Consumer Protection Act, 1986.

It is to be argued that much talked about concept of consumer protection centres around the problems of buyers in a world of sellers. The technological developments have multiplied the need of consumers and have changed the tradition that guided our living in the past. The rapid industrial development has not only brought new innovations and products into common use but has also affected the mode and outlook of our living. The simple goods which were catering our needs have been replaced by complex and complicated ones. In view of the socio – economic changes which have taken place in the lives of the people it is imperative to build up a strong and broad based consumer movement which may give impetus and bring about socio- legal measures necessary for consumer protection. This study aims to project and suggest not only the ways and means to manufacturers, distributors, traders and all those engaged in serving the consumer but also evolve balanced viewpoint between the buyers and sellers within socio- economic and legal framework of the society.¹³

Consumer Protection

We all are consumers in one form or the other. But in the present socio-economic scenario we find that the consumer is a victim of many unfair and unethical tactics adopted in the market place. The untrained consumer is no match for the businessman marketing goods and services on an organized basis and by trained professionals. He is very often cheated in the quality, quantity and price of the goods or services. The consumer who was once the “king of the market” has become the victim of it. The modern economic

¹³Rajendra Kumar Nayak, *Consumer Protection Law in India: An Eco- Legal Treatise on Consumer Justice*, New Delhi: The Indian Law Institute, 1991

industrial and social developments have made the notion of “freedom of contract” largely a matter of fiction and an empty slogan so far as consumers are concerned¹⁴. With globalization and development in the International Trade and Commerce there has been substantial increase of business and trade, which resulted in a variety of consumer goods and services to cater to the needs of the consumers. In recent years, there has been a greater public concern over the consumer protection issues all over the world. Taking into account the interest and needs of the consumers in all countries, particularly those in developing countries, the consumer protection measures should essentially be concerned with – (i) the protection from hazards to health and safety; (ii) the promotion and protection of economic interests; (iii) access to adequate information; (iv) control on misleading advertisements and deceptive representation; (v) consumer education and (vi) effective consumer redress¹⁵. The consumer deserves to get what he pays for in real quantity and true quality. In every society, consumer remains the centre of gravity of all business and industrial activity. He needs protection from the manufacturer, producer, supplier, wholesaler and retailer.¹⁶

In the early law, the doctrine of *caveat emptor* “let the buyer beware” was the philosophy of the law of sales. Today it has been replaced by “let the seller beware”. As a result of this change of legal philosophy, business is heavily regulated on behalf of the consuming public. Product liability suits are already a part of tort law.

But the situation in India is altogether different. The consumers are confronted invariably with the non-availability of effective and speedy machinery for redressal of their grievances in the marketplace. It is imperative to consider consumers’ problems and scope and nature of their grievances. However, some remedies can be suggested for the various kinds of problems consumers confront in the market place which have serious repercussions on their self- respect, self image and also on their decision-making processes. The consumer often experience in the market place frustration and sometimes humiliation too, due to the arrogant behaviour of the sellers, which is the product of the prevailing scarcity of articles and cancerous tendency of hoarding in India. The consumer’s problems are created in the market place from range of frauds and deception to outright rejection of their just protest and lack of information about goods. Whatever remedies are available in India for protection of the consumers are by no means sufficient and the consumer find themselves helpless due to ineffective legal machinery for redressal of

¹⁴V.K. Agarwal, *Consumer Protection Law and Practice: A Commentary on the Consumer Protection Act, 1986*, 6th Ed., New Delhi: B.L.H Publishers

¹⁵United Nations General Assembly, *Consumer Protection Resolution, No.39/248*, dated 9-4-1985, para 3

¹⁶*Morgan Stanley Mutual Fund V. Kartick Das*, (1994) 4 SCC 225

grievances. If a consumer experiences that he has been cheated owing to the high pressure sales pitch or by scarcity of commodities or reductive advertisement techniques, or any other commercial means of exploitation, he may still remain passive sufferer inspite of knowing that he has not received the value of his money for the commodity he paid. So to say, the consumer is powerless to assert his rights and to compel a solution of his grievances in the marketplace.¹⁷

International Consumer Law for E-Commerce

Electronic Commerce (e-commerce) is the result of the developments and innovations in the areas of computer hardware, computer software, internet and communications technology. Electronic Commerce has the potential to be one of the major economic revolutions of the 21st Century. E-Commerce, new communication technologies and resultant exchange of information and knowledge underlie the new way of doing business which will provide opportunities to improve the quality of life and economic well being of the people and has the potential to spur the growth and employment in all the countries of the world.

E-Commerce is a subset of e-business. It is a commerce or conducting transactions using network of computers and telecommunication i.e. internet. It is an exchange of goods/services and the financial consideration for them. Business includes a whole set of transactions that must be completed before the goods/services change hands for the financial consideration. E-Business links employees and internal business processes through intranets, the business relations with suppliers, customers through extranets and finally exchanging goods/services for a value. Goods/services can be directly delivered on the net or by conventional mode and similarly payment can be effected through electronic means or by conventional mode. Indeed, designing the effective and secured payment system is one of the roadblocks to the full-fledged growth of e-commerce. The possibility of direct interaction with the customers and elimination of intermediaries who do not provide any value is the biggest advantage of the e-commerce. The economics of e-commerce will enable large number of small players to participate in the global business. Business organisations will be able to cater to the needs of the customers without any barriers of time and space. Compared to this a major disadvantage of e-commerce is that the customer cannot have a feel of the goods as he cannot touch them.

E-commerce and Regulations

The central issues of e-commerce and the law include the development of e-commerce, the role of consumers, and regulation of e-commerce in

¹⁷Avtar Singh, *Law of Consumer Protection-Principles and Practices*, 4th edition, Eastern Book Company

regard to consumer protection, as well as a general consideration of the international operation of e-commerce.

E-commerce is a new way of conducting business that takes place in the intangible world of the internet. It has become an important economic activity across the world, since internet technology develops rapidly. Although e-commerce does have a profound effect on global trade and commerce, governments also can have a profound effect on the growth of commerce on the Internet by facilitating it or inhibiting it in their regulations. Governments set regulations for e-commerce, and subsequently organisations' managers worry if the regulations will be too stringent, or prematurely reduce their market potential in cyberspace. The regulations not only effect the organisations which engage in e-commerce, but also the consumers. While the government regulations of e-commerce may provide a safe environment for the online shopper, it may also provide a legal infrastructure governing electronic contracting, security, and integrity of electronic transactions to the consumers. Regulation of e-commerce is very important for the cyberspace market as it can facilitate or inhibit the organisations working with e-commerce, as well as being able to protect the consumers in the cyber-market.

The Government law is very important to regulate the process of e-commerce. The law may not be able to control the electronic transaction, but it must help provide a safe place for consumers in the online-market. However, at the moment such development in the regulation of e-commerce is mainly within the ambit of the United Nations, which has been developing the foundations of online dispute resolution, most particularly since the 2003 United Nations Conference on Trade and Development (UNCTAD).

Development of Electronic Commerce

One broad example of how the development of e-commerce has affected the law is to be found in contract law. According to Concise Australian Legal Dictionary many transactions involve a contract being formed, which is a legally binding promise or agreement. A contract is only valid if it fulfills certain requirements and there are certain measures to enforce them. However, these requirements and measures were originally formulated without contemplation of the Internet as a medium for forming contracts. It is for this reason that in recent years as e-commerce has developed and become more widespread, the law has to develop to accommodate for it. However, this has been a slow process and is yet far from being conclusive since such development in the law is dependant on the government support as well as emerging cases that need these new issues to be solved in court.¹⁸

¹⁸Beard, D. (2000), "*International Virtual Contract*", *Australian Business Law Review*, Vol. 28, p.211

New technologies are perhaps the best examples of why the law needs to keep developing. The Internet and cyberspace have created entirely new environment in which traditional principles and concepts do not apply, and are subsequently reshaped. The concept of time is one such example.

It is not in all situations that entirely new laws for electronically formed contracts will be formed. Existing contract laws may still apply or alternatively be reshaped. Of course, this process is in some circumstances challenged due to the fundamental difference between the traditional contract law framework which is paper-based, and to which it is being applied to, electronic contracts, is a paper-less form. Since the Internet is a global medium, ideally there needs to be uniform global regulations on electronic transactions. Although a number of international organisations are now trying to resolve issues of e-commerce and e-contracts, they have to contend with national laws. Furthermore, for the laws of cyberspace to be at all useful they need to be enforced in order to recognise that “transactions in cyberspace can bring about actions in the real world”.

The issues about which consumers are generally concerned about in an e-transaction are:

1. Confidentiality of any information which they provide;
2. Identity of the seller;
3. The competition is open and the market is not artificially distorted. On the net, a single person can create many websites and market the same product at different prices;
4. The goods are delivered at correct place and correct time;
5. The goods delivered correspond to the description, quality and quantity for which he has effected payment;
6. He has effective grievance system and legal remedies if anything goes wrong;
7. E-Commerce raises questions about the application of existing regulations concerning contract law, consumer protection, competition policy, intellectual property rights, dispute settlement mechanism, tax laws etc.

OECD Electronic Commerce Guidelines for Consumer Protection

About one-fifth of total electronic commerce is accounted for by business-to-consumer transactions. Consumer and user trust is essential for its future development. Cooperation by business and consumer organisations in developing a united approach to the development of consumer protection strategies for e-commerce is a vital step in improving the extent of consumer protection and consequently consumer confidence in this new way of doing business.

Such international cooperation can and is being achieved through international networks like the OECD’s Committee on Consumer Policy (CCP)

which has been successful in building consensus among government, business and civil society. Both business and consumer organisations now participate in the committee's work and regularly attend its meetings and the CCP has proven to offer an excellent opportunity for international cooperation and the development of consumer protection standards for global commerce.

The Guidelines

At the end of 1999, after 18 months of negotiation, the OECD completed and adopted Guidelines for Consumer Protection in the Context of Electronic Commerce.¹⁹ The Guidelines set out the core characteristics of effective consumer protection for online business-to-consumer transactions. These Guidelines are proving helpful to governments, business, and consumers in very practical ways in trying to deal with this new environment as they provide instructive principles for both applying existing laws and developing new ones if necessary as they work to establish consumer protection mechanisms for e-commerce. The Guidelines are first step in encouraging a global approach to consumer protection in the online marketplace, a sector that is inherently international — borderless. These facilitate online commerce consumer protection mechanisms without erecting barriers to trade and by increasing consumer confidence in e-commerce. These have the ability to help e-commerce reach its full potential. Eight simple concepts form the basis of the recommendations. These are:

Transparent and Effective Protection

E-commerce consumers should be no less protected when shopping online than when they buy from their local store or order from a catalogue.

Fair Business, Advertising and Marketing Practices

Advertising should be clearly identifiable. Businesses should respect consumers' choices not to receive e-mail they don't want. Business should take special care when targeting children, elderly, and others who may lack the capacity to understand the information as presented.

Online Disclosures about the Business, the Goods and Services, and the Transaction

Disclosure should include complete and accurate information about the business, about the goods or services for sale and about how the transaction is made. What this means is that e-customers should know which business they are really dealing with. They should have a complete description of what they are buying and they should have enough information about the transaction

¹⁹OECD: *Empowering E-Consumers: Strengthening Consumer Protection in the Internet Economy*, Washington, DC 8-10 Dec, 2009 available at <http://www.oecd.org/document/51/guidelines>

process to be able to make an informed decision.

Confirmation Process

The confirmation process for a sale should give the consumer a chance to see what he has agreed to buy and to change his mind if he wants before the purchase is completed.

Secure Payment Systems

Payment systems need to be secure and easy to use.

Redress

In an international transaction, redress is one of the most difficult areas to address, and the OECD recommendations recognise that further work is needed. The Guidelines articulate the principle that international e-commerce transactions are subject to an existing framework of applicable law and jurisdiction, but that it may be necessary to modify, or apply differently, this framework to make it effective to provide redress for e-commerce. The use of alternative dispute resolution is strongly recommended.

Privacy

The OECD has been in the forefront of international privacy work for decades. Over 20 years ago, the OECD developed Guidelines governing the Protection of Privacy and Trans-border Flows of Personal Data (1980). These Guidelines were developed long before everyone started worrying about privacy in e-commerce (because there was no e-commerce). Still today, the OECD Privacy Guidelines are considered to be a “flagship” OECD document and still serve member countries as the basis for current international work on privacy in the online environment. The Guidelines set out eight principles:

- Collection limitation principle
- Data quality principle
- Purpose specification principle
- Security safeguards principle
- Openness principle
- Individual participation principle
- Accountability principle

The OECD Consumer Protection Guidelines point directly to the 1980 Privacy Guidelines as the benchmark for providing privacy protection by recognising that “business-to-consumer e-commerce should be conducted in accordance with the recognised principles set out in the 1980 OECD Privacy Guidelines.”

Education

Finally, the OECD Guidelines encourage governments, business and consumers to work together to educate consumers about electronic commerce, to foster informed decision making by consumers participating in electronic commerce, and to increase business and consumer awareness of the consumer protection framework that applies to their online activities.

UNCITRAL Model Law on Electronic Commerce

Adopted by UNCITRAL on 12 June 1996, the Model Law²⁰ is intended to facilitate the use of modern means of communications and storage of information. It is based on the establishment of a functional equivalent in electronic media for paper-based concepts such as “writing”, “signature” and “original”. By providing standards by which the legal value of electronic messages can be assessed, the Model Law should play a significant role in enhancing the use of paperless communication.

The Purpose of the E-Commerce Directive

The overall aim of the E-Commerce Directive is to provide a legal infrastructure that facilitates the smooth functioning of the European Internal Market. Article 1 of the E-Commerce Directive states:

“This Directive seeks to contribute to the proper functioning of the internal market by ensuring the free movement of information society services between Member States.”

Free movement is best achieved by providing a common and trustworthy legal infrastructure for businesses and consumers within the Internal Market. The focus on trustworthiness in the Directive can be seen in the Articles regulating, among other things, the procedures for contracting online. This is thought necessary since actors have felt uncertainty as to whether contracting online can be made with legal effect.

Originally, the drafts of the E-Commerce Directive contained detailed private law regulation of how electronic contracts were to be formed. As the original draft of the section on contract law was heavily criticised, one solution could have been to wholly abstain from regulating contractual issues. However, this was not the solution chosen. Instead, the Articles remained but were changed substantially from being a regulation which belongs clearly to the realm of private law to one which is neither private law nor public law. Since no effects are provided for in case of non-compliance with the rules, it is impossible to know whether the regulation is intended to be sanctioned by public or private law. The result is three vague Articles with an unclear rationale. The inevitable effect of such vagueness and ambiguity is that the Directive is difficult to implement into national law. The more complicated a Directive is

²⁰http://www.uncitral.org/taxts/electronic_commerce/1966modellaw

to implement, the more likely it is that Member States will choose to implement it differently. Thus, instead of creating a harmonised legal environment for consumers and businesses acting within the internal market, we are at risk of achieving the opposite, namely many different legal environments for e-commerce. This makes it difficult for businesses to streamline their procedures in order to easily and cost-effectively reach all consumers in the internal market and deprives European consumers of the benefit of having a large amount of supply of goods and services from which to choose, which in turn would have led to lower prices and a larger variety of products.

Conclusion

The impact of globalisation on consumers and consumer policy is at the heart of the activities of the OECD's work on consumer policy. The OECD has for many years been examining a number of issues directly related to cross-border consumer transactions, including ways to build trust and confidence online and to overcome existing barriers to a truly global marketplace.

By setting out the core characteristics of effective consumer protection for online business-to-consumer transactions, it is hoped the OECD Guidelines for Consumer Protection in Electronic Commerce will help eliminate some of the uncertainties that both consumers and business encounter while buying and selling online and ultimately assist online commerce in the global marketplace to reach its full potential.

EFFECTIVENESS OF INDIAN LEGAL FRAMEWORK TO PROTECT CONSUMERS IN THE CYBER MARKET PLACE

YASHOMATI GHOSH AND ANIRBAN CHAKRABORTY

Introduction

Internet has created new opportunities for business and commerce wherein the whole world can be treated as one single global marketplace or 'cyber market'. This cyber market has also created multitude of opportunities for consumers who at a click of a button can access goods and services from different parts of the world at competitive prices. The sellers and producers of goods and services have also accepted this new market with enthusiasm because of the possibility to tap vast number of consumers across the world at negligible costs.

But inspite of the numerous advantages of electronic commerce (e-commerce), cyber market has failed to develop to its maximum potential. Uncertainties like non-applicability of national laws in the online environment for protection of consumer rights; lack of clarity on jurisdictional issues and consumer dispute resolution; use of various technological barriers by the producers have hindered the growth of e-commerce. These effects combined together have lead to lack of consumer confidence in online transactions consequentially hampering the growth of e-commerce. Absence of adequate consumer centric laws in the online environment and non-application or limited application of the national consumer protection legislations in e-commerce transactions is the source of this mistrust in the minds of the ordinary consumers about the online market place.

There has been an exponential growth of the Internet and e-commerce in

the western countries. The United States Department of Commerce recently reported that on-line sales have increased to approximately \$ 174.5 billion in 2007. In 2009 North American sales represented 8.6 percent of the nearly \$149 billion in online retail sales for that year reported by the U.S. Commerce Department and Statistics, Canada, a government agency. With U.S. e-retail growth at just over 14 percent for the first three quarters of 2010, according to the U.S. Commerce Department, North American e-commerce is likely to total about \$170 billion for 2010. The Internet, and specifically the World Wide Web, has become a primary source for obtaining goods, services, and information by large number of people in a very short period of time. One significant cause for the prolific growth of e-commerce in the western countries has been their ability in regulating the online market place and securing consumer confidence through legislative means. These regulations have aimed at balancing the advancement in computer technology and Internet in promoting trade and commerce and at the same time securing consumer rights and safeguarding their interests in the online environment.

In this paper the authors propose to study some of the causes for limiting the growth of e-commerce inspite of the manifold advantages it has to offer to both the sellers and the buyers. The paper will also attempt to re-examine the effectiveness of the Consumer Protection Laws to identify the gaps and propose changes to build consumer confidence in e-commerce transactions in India.

The Internet oriented market has grown at a frantic pace in the last decade in the western countries but in India it is still at a nascent stage. However, the number of Indian Internet users for routine tasks like communication, entertainment, work, and shopping is steadily increasing. As a result, Internet markets are also experiencing growth. But a significant number of Indian consumers are skeptic and lack confidence to shop freely on the internet market place. The main reason for their lack of confidence stems from the very characteristic of the Internet. The entire Internet structure is relatively unregulated compared with entities that operate in the “real world”. The Internet is free from substantial regulations and adequate regulatory mechanisms, including consumer protection mechanisms. As a result, many potential consumers view this environment as unsafe and unfavorable to commercial activities. This has raised a significant challenge for Indian scholars and policy-makers to introduce a certain level of legal protection in the Internet environment so as to ensure that consumers of the digital market place receive a minimum level of consumer protection which will boost their confidence and consequently help in the development of e-commerce. The debate about Internet governance mechanisms had started from the time of its inception but in the absence of detailed study about the strengths and weaknesses of the relevant regulatory mechanism finding an adequate solution is a difficult proposition.

Consumers' Lack of Confidence in E-Commerce

The first issue of consumer concern is whether the virtual market place is significantly different from the real world market place. Based on our experiences, there are some distinguishing characteristics of the Internet as a medium for doing business.

1. *Computer Networks are Interactive:* A computer network lets buyers and sellers talk to one another. Unlike a mere advertising medium, the Internet can carry offers and acceptances and provide an opportunity for all negotiations to take place between buyers and sellers. This distinguishes the Internet from mass advertising media, from direct mail, and even-given the ability to transmit text and graphics from the telephone.
2. *Computers are Portable:* An internet connection can be created wherever there's a phone jack. In fact, with wireless technology, it's possible to surf the internet from any place of convenience. This factor also makes it easier for fraudsters to sit at one place and cheat people from across the world, and in case of any surveillance they can easily shift their position, making it difficult for police authorities to locate them.
3. *Network Users can Remain Anonymous:* As a consumer, all one knows about the seller is what one sees on the computer screen, and there is every possibility that the person sending an e-mail, or posting a bulletin board message, or advertising on a web page may or may not be telling the truth about who they are or where they are.

Therefore, these distinct characteristics of internet technology are directly linked with the causes of consumer concerns over the viability and security of the medium.

Firstly, in the absence of specific rules and guidelines consumers and users of digital technology are most apprehensive about their rights and freedoms in the online environment. Specific issues like lack of assurances about quality of goods and services; non-application of the guarantee or warranty rules; absence of protection from hazardous goods and services; unfair trade practices; inaccessibility to information relating to quality, quantity, potency and purity of goods; and absence of adequate redressal mechanisms have made consumers prefer the traditional brick-mortar marketplaces over the cyber-market. The difficulty of identifying and locating people is one of the most serious obstacles encountered in prosecuting crime and fraud perpetrated over computer networks.

Secondly, the most fundamental reason of consumer concern is based on jurisdictional problems presented by global internet market. Consumer protection programs in any country are an extensive array of laws, regulations and practices that touch on practical problems in commerce. No single government agency is responsible for consumer protection. We have country specific laws to protect

consumer rights, fight fraud, provide consumer information, curb monopoly and promote fair competition. Internet commerce is able to transcend borders. Consumers who receive services over the Internet can establish virtual residency anywhere in the world, and sellers of services or products can very easily shop around for the most permissive regulatory home. Any regulatory scheme that depends upon the location of the “seller” is necessarily limited by the ability of a firm to arbitrarily choose its virtual nationality. In the new world of Internet commerce, there are more than 200 possibilities for nationality, and any system that relies upon the jurisdiction of the seller will likely lead to competition for the most anti-consumer haven for commerce. There are obvious practical problems with rules based upon the destination of the buyer. With hundreds of nationalities and countless local sub-national governments, it is difficult and in many cases impossible for a seller to comply with all of the rules offered by governments that claim jurisdiction in cyberspace.

Thirdly, in areas like online entertainment where the consumers have been more enthusiastic about accepting the benefits of new technology like downloading music, watching movies online, playing games and reading e-books the growth of the industry has been significantly tamed because of the conflict between the rights of the copyright holders and the entertainment industry on one hand and the rights of the consumers or users of such technology on the other hand. Present practices of the entertainment industry like use of DRM technology and anti-circumvention laws has infringed the traditional rights of the consumers like doctrine of first sale, fair use, sharing of materials between friends and families etc.

Therefore, if we try to focus these problems of consumers in the internet based virtual market from the perspective of the existing notions of consumer rights which are well ingrained in the international and domestic system of consumer protection in the real world, they are severally challenged. Almost all the essential consumer rights that are center to the modern consumer protection system appear to fall apart.

Right to Choose: Is there any such clear right? And can consumers affect the way goods or services are provided through their own behaviour?

Right to Safety: Is there adequate measures or standards of certification available to ensure that goods or services available on the Internet market place are not spurious, adulterated or dangerous to their health or welfare?

Right to Information: Is it at all available? If available is it in the right way to help consumers make the best choice for themselves?

Value for Money: Will it affect the cost to the consumer and the quality of goods and services?

Equity and Fair Competition: Are some or all consumers subject to arbitrary or unfair discrimination? Are products available on a competitive price? What is its impact on individuals or groups of consumers (including disadvantaged consumers)?

Redress: If something goes wrong, is there an effective system for putting it right?

Representation: If consumers cannot affect the supply of goods or services through their own decisions, are there ways for their views to be represented?

Access: Can consumers actually get the goods or services they need or want? (Access is defined here as access to goods and services by end users, not access to networks by service providers or other network operators.)

Inefficient Consumer Protection Laws

Consumer laws, policies and practices limit fraudulent, misleading and unfair commercial conduct. Such protections are indispensable in building consumer confidence and establishing a more balanced relationship between businesses and consumers in commercial transactions. But due to inherent nature and geographically borderless character, the digital networks and computer based electronic marketplace challenges the existing legal regime. The unique nature and international character of e-commerce requires a global approach to consumer protection as part of a transparent and predictable legal and self-regulatory framework.

The global network environment challenges the abilities of each country or jurisdiction to adequately address issues related to consumer protection in the context of electronic commerce. Disparate national policies may impede the growth of electronic commerce, and as such, these consumer protection issues may be addressed most effectively through international consultation and co-operation. Governments in west realizing this need have adopted internationally coordinated approaches. These approaches focus on exchange of information and establishing a general understanding about how to address these issues. Countries like USA and EU had reviewed their existing consumer protection laws and practices to determine whether or not changes need to be made to accommodate the unique aspects of electronic commerce. Some of these countries are also examining ways in which self-regulatory efforts can assist in providing effective and fair protection for consumers in that context. Governments have also sorted inputs from the civil society, technologists, lawyers, business houses and consumer groups. Indeed this is in many respects has been a difficult task than many of the harmonization efforts, because the differences among countries are larger. But it seems that a comprehensive solution is the only way out.

In this regard in April 1998, the OECD Committee on Consumer Policy began to develop a set of general guidelines to protect consumers participating in electronic commerce without erecting barriers to trade. These guidelines represent a recommendation to governments, businesses, consumers, and their representatives as to the core characteristics of effective consumer protection for electronic commerce. In particular, the purpose of the guidelines was to provide both a framework and a set of principles to assist:

- i) Governments in reviewing, formulating and implementing consumer law enforcement policies, practices, and regulations if necessary for effective consumer protection in the context of electronic commerce;
- ii) Business associations, consumer groups and self-regulatory bodies, by providing guidance as to the core characteristics of effective consumer protection that should be considered in reviewing, formulating, and implementing self-regulatory schemes in the context of electronic commerce; and
- iii) Individual businesses and consumers engaged in electronic commerce, by providing clear guidance as to the core characteristics of information disclosure and fair business practices that businesses should provide and consumers should expect in the context of electronic commerce.

At the present moment the OECD is the only trans-national body that has taken on the task of developing a set of self-regulatory consumer protection precepts that could provide an effective framework for global, cross-border, electronic commerce and also a search light to India's approach. The draft guidelines go a long way in providing answers to the questions posed in this paper.

Review of OECD Guidelines

The Organization of Economic Cooperation and Development (OECD) issued *Guidelines for Consumer Protection in the Context of Electronic Commerce* on December 9, 1999. The Guidelines closely track existing global consumer protection standards and enforcement actions, and have developed a blueprint for governments working to address consumer protection schemes for e-commerce. The Guidelines support and recommend development of self-regulatory practices and private sector leadership, as well as global cooperation, including cooperation in investigating and prosecuting fraudulent, misleading and unfair commercial conduct online.

E-businesses, according to the Guidelines, among other things, should

- Avoid representations or practices likely to be deceptive, misleading, fraudulent or unfair.
- Make information about themselves, their goods and their services available in a clear, conspicuous, accurate and accessible manner.
- Comply with representations.
- Consider various regulatory characteristics of the markets they target.
- Not exploit the special characteristics of the Internet to hide their identity or avoid compliance with consumer protection standards or enforcement mechanisms.

- Delineate between advertising and other content.
- Substantiate their representations.
- Implement procedures to allow consumers to choose whether to receive unsolicited e-mail.
- Observe special care in advertising or marketing to children.

Online Disclosures

Clear, conspicuous disclosures should include:

- Name, address, telephone number, e-mail address and relevant licensing or government registration information (where applicable).
- Location for service of legal process and contact by law enforcement and regulatory officials.
- Itemization of all costs (in the applicable currency).
- Terms of delivery or performance.
- Terms, conditions and methods of payment.
- Conditions of purchase, such as approval by a parent or guardian, or regional or time restrictions.
- Instructions for use, including safety and health warnings.
- Information on after-sales service.
- Refund, return, exchange, cancellation, withdrawal or termination policies.
- Warranties and guaranties.

Confirmation and Payment: Consumers did not succeed in including a three-day cancellation right or “cooling off” period, or other specific language to assure that the consumer truly wishes to make the purchase. Instead, the Guidelines simply provide that the consumer should be able to cancel the transaction before concluding the purchase. The Guidelines also suggest providing consumers with easy-to-use, secure payment mechanisms and information on the level of security involved, along with limitations of liability, to encourage consumer confidence.

Dispute Resolution and Redress: A key issue in the e-commerce world has been the knotty question of applicable law, including jurisdiction, venue and choice of law for online disputes. Consumer groups, which seek imposition of a blanket rule requiring that the law of the consumer’s home apply to e-transactions, failed in an effort to insert language into the OECD Guidelines. Instead, the Guidelines suggest that governments consider “whether the existing framework for applicable law and jurisdiction should be modified, or applied differently, to ensure effective and transparent consumer protection in the context of the continued growth of electronic commerce.” Alternative Dispute Resolution (ADR) mechanisms are encouraged, and the guidelines suggest that businesses, consumer groups and governments work together to achieve an appropriate process for the borderless e-commerce world.

Privacy: The Guidelines also contain an explicit recommendation that

business-to-consumer activities online should be conducted in accordance with the OECD *Guidelines Governing the Protection of Privacy and Transborder Flow of Personal Data* (1980), taking into account the OECD *Ministerial Declaration for the Protection of Privacy on Global Networks* (1998).

Implementation: The Guidelines suggest a combination of educational efforts, continued promotion of private sector leadership and self-regulatory initiatives, and ongoing global cooperation to achieve the objectives of the Guidelines.

Conclusion

It is firmly believed that consumer protection concerns on the internet market place must be addressed at both national and international levels. The on-line consumers should be afforded atleast the same level of protection as applies to other methods of shopping under the national laws and practices of the country in which they live. The consumer should have reliable and full information about the products and services being offered (such as all costs, delivery arrangements, safety warnings, and conditions relating to return, exchange, cancellations and refunds). The consumer should enjoy sufficient confidence in the security of payment systems and have the right to privacy and protection for personal and financial information and against unwanted and aggressive advertising. The consumer must have adequate access to effective redress mechanisms including complaint and dispute resolution procedures in their country of residence at a relatively low cost and in an expeditious manner. Adoption and implementation of necessary guidelines modeled on the OECD Guidelines specifically dealing with consumers rights under e-commerce complimented with the CPA Act of 1986 and the I.T Act of 2000 can be of great help in India.

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DIGITAL RIGHTS MANAGEMENT TECHNOLOGIES (DRM)- CHALLENGES TO THE INDIAN CONSUMER PROTECTION REGIME

PARESH BIHARI LAL AND RAM KRISHAN NIGAM

Introduction

Prevention is better than cure. So goes a timeless wisdom. A reasonable man contends with the problems at hand, however a wise one is prepared for the problems that he might have to contend with. It is thus occasion for our legislators to be wise and take note of the storm that threatens on the horizon. Digital Rights Management or DRM has long arrived on the technological scenario. DRM can be understood as the techniques utilized by the producers, creators etc. of a digital work to manage or safeguard their rights in the same. If the implications are not understood then the enforcement of legal rights in an illegal manner and other unconscionable usages of the same predicts the fostering of the demise of the basic consumer rights guaranteed to the citizens of our country. As has occurred in the past, the advent of this new technology has not been envisioned by the law framers. Thus various gaping holes in the legal regime allow the right holders to misuse the technology to their unfair advantage and to the detriment of the consumer.

The controversy surrounding DRM usages also brings to the fore existence of a delicate relationship between copyright and consumer rights. While it can be contended that DRM is one of the most potent modes of protection of intellectual property in the digital form, yet it cannot be denied that stringent and excessive DRM techniques prove detrimental to the common and reasonable consumer. Hence not only is the task of controlling the means of using DRM

before the legislators but they also have to ensure that the right holder has ample means of protecting his intellectual property.

The controversy has myriad dimensions. The quantum and mode of damage done to consumer rights forms a fundamental issue. Another numbing question is whether we have adequate legal measures to prevent the abuse of DRM and where does a victimized consumer find sanctuary as a result of the same. Again the kind of remedy to be sought and where the same is to be sought poses a tricky question.

The uninhibited and abusive means of utilizing DRMs is a legal catastrophe waiting to happen. Slowly yet steadily the difference between what the right holders should or should not protect is diminishing at the cost of the rights of the consumers. Hence it is pertinent that due consideration should be bestowed upon the problem by the authorities and a solution worked out.

DRM: Understanding the Technology

DRM Defined: The precise definition of the term DRM is scarcely possible. However, generically put Digital Rights Management (DRM) is a broad term that refers to any technology and tool which has been specifically developed for managing digital rights or information.¹ Digital rights management is simply a tool. It is a system that includes technological measures that allow for specific terms of use, what you can and cannot do, and then the ability to monitor that use and to get payment for that use.² More formally DRM systems consist of “secure packaging and delivery software designed to prevent purchasers and third parties from making unauthorized uses of digital works”.³ In other words, DRM systems provide means of expressing usage rules, means of associating those rules with content, and frequently, a means of enforcing these rules by preventing actions that the usage rules do not explicitly permit.⁴ This method of decision making - disallowing everything that is not explicitly permitted - is an embodiment of the “closed-world assumption” that is familiar to many technologists.⁵ DRM systems are software-based tools tailored to control the use of digital files in order to protect the interests

¹Eberhard Becker et al., eds, *Digital Rights Management: Technological, Economic, Legal and Political Aspects*, Springer-Verlag, 2003, p 597; C.J. Alice Chen and Aaron Burstein, Symposium Comment, “*The Law and Technology of Digital Rights Management*”, *Berkeley Tech. L.J.*, 18, 487, 487 (2003).

²Marybeth Peters, Joseph Salvo, Fred Von Lohmann, PANEL II: “*Licensing in the Digital Age: The Future of Digital Rights Management*”, *Fordham Intell. Prop. Media and Ent. L.J.*, 15, 1009.

³Dan L. Burk and Julie E. Cohen, “*Fair Use Infrastructure for Rights Management*”, *Harv. J. Law and Tech.* 15, 41, 48 (2001).

⁴Barbara L. Fox and Brian A. “*LaMacchia, Encouraging Recognition of Fair Uses in DRM Systems, Communications of the ACM*” (Apr. 2003) p. 61, at 61, available at <http://delivery.acm.org/10.1145/650000/641233p61fox.pdf?key1=641233&key2=2926712501&coll=ACM&dl=ACM&CFID=10296420&CFTOKEN=18029193>

⁵*Ibid.*

of right-holders. DRM technologies can manage file access (number of views, length of views, and ways of viewing), altering, sharing, copying, printing, and saving.⁶ These technologies may be included within the operating system, program software, or in the actual hardware of a device. DRM technology can be used to protect both online and offline media. The term also describes technologies designed to promote and empower consumers to use content in a specific and intended way.⁷

DRM, Copyright and Consumer Protection

The Entangled Triangle

Digital Rights Management, Copyright and Consumer Protection share an intricate relationship amongst each other. Copyright holders use the Digital Rights Management techniques to mandate as to what the users or the consumers of the digital content may or may not be able to do. Hence DRM precariously swings between protection of the copyright and abrogation of consumer rights.

Throughout its history, copyright law has always evolved in response to disruptive technological changes. In recent years, the Internet and other digital communication technologies have once again begun to challenge the scope and justification of copyright law. Unlike earlier challenges, it is extremely difficult to take legal action against copyright infringers in communication networks.⁸ The advent of file sharing networks such as the former Napster system, Gnutella, KaZaA, and Morpheus has brought intellectual property from all over the world to everyone's computer at a negligible cost. Accordingly, the recording industry has accused such networks of enabling mass-scale piracy and severely hampering revenue opportunities for content industries.⁹

On the other hand, digital technologies provide many tools through which digital content may be securely distributed under the auspices of its respective rights holders. Indeed, as a now popular slogan aptly states, the answer to the machine may lie in the machine.¹⁰ Digital Rights Management (DRM) promises

⁶Stefan Bechtold, "From Copyright to Information Law - Implications of Digital Rights Management in Security and Privacy in Digital Rights Management", ACM CCS-8 Workshop DRM 2001 213, 214-15 (revised papers, Springer-Verlag 2002), available at [http://www.jura.uni-tuebingen.de/bechtold/pub/2002/DRM Information Law.pdf](http://www.jura.uni-tuebingen.de/bechtold/pub/2002/DRM%20Information%20Law.pdf)

⁷Stefan Bechtold, "Digital Rights Management in the United States and Europe", 52 *Am. J. Comp. L.* 323, 324 (2004).

⁸Lawrence Lessig, *Code and Other Laws of Cyberspace*, 125, (1999).

⁹*A&M Records v. Napster*, 239 F.3d 1004 (9th Cir. 2001), remanded to 2001 WL 227083 (N.D. Cal. 2001), aff'd, 284 F.3d 1091 (9th Cir. 2002).

¹⁰Charles Clark, "The Answer to the Machine is in the Machine", in P. Bernt Hugenholtz, ed., *The Future of Copyright in a Digital Environment*, 139, 1999; Stuart Haber et al., "If Piracy is the Problem, is DRM the Answer?" in Eberhard Becker et al., eds., *Digital Rights Management - Technological, Economic, Legal and Political Aspects*, 224, 2003.

to offer a secure framework for distributing digital content, be it music, video, works in writing or even raw data. DRM ensures that content providers, in particular copyright owners, receive adequate remuneration for the creation of the content that is distributed over the DRM system.¹¹ Compared to traditional copyright law, DRM promises an unprecedented degree of control over the entire distribution chain and the usage of digital content.

Consumer Concerns

The Use of DRM systems has made the consumers wary all over the globe. The DRM techniques often threaten the rights of the consumers. The threats posed by DRM techniques can broadly be classified into the following kinds:

a) Unfair Contractual Terms: Important questions are whether consumers are at all aware that DRM systems are applied while buying and consuming DRM-protected products and what details of the underlying DRM systems consumers may recognize. The combination of contract with technological protection measures could represent a powerful mixture for a fully automated system of secure distribution, rights management, monitoring, and payment for protected contents. So, when users access content protected by a technological protection measure, the content provider, in practice, imposes a contractual provision. In particular, in the online media marketplace, digital rights management systems can operate in combination with contracts and can be essentially used to enforce contractual conditions. A DRM-enforced contract is often realized on unfairness in the process of contract formation and on unfairness in the “invisible” contract terms connected with the use of technological protection measures.¹² Whereas “visible” terms are immediately valuable by consumers, “invisible” terms and conditions are not only terms that cannot be readily comprehended, but in this case they are also terms implemented without providing consumers notice of the possible limitations of the copyright-protected content.¹³ In few words, the restrictions imposed by technological measures are frequently unclear to consumers. This lack of information can induce consumers to make buying decisions which they would not have made had they been better informed. Thus,

¹¹Frank Hartung and Friedhelm Ramme, “*Digital Rights Management and Watermarking of Multimedia Content for M-Commerce Applications*”, 38 (11) *IEEE Communications Magazine*, 78, ‘79 (Nov. 2000); Franco Bartolini et al., “*Electronic Copyright Management Systems: Requirements, Players and Technologies*”, in Proceedings of the Tenth International Workshop on Database and Expert Systems Applications (DEXA 1999) 896 (1999).

¹²Nicola Lucchi, “*Countering the Unfair Play of DRM Technologies*”, 16 *Tex. Intell. Prop. L.J.* 91.

¹³*Ibid*

DRM can also be seen as imposition of “unilaterally defined contractual terms and conditions.”¹⁴

b) Exceptions to Copyright: The use of DRM technology to safeguard content is a blanket ban on various activities such as making copies of the original work, and disallowing everything that is not explicitly permitted by the content providers. While such a policy does prohibit infringement of copyright but the indiscriminating nature of such a restriction poses a problem for those who intend to carry out legitimate activities. Normally consumers have some privileges granted under copyright law regime.¹⁵ Copyright law allows certain exceptions whereby users can use copyright works freely without rights holder authorization. Both common law and civil law countries have more or less several exceptions in common such as educational and scientific purposes, citation, parody, and private copying. Generally these exceptions allow consumers to make copies or utilize copyright material in some circumstances. Problems arise when a technological protection measure is in place because it eliminates these fair use rights or copyright exceptions. Given that the circumvention of these measures is strictly prohibited, the beneficiary of a copyright exception on a technologically protected content would have no possibility to benefit from these exceptions without exposing themselves to sanctions. Few States have implemented effective rules to protect the interest of consumers of digital content.¹⁶ Some countries, such as Greece and Ireland, have incorporated the directive into national law requiring that right holders make available means to beneficiaries to benefit from the exceptions.¹⁷ On the contrary, Austrian and Dutch law does not set any exception to the anti-circumvention provisions. Thus often by not providing for the legitimate exceptions while using DRM measures the content providers violate not just copyright law but also consumer rights.

c) Privacy Issues: The privacy issue of DRM systems is one of the most intensely discussed concerns in public debates; in particular the concern is raised by cyber rights’ advocates or citizens’ representatives. The loss of individual privacy is one interest that some commentators

¹⁴Jacques de Werra, “*Moving Beyond the Conflict Between Freedom of Contract and Copyright Policies: In Search of a New Global Policy for On-Line Information Licensing Transactions: A Comparative Analysis Between U.S. Law and European Law*”, 25 *Colum. J.L. & Arts* 239, 244 (2003).

¹⁵*Ibid*

¹⁶Urs Gasser and Michael Girsberger, “*Transposing the Copyright Directive: Legal Protection of Technological Measures in E.U.-Member States*”, *Berkman Ctr. Internet and Soc’y*, Nov. 2004, <http://cyber.law.harvard.edu/media/files/eucd.pdf>.

¹⁷Margreet Groeneboom, “*Comparing the EUCD Implementation of Various Member States*”, *INDICARE Monitor*, Mar. 21, 2005, http://www.indicare.org/tiki-read_article.php?articleId=88.

perceive DRM to threaten. For example, Julie Cohen writes that “the future of privacy is increasingly linked to the future of copyright enforcement”.¹⁸ In respect of online services in particular DRM is sometimes used to collect information about you: at what time you play which songs, how often do you play them, etc. The data can be used for checking adherence to the usage license. It is also sometimes used for internal marketing purposes, in other cases it is passed on or even sold to third parties. Occasionally, CDs and DVDs can also use DRM to monitor consumer behaviour. One inglorious example was the so called XCP-DRM system used by Sony-BMG: if you wanted to listen to the CD on your computer, you first of all had to install software that allowed Sony-BMG to track when you listen to the CD, for how long, etc. This information was then sent to Sony BMG via the internet.

d) Interoperability: Interoperability is a major consumer concern while dealing with DRM measures. Whether or not content is accessible also depends on whether the consumer’s hardware supports certain DRM standards. Apple’s iPod, which only supports Apple’s DRM standard, FairPlay, is a classic example. iPod owners cannot play music files that are encrypted using Real-Network’s standard, Harmony, for example. Interoperability is also a matter of competition between the content of different providers, and therefore, indirectly one of pluralism and diversity. If proprietary software or hardware prevents users from receiving certain content, particularly competitors’ content, it harms the latter’s competitiveness and the consumer’s freedom of choice. For example, the High Level Group on Digital Rights Management, a group of experts set up especially by the European Commission, has specifically highlighted the significance of the problem of interoperability in the DRM sector.¹⁹

e) Special Users: Another important aspect of DRM is the situation of users with special needs. These include older people or children, who find it difficult to use complicated services or devices, and users with restricted vision or hearing, or with motor or learning difficulties. One of the main worries here is the accessibility of content in a suitable format or the ability to manipulate content in order to make it accessible and compatible with the needs of particular population groups.²⁰

¹⁸Edward W. Felten, “A Skeptical View of DRM and Fair Use, *Communications of the ACM*” (Apr. 2003) at 57, 58, available at <http://delivery.acm.org/10.1145/650000/641232/p56-elten.pdf?key1=641232&key2=0949712501&coll=ACM&dl=ACM&CFID=10297022&CFTOKEN=48631939>

¹⁹High Level Group on Digital Rights Management, Final Report, pp. 5 *et seq.*, available at: http://europa.eu.int/information_society/eeurope/2005/all_about/digital_rights_man/doc/040709_hlg_drm_final_report.doc

²⁰Disabled People International 2004, point 4; World Blind Union, 2003; World Wide Web Consortium, 2004 (Web Content Accessibility Guidelines Working Group (WCAG WG); ENABLED 2005.

f) *Security Concerns*: Security issues of DRM systems are seldom raised. Yet security issues for consumers may for instance arise when DRM systems are in conflict with other software installed on a PC. Since most DRM systems need an Internet connection, e.g. for registration, they are relatively open for external attacks, but can be hardly controlled by consumers in this respect.

These are some of the methods in which the use of DRM techniques hampers the rights of the consumers.

DRM technologies can be used by individual content providers as well as large scale business houses such as Sony, Apple, and Microsoft etc. to protect their copyrights. Some examples of the effects of the use of DRM technologies in consumer products help to better understand the potential strategies.

a) *The 'Rootkit' Controversy*: Sony-BMG started using a technology called the Extended Copyright Protection (XCP) in the Sony-BMG CDs²¹ to safeguard their digital content against abuse. When consumers tried to play the copyright protected CDs on their computers, this DRM system automatically installed software and then hid this software to make it more difficult for consumers to remove it. The side effect of this software was to interfere with the normal way in which the Microsoft Windows operating system played CDs, opening security holes that allowed viruses to break in and collect information from the user's computer. Even if Sony BMG disclosed the existence of this software in the End Users' License Agreement (EULA), the agreement did not disclose the real nature of the software being installed, the security and privacy risks it created, the practical impossibility of uninstalling and many other potential problems for the user's computer.²² On the contrary, the EULA misrepresented the real nature of the software including ambiguous and restrictive conditions.²³ One major concern was that software would collect information on when, how often and which song did the consumer listened to and transmitted the details directly to Sony-BMG.²⁴ When users and consumer organizations were informed of the matter, they filed more

²¹Megan M. LaBelle, "*The 'Rootkit Debacle': The Latest Chapter in the Story of the Recording Industry and the War on Music Piracy*", 84 *Denv. U.L. Rev.* 79 (2006); J. Alex Halderman and Edward W. Felten, *Lessons from the Sony CD DRM Episode*, Ctr. for Info. Tech., Princeton Univ. Dep't of Computer Sci., Working Paper, Feb 14, 2006, available at <http://itpolicy.princeton.edu/pub/sonydrm-ext.pdf>; Jeremy F. deBeer, "*How Restrictive Terms and Technologies Backfired on Sony BMG Music (Part 1)*", 6 *Internet and E-Com. L. in Can.* 93 (2006); Jeremy F. deBeer, "*How Restrictive Terms and Technologies Backfired on Sony BMG Music (Part 2)*", 7 *Internet and E-Com. L. in Can.* 1 (2006).

²²Labelle, *Supra Note 8*, at 93-94.

²³*Ibid.*

²⁴Electronic Frontier Foundation (EFF): Sony BMG Litigation info, <http://www.eff.org>.

than twenty lawsuits against Sony BMG in Canada, the United States and Europe²⁵.

b) Apple's 'Fair Play': The iTunes Music Store, developed by Apple, is a famous virtual shop where customers can buy and download either complete albums or individual tracks from many major artists of different genres.²⁶ This service enforces its standard contract terms by means of a DRM system called "Fair Play" and, according to the terms of service, the provider reserves the right, at its sole discretion, to modify, replace or revise the terms of use of the downloaded files.²⁷ Thus unilaterally imposed changes in conditions of use on legitimate downloaded files can be enforced just by changing the DRM settings. The terms of service such as those used by iTunes could be included in the indicative and non-exhaustive list of the terms which may be regarded as unfair.

c) The EMI Music Case: A consumer association filed a lawsuit claiming that EMI Music France had not provided sufficient and correct information to consumers concerning technological protected CDs and their playability restrictions.²⁸ The judge determined that not informing consumers about the fact that a content medium like a CD cannot be played on some devices can represent a "*tromperie sur les qualites substantielles des CD,*" or "a deception on substantial qualities of CD." For this reason, it can constitute a misleading behavior about the nature and substantial qualities of the product as recognized by the article L213-1 of the French Consumer law (*Code de la Consommation*). The Court of Appeal in Versailles confirmed the decision of the Tribunal de Grande Instance de Nanterre, rejecting the arguments of EMI Music France.²⁹ It also ordered EMI Music to pay 3000 euros as damages and to appropriately label the outside packaging of its products.³⁰

²⁵See John Edward Sharp, Comment, "*There Oughta be a Law: Crafting Effective Weapons in the War Against Spyware*", 43 *Hous. L. Rev.* 879, 885 (2006).

²⁶Apple iTunes Store, <http://www.apple.com/itunes/store/> (last visited Jan. 11, 2007)

²⁷DRM and Contract Terms, INDICARE Monitor, Feb. 23, 2006, http://www.indicare.org/tiki-read_article.php?articleId=177 (analyzing the relationship between contract terms and DRM in on-line music stores and specifically in iTunes music store term of service).

²⁸*Association CLCV v. EMI Music France*, Tribunal de Grande Instance (T.G.I.) [ordinary court of original jurisdiction] Nanterre, June 24, 2003, D. 2003, Somm. 2823, full text available at http://www.legalis.net/jurisprudence-decision.php3?id_article=34.

²⁹*S.A. EMI Music France v. Association CLCV*, Cours d'appel (CA) [Regional Court of Appeal] Versailles, 1e ch., Sept. 30, 2004, (Fr.), full text available at http://www.legalis.net/jurisprudence-imprimer.php3?id_article=1344

³⁰*Ibid.*

The Way Forward

As discussed above, the *status quo* offers a plethora of opportunities for the misuse and abuse of DRM Techniques. The DRM measures used today go beyond the mere protection of the copyright of the content provider. Moreover, the mode in which the copyright is being protected can be labeled as unjust to the legitimate concerns of the consumers. At the receiving end, the consumers are at sea to find remedies against the denial of their consumer rights. Thus it can safely be said that it is time that the policy-makers take note of the unconscionable use of DRM methods as described above. Much remains to be done. In the quest to prevent the further exploitation of consumers via DRM measures, the following suggestions will be useful to protect the consumers.

a) First and foremost, it is imperative that a balance is struck between the protection of the copyright and the rights of the consumers. The dynamics of such a relationship cannot be left in the hands of the content providers; else we risk the creation of unfair bargaining power in the particular market. Hence laws should be made in order to govern this relationship.

b) The DRM techniques should only be utilized in a manner that allows genuine exceptions to copyrights. The same is more easily said than done. Every country has its distinct copyright code and what amounts to an exception to infringement may vary from one nation to the other. Further it is almost impossible for the DRM System (software that implements the restrictions on use) to distinguish between a legitimate user, such one who uses the digital content within the exceptions to the copyright regime, and an illegitimate user, such as one who attempts to infringe the copyright. Thus provisions allowing for exceptions within the software shall be practically impossible. On the basis of the above consideration it is suggested that a provision be made whereby a user could register with the content provider by stating his objective and by furnishing other relevant details (such as how many copies are to be required, etc.). The content provider could then, after ascertaining whether the said objective falls within the ambit of the copyright exceptions or not, allow the consumer to use the digital content in the desired manner. Such a registration would not only function as a record but would also serve as a contract between the content provider and the end-user in case of any breach. If the suggestion is considered then the content providers shall generally be able to restrict infringement of their copyright and also be able to cater to the exceptions to the infringement of copyrights.

c) It goes without question that the terms related to the presence of DRM technology, which are incorporated in a standard form of contract,

and the nature of the same should be mandatorily made known to the consumers. Most software programs are subject to End User License Agreements (EULAs), and the common consumers' attitude towards EULAs is to agree without reading them.³¹ Consumers must know what they can do with their digital hardware and content as well as the limit of their usage.³² "Consumer contracts governing the use of digital material" need to be "fair and transparent".³³ "Rights and duties are always at the heart of consumer politics".³⁴ The content providers can discharge their burden by ensuring that all possible steps are taken to bring the presence of DRMs and its nature in the purchase to the notice of the consumer. During online transactions the same could be done by strategically highlighting the terms in the contract. Further the nature of the DRM should be disclosed in the product description itself. On the other hand it should be made a legal duty of the seller to point out the presence and the nature of DRM technology to the consumer at the time of purchase.

d) The above mentioned measure can have a two fold benefit. Firstly, the consumers shall be able to make an informed choice which they might not have been able to make earlier. There is little doubt that disclosure and transparency are effective means of protecting their rights and interests, especially in cases of information asymmetry.³⁵ Secondly, if followed it shall go a long way in diluting the security concerns of the consumers. As explained above the principal reason for the security concerns is that the consumers do not know the nature of the DRM Technology and whether the same will be in contradiction to the already installed software on their computers. If the consumers are made duly aware of the same, the security problems concerned with DRM measures shall automatically be taken care of.

³¹Cf. Annalee Newitz, *Dangerous Terms: A User Guide to EULAs*, Electronic Frontier Found., Feb. 2005, <http://www.eff.org/wp/dangerous-terms-users-guide-eulas>.

³²*Consumers Digital Rights Campaign*, <http://www.consumersdigitalrights.org/> (last visited Oct. 20, 2007).

³³Bureau Europeen des Unions Des Consommateurs, *Digital Rights Management* [BEUC/X/025/2004] (Sept. 15, 2004), <http://docshare.beuc.org/Common/GetFile.asp?PortalSource=507&DocID=6188&mf=off&pd=1>

³⁴Matthew Hilton, "The Duties of Citizens, the Rights of Consumers", 15 *Consumer Pol'y Rev.*, Jan 1, 2005, at 6

³⁵Howard Beales, Richard Craswell, and Steven Salop, "Information Remedies for Consumer Protection", 71 *Am. Econ. Rev.* (Special Issue) 410, 411-413 (May 1981); Edward Rubin, "The Internet, Consumer Protection and Practical Knowledge", in Jane K. Winn, ed., *Consumer Protection in the Age of the "Information Economy"*, 35, 38, 2006; Howard Beales, Richard Craswell, and Steven C. Salop, "The Efficient Regulation of Consumer Information", 24 *J.L. and Econ.* 491, 513 (1981).

e) The consumer concern of interoperability can be dealt with only by the content providers themselves. The problem can be addressed by working towards a standard which can be used to allow the different forms of digital content to be used on most of the hardware devices. Consumers generally welcome standards: they are spared having to pick a winner and face the risk of being stranded. They can enjoy the greatest network externalities in a single network or in networks that seamlessly interconnect. They can mix and match components to suit their tastes. And they are far less likely to become locked into a single vendor, unless a strong leader retains control over the technology or wrests control in the future through proprietary extensions or intellectual property rights.³⁶ More ease in use of the product shall help in increasing the profitability of the content provider as well.

f) Although some modifications in the current usage practices and the laws might go a long way in addressing the above mentioned consumer concerns, the same cannot be said of the invasion of the privacy of the consumers. The privacy of an individual forms one of the basic human rights of any individual. The same should not be allowed to be breached at any cost. Such violations of the privacy of the consumer by the use of DRM methods should be harshly dealt with, either by criminalizing it or by fining such practices.

Conclusion

It cannot be denied that DRM is a new and a novel mode of protection of the copyright of the content providers. However, the side effects of the same in the realm of consumer rights cannot be wished away either. As explained above, the use of DRM techniques by the content providers are cacophonically grazing against the touchstone of consumer guarantees. What is heartening is that the situation is not beyond remedy. With a smart and concentrated effort the two contradictory rights, that of the consumers and those of the copyright holders can be well balanced and harmonized. Not only should the national legislators wake up and understand the task at hand but also it would be prudent, given the international nature of copyright and the products in question, that the issue should also be taken up at the global stage. An international resolution or concord on the matter would probably be the best step possible.

³⁶Carl Shapiro and Hal R. Varian, *Information Rules: A Strategic Guide to the Network Economy*, 233 (1999).

ORGANIC TRENDS IN INDIA - NEED TO EDUCATE CONSUMERS

K. SOUNDARARAJAN AND G. VEDANTHADESIKAN

Introduction

The ever-increasing trend in agriculture has been towards large-scale, chemical-based farming. Harmful chemical fertilizers, non-degradable pesticides and herbicides have destroyed the life of the soil, causing widespread erosion and sterility. Food has become polluted with the byproducts of these applications, sacrificing quality to unhealthy growing and processing practices. There is a continual emphasis on killing predators, insects, weeds, bacteria-anything and everything that is outside the mono-crop system. The whole food chain is thus polluted with poisons and killing agents and the natural balance of the species in the environment is completely disrupted. Not only do whole community has become subject to the dangers of toxic agricultural chemicals, but they also seep into the food on which they are applied; and the food grown for the general public becomes contaminated as well. In many places trees have stopped bearing fruits because the heavy use of pesticides has killed the pollinators-the bees and the butterflies.

The recent introduction of GM seeds and crops (genetically modified, also called GE, genetically engineered), which needs to be purchased every year at a high cost, and needs to be heavily sprayed with the killer pesticides that the same companies produce, has evoked a strong response from health and environment conscious people all over the world.

Agriculture has historically been the source of livelihood to most of the people of India, as well as for food security. Despite the impact of the green revolution, particularly over recent decades, and the introduction of synthetic fertilizers and agrochemicals, agriculture in India is still largely based on the

traditional method, characterized by no or little use of external inputs, but driven by the timeless wealth of indigenous knowledge (such as for natural pest and disease control, soil management and crop/livestock production) which is still paramount in majority of the rural communities. The agricultural contaminants such as inorganic fertilizers, herbicides and insecticides from conventional agriculture are a major concern all over the world.

Compared to the above, the organic agriculture dramatically reduces external inputs by refraining from the use of synthetic fertilizers and pesticides, genetically modified organisms and pharmaceuticals. The pests and diseases are controlled with naturally occurring means and substances according to both the traditional as well as modern scientific knowledge, increasing both agricultural yields and disease resistance. Organic agriculture adheres to globally accepted principles, which are implemented within local socio-economic, climatic and cultural settings.

Through organic agriculture, farmers learn healthy, sustainable farming practices, and are regaining the wisdom of their agricultural heritage. The organic agriculture enriches the soil season by season. It increases the long-term yield, nutrient value and potency of the crops. It allows for a naturally clean water supply, and provides overall richness, health and well-being of their families, livestock, farmlands and communities.

Though the green revolution augmented the agricultural production during the 60s and 70s, in the later stage, not only the farmers and the people (consumers) have also realized the worst impact of inorganic fertilizers. The impact was not only on land but also on the human health. Not only had the green revolution during 60s, the new economic policy of 1990 also paved a way for hectic pollution. These reasons made the agriculturists to go for organic farming. The main reasons are as follows:

- i. Land degradation;
- ii. Permanent non-fertility;
- iii. Lessening of production; and
- iv. Impact on health (flora, fauna and human).

Apart from this in a nutshell the arguments in favour of organic farming could be given as follows.

Organic agriculture is a positive area of economic growth and collective organizing for a variety of reasons related to:

1. Environment Protection;
2. Food Quality and Security;
3. Social Justice; and
4. Safeguarding future generations.

Organic Agriculture in India

The organic cultivation is particularly suitable for a country like India with a huge population of small farmers who still use traditional methods of

farming with few agricultural inputs. It is estimated that 65 percent of the country's cropped area is organic by default; the small farmers have no choice but to farm without chemical fertilizers and pesticides as they cannot afford the same. This default status coupled with India's vegetables inherent advantages, such as, its varied agro-climatic regions, local self-sustaining agri-systems, seeds, number of progressive farmers and ready availability of inexpensive manpower having a potential to cultivate a vast basket of products organically.

However, since the introduction of synthetic fertilizers and chemicals, application for soil fertility, pest and disease control are becoming widely accepted and available practices; also affordable through government schemes and subsidized commercial sector activities. As a result of the increasing intensity of chemicals usage, ill effects on human health, the environment and the ecology is evident. Human and animal illness from chemical-related disorders, soil degradation, a significant decrease in the diversity of agricultural systems, pest and disease resurgence and resistance, a resulting decrease in yields, are some of the negative impacts widely acknowledged.

Drawing on these principles, a number of strategies have emerged that are critical to the success in a green infrastructure initiative. Five keys to success are as follows:

Partnership with Stakeholders in Green Infrastructure Initiative

It is important to involve the people who will be affected by changes to the community, including key landowners, elected officials and other community leaders, developers, conservationists, and other interested citizens. There should be a clearly defined leadership group entrusted with the task of taking the effort forward. The following steps are required to accomplish the objective:

- Establish a leadership group to share experiences and expectations, build consensus, lead and support your green infrastructure initiative.
- Create a shared vision of what you want your area to look like in the future. This vision should be compelling, practical, and inspiring, and can be accompanied by a map and other graphics.
- Inform and educate the public at all stages of planning and implementation.
- Provide ongoing leadership and support. Too many conservation programs that begin well die out as those involved turn their attention to new endeavors. The elements of a green infrastructure system need to be protected over the long term. This requires long-range planning and management, as well as an ongoing commitment of all the parties involved.

Design Green Infrastructure Network to Link Natural Areas and Ecosystems

The key to any strategic conservation approach is to systematically identify all lands of conservation value within the area of focus, to assess them for

their relative ecological values and contributions to the function of the system as a whole, and to use this information to establish conservation and restoration priorities. The following steps are required to accomplish this objective:

- Identify desired network components and gather data describing their spatial arrangement across the landscape. This data should include not only the ecological features that may comprise the green infrastructure network, but also the human-modified features such as roads that may influence design decisions.
- Lay out the network to connect important green infrastructure elements across multiple landscapes, jurisdictions, and scales. Select the largest and highest quality natural areas as hubs and then identify links between those hubs.
- Evaluate and prioritize network components for conservation action. Once identified, the conservation and contribution lands should be assessed for their relative ecological values and contributions to the function of the system as a whole. This can help prioritize implementation actions, such as acquisition, restoration, or enhancement. Conservation, preservation, and restoration priorities should be based not only on ecological values but also on degree of threats such as land conversion.

Develop an Implementation Program to Make the Network Design a Reality

Once conservation lands have been identified and prioritized, the difficult work of making it happen begins. “Implementing” green infrastructure requires financing land protection activities; managing the various conservation components; integrating conservation actions into land use plans, policies, and decision making; and generating enthusiasm and support among the constituencies.

The following steps are required to accomplish this objective:

- Identify the range of implementation tools available for your area.
- Create an “Implementation Quilt” that matches financial, management, and other tools to the components of your green infrastructure network.
- Prepare a plan of action that involves participants from the public, private, and non-profit sectors.

Prepare a Plan to Monitor, Restore, and Maintain the Green Infrastructure Network

Protecting the elements of a green infrastructure system requires long-range management and an ongoing commitment of resources. Monitoring, restoration, and maintenance should be addressed during the planning phase.

The following steps are required to accomplish this objective:

- Secure funding to accomplish the goals of monitoring.

- Establish network of people and organizations to implement the plan.
- Monitor the condition of the network over time, and apply management strategies based on monitoring results.
- Educate the public about the need for long-term stewardship.

Actively Sell Green Infrastructure Vision and Plan to the Public

Working with the public at all stages of planning and implementation is integral to success of strategic conservation initiatives. In addition to working with key community leaders, landowners, policy-makers, and others, it is important to apprise the general public of the goals and plans of the initiative. The following steps are required to accomplish this objective:

- Develop rational and convincing information that documents the need for and the benefits of the vision and plan.
- Make connections between green infrastructure initiatives and other activities within the community.
- Make connections between green infrastructure initiatives and other activities beyond the community.

While the terms eco-friendly and organic are used inter-changeably (albeit them having quite different meanings), a cleaner, greener lifestyle has seemingly turned into the norm of the day. From organically grown cereals, vegetables pulses and fruits (that have a comparatively higher nutritive value and greater shelf life than their regularly cultivated counterparts) to apparel, home decor, furniture, toys, beauty products and medicines and even herbal beer and Viagra- the need for a better quality of life has prompted several Indians to switch to the green life. It has become evident to many that the green revolution is not the panacea. This widespread realization has given rise to an increasing return to husbandry led farming practices, combining traditional knowledge and modern technology resulting in what is now formally termed as “Organic Agriculture”; promoting environmentally, socially and economically sound production of food and fibers.

The Organic Movement in India

Certified organic farming in the modern sense as understood in the developed countries is only around 15 years old in India. The 1990s saw a vigorous growth of the two branches of the organic movement in India. The first was initiated by environment conscious urban-based NGOs who started extensive work at the grass root level among the small farmers popularly known as low external input sustainable agriculture (LEISA). The opposition to foreign companies controlling agri-inputs, along with a drive towards self sufficiency at the farmer level to avoid market manipulations seemed their objective. Efforts to save the local seed biodiversity, opposition to multinational agribusiness companies, as well as pressurizing the government on the need

to be careful with genetically modified seeds have been notable highlights of the NGOs' initiatives. When funds from donors declined, these initiatives could not be sustained mainly because the financial viability and marketing aspects of emerging organic farms had not been taken into consideration in the planning by these NGOs.

The other organic movement push came from the private companies who have facilitated large scale conversions to organic systems, especially tea, coffee, spices and cotton. They are professionally managed and have tied up with their markets which are mostly overseas and are to a large extent successful. An exception to the two initiatives mentioned above is the government itself becoming an organizer like in the State of Uttarakhand, where the Uttarakhand Organic Commodities Board has been set up and the State Government has adopted an active policy to encourage organic farming and to help these farmers to access markets. As per the recent statistics, India has around 70,000 hectares under organic certified projects, and around 2.4 million hectares of certified forest lands from where wild herbs and medicinal plants are being harvested. These wild grown certified forests are mostly in Madhya Pradesh and parts of Uttar Pradesh.

NSOP and India Organic Logo

In 2000, the Government of India released the National Standards for Organic Products (NSOP) formulated by Department of Commerce, Government of India for National Program for Organic Production. Indian National Standards for Organic Production and India Organic Logo is governed by APEDA, which provides national standards for organic products through a National Accreditation Policy and Programme. The products sold or labeled as 'organic' thereafter need to be inspected and certified by a nationally accredited certification body. The aim of the National Programme for organic production include: (1) to provide the means of evaluation of certification programmes for organic agriculture and products as per internationally approved criteria; (2) to accredit certification programmes; (3) to facilitate certification of the organic products in conformity to the National Standards for Organic Products; and (4) to encourage the development of organic farming and organic processing.

Rural Development and Organic Agriculture

“Rural Development” is a strategy to enable a specific group of people, poor rural women and men, to gain for themselves and their children more of what they want and need. It involves helping the poorest among those who seek a livelihood in the rural areas to demand and control more of the benefits of development.

In an effort to improve the quality of life of the rural masses, the Government of India (GoI) continues to make huge investments in rural

development. However, many of the interventions are supply driven and are generally unsustainable. It is now commonly accepted that the involvement of the rural community in all facets, from planning to implementation to post-implementation operation and maintenance is imperative if interventions are to be sustainable. Consequently, the government is now gradually shifting from being a 'provider' to becoming a 'facilitator' thereby increasingly involving Panchayats, community based organizations, and non government organizations in the development process. The major cause of the continued deterioration of the rural environment is the unsustainable pattern of consumption and production. Sustainable rural development is a key concern of today. This component of rural development focuses on generating revenue and alternative employment through farm and non farm activities, by promoting individual as well as group farmers following organic practices.

Here, it is important to note that women are the major stakeholders in the organic agriculture, precisely because they are the worst victims of inorganic agriculture, or chemical farming. Over decades, the socio-economic and health status of women in farming communities has been adversely affected by green revolution or "industrial" farming technologies and policies. As women are the main factors for the sustainable development, it is well said that if you educate a women a house will be getting complete education. Keeping this in mind the main aim is "how to educate the organic trends" to keep the environment clean or bio-friendly. For this purpose, the target group should be the women SHGs. The urban area is already polluted and now the rural area is emerging as a potential for marketing. Therefore, there is a need to save the rural environment from further deterioration.

Conclusion

When technologies are growing and people have adopted luxurious lifestyle, they will hamper the environment completely. It is heartening to note that now a days, consumers have a policy 'of use and throw'. This has degraded the environment completely. This use and throw starts from the packing side first. Using the organic materials or the packing may cost more during the initial stage. This also may be one time investment. But in a later stage, the eco-friendly packaging becomes bio-degradable and sometimes they could be recycled also. When they are bio-degradable and recycled two things are sure, one is sustainable development of resources, and the second one is environment protection. The above should be made known to the SHGs members. To create awareness among them, a continuous campaign with practical examples will awake the people. According to the area and on the basis of the type of population, the sort of awareness should be given. The awareness creation team should consist of an expert in the environment, consumer rights and the trainers from the NGOs. To implement the above things, the district and other administrative units may be involved on the basis

of problem related to environment. During the first instance, after establishing the above, awareness camp has to be conducted. After some time post evaluation should also be done. This will pave a way for correcting the mistakes and at a stage people will be made aware and further more people would be educated in this direction.

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ECOLOGICAL QUALITY OF PRODUCTS AND CONSUMER PROTECTION – LESSONS FROM EUROPEAN DIRECTIVE

ANKUR KHANDELWAL AND PARIRU

Introduction

There has been a rapid development of consumer rights granted to citizens – individuals as well as groups by European Community Law. The “European Economic Constitution” is used as a metaphor to describe a fundamental process and to protect the ordinary European citizens in their economic role as consumers, in their function as ecologically responsible subjects and in their individual and collective access to courts of law in case of need of protection. The concept of the “European Economic Constitution” tries to describe a process of establishing, guaranteeing and implementing individual and collective rights as subjective rights,¹ to EC citizens in the dynamics of European integration. In its Opinion 1/191, the European Court of Justice insisted on the specificity of Community Law, which contains the rights and duties not only of member states but also of citizens.² Community law concept of direct effect tries to transfer these objective principles into subjective rights. The idea of subjectivisation of principles guaranteed under the Community law will be extended further to general citizen’s rights in their roles as consumers and their functions as ecological subjects.

Consumer rights are not explicitly recognized by the EC Treaty. Article 129a of the Treaty on Consumer Policy is concerned with jurisdiction, not

¹Legrand, “*European Legal Systems are not Converging*” 45 *International and Comparative Law Quarterly* (ICLQ) 52 at 70, 1996

²ECR I – 6102 No. 21, 1991

with conferring rights, even though, together with Articles 3(s) and 100a(3), it insists on a high level of protection to which the Community is contributing. Article 130r lists the objectives of environmental policy which is also related to health issues, e.g. quality of drinking water and air. Right to safety and environmental quality can be deduced from these norms.

Ecological Quality as a Fundamental Right

Right to environment is a fundamental right under the European Human Rights Convention (EHRC), guaranteed to the European Citizens. Thus the right to have goods of ecological safety becomes an indirect fundamental right under the convention. The European Court of Justice has consistently held that certain fundamental rights which are common to all Member States, of which right to environment is a part, are part of the Community legal order. It has also been held that fundamental rights are also binding on the member states when they implement Community rules.³ Fundamental rights will be respected as general principles of community law. According to Article 164, the Court must ensure that the law is observed in the interpretation and application of the Treaty. Principles of community law on fundamental law can certainly be regarded as “the law” according to Article 164.⁴ Therefore, it can be concluded that even though the Community is not directly bound by the European Human Rights Convention, it is directly under an obligation to respect it as a general principle of community law.

This has resulted in the increase in the status of the consumer since the rights of the consumer are considered as fundamental rights. Article F2 of the Maastricht Treaty has created a dynamic element in the recognition of fundamental rights, provided they fall in areas which are covered by the treaty or by Secondary Community Law.⁵ So far as coming under the ambit of the EHRC, they have indirectly increased the position of the consumer within the Community context. The EC has adopted directives aiming at a high level of protection and these become the starting point for guaranteeing rights. It is a matter of theory of “direct effect” and how far these rights are guaranteed by the directives themselves and how far they can be enforced in the judicial process of Member States. Community rights theory presupposes a close link between primary and secondary community law. The latter usually contains a hierarchy of sources whereby fundamental rights enjoy the highest place in the Constitution and are placed above legislative and administrative acts. Community directives establishing subjective rights and being capable

³Case 5/88 *Wachauf v. Bundesamt für Ernährung* ECR 2609 at 2639, 1989

⁴J. Bengoetxea, *The Legal Reasoning of the European Court*, Oxford, Clarendon Press, 1993

⁵N. Neuwahl, “Principles of Justice, Human Rights and Constitutional Principles within the EU” in E. Paasivirta/ Rissanen (eds.), *Principles of Justice and the Law of the EU*, 76 – 9, 1995

to direct effect are usually the result of complicated negotiations where many actors participate according to their relevant to Community provisions, which makes their adoptions, but also their amendment or even abolition, difficult.

Right to Ecological Quality and Product Safety

Ecological rights in a broad sense are concerned with both product safety and environmental quality. They are closely related to each other because modern product regulation takes into account safety, health and ecological aspects of goods moving freely in the internal market.⁶ To some extent, environmental quality may be the concept because it also extends to resource planning and protection, process regulation and waste management.⁷ As far as the European Economic Community (EEC) is concerned, product safety and ecological quality were among the EEC objectives from the beginning and this can be seen in Article 36 of it as well. Environmental concerns recognized in a case law of the European Court of Justice as being part of community policy. Further the Maastricht Treaty on European Union expanded Union competences and includes, among the community activities, a policy in the sphere of the environment and contribution to the strengthening of consumer protection.

Ecological aspects play an increasingly important role in community/union policies. They cannot be separated from consumer policy which requires more than "value for money".⁸ Product safety and ecological quality were among the EEC objectives from the beginning. This can be seen in Article 36 which allows Member States to derogate from the rules of free movement on grounds of "the protection of health and life of humans, animals or plants" unless the community has itself acted.

Law approximation through Article 100 of the EC Treaty was always concerned with aspects of health (especially in food stuffs) and safety (especially in technical products, pharmaceuticals and chemicals). Free movement of goods could not be attained without acceptable safety levels for products in the community or, if this was not possible in member states. The threat of unilateral action by member states under Article 36 imposed a strong incentive upon the community legislative process. To some extent environment concerns were addressed in Article 36 and were recognized in later case law of the European Court of Justice as being part of community policy.⁹ This broad reading of the treaty provisions allowed, on the one hand, Community Action and on the other, subject to the somewhat obscure limits of the

⁶N.Reich, at nos. 209, 225

⁷Rehbinder/Stewart, *Environmental Protection Policy*, 1985, at 404-20

⁸Kye (ed.), "EU Environmental Law and Policy and EC Consumer Law and Policy: Converging or Diverging Trends?" (1995); L. Kramer, "On the Interrelation between Consumer and Environmental Policies in the EC." (1993) 16 JCP 455

⁹Case 240/83, *Procureur de la Republique v. ADBHU* (1985) ECR 531 at 459 No.13

proportionality principle,¹⁰ Member State measures impeding free trade and free movement if the community remained inactive or acted only unsatisfactorily.

The Single Act, with its ambitious objective to attain an internal market by 31st December 1992, gave safety and environmental regulation a new impulse. This can be seen from the new enabling provisions of Articles 100a and 130f-t. There has been some discussion on how to delineate the different competences of the community under Articles 100a and 130s and the court has been asked to rule on the question several times.¹¹ The court seems to apply the theory of the primary goal of the Community measure.¹² The internal market programme outlined several important directives concerned with establishing consumer rights to safety and environmental quality.

Enforcing the Community Law

The ECJ has shifted the responsibility of enforcing Community law to Member State courts. These courts have to apply both national and community laws and have to merge them in a spirit of cooperation and loyalty according to Article 5 of the EC Treaty.¹³ They should go as far as possible in interpreting national law in a community law like manner in order to avoid conflicts between their national and community laws.¹⁴ The mechanism of interpretation can hardly be distinguished any longer from application because it extends not only to new law under the impact of the directive but also to old law enacted before the directive.¹⁵ It depends, therefore, upon how national judges handle this power. This may be expected to lead to considerable differences in the application of Community law and thereby endanger its uniformity. The power of national judges is also limited to cases which do not lead to contra legem application, as the court indicated with its reference to interpretations of the national law “as far as possible in the light of the wording and purpose of the directive.”

General Product Safety and Environmental Quality – The Way Forward

General product safety, the most important in this context is Community

¹⁰Case 302/86, *Commission v. Denmark* (1988) ECR 4607 (Danish Bottles) and the critique by the Hedemann – Robinson (1997) 20 JCP 1-43

¹¹Cases C – 300/89, *Commission v. Council* (1991) ECR 2867 (re Titanium Dioxide); C – 155/91, *Commission v. Council* (1993) ECR I-939 (re Waste); C – 187/93, *Parliament v. Council* (1994) ECR I -2857 (re shipment waste)

¹²Kramer, *EC Treaty and Environmental Law*, 2nd edn., Sweet and Maxwell, at 91 who prefers objective criteria, London, 1995

¹³J. Temple – Lang, “Art. 5 as an Element of Community Constitutional Law” (1990) 27 CMLRev. 645

¹⁴Kramer, *EC Treaty and Environmental Law*, 2nd edn., London, Sweet and Maxwell, 1995 at 78

¹⁵Case C – 106/89, *Marleasing v. La Comercial Internacional de Alimentacion* (1990) ECR I – 4135

Directive 92/59¹⁶ on general product safety. It imposes on producer and, to a lesser, the supplier the duty to market only safe products in the Community. In accordance with the general safety requirement, producers are obliged, first to place only safe products on the market and, secondly to provide consumers with the relevant information to enable them to assess the risks inherent in a product throughout its normal or reasonably foreseeable lifetime, and, where such risks are not immediately obvious without adequate warnings to take precautions against risks. A third obligation is to adopt measures commensurate with the characteristics of the product to enable consumers to be informed of risks which a product may present and to take appropriate action, including, if necessary, the withdrawal of the product from the market. Distributors are required to act with due care to help ensure compliance with the general safety requirement.

The safety obligation must then be implemented by Member States which have to devise appropriate administrative provisions to make producers and distributors comply with their obligations in such a way that the products placed on the market are safe. There are very detailed information duties between Member States and the Community. Article 9 provides for a Community procedure for acting against hazardous products circulating in the internal market, which was challenged by Germany but upheld by the ECJ in its judgment of 9 August 1994.¹⁷ The court justified it in the following words: “the free movement of goods can be secured only if product safety requirements do not vary significantly from one member to another. A high level of protection can be achieved only if dangerous products are subject to appropriate measures in all the Members States.”¹⁸

The court also insisted that the Community procedure was proportionate. It first restated that not only Member States but also the Community is bound to the principle of proportionality in relation to product safety, and, as one might add, environmental quality matters. The court justified the powers conferred upon the commission on the following grounds: “the powers conferred on the commission by Article 9 are appropriate for the purpose of attaining the objectives pursued by the directive, that is to say, ensuring a high level of protection, for the health and safety of consumers whilst eliminating barriers of trade and distortions of competition arising as a result of disparities between national measure taken in relation to consumer products.”

The Role and Importance of Liability Rules

The court confirmed Micklitz’s perception of shared responsibilities in

¹⁶(1992) OJ L228/24

¹⁷Case C – 359/92, *Germany v. Council* (1994) ECR I - 3681

¹⁸At 3860 No. 34

Product Safety Law which does not confer rights upon the individual. The question is whether they be imposed by liability rules? With regard to producers and distributors, this is an aspect of product liability law. Community liability for not taking appropriate safety measures could arise out of Article 215(2). In the Francesconi case,¹⁹ the court denied consumers an individual right of redress with regard to measures relating to adulterated wine:

“It must first of all be observed that the commission has no power to withdraw adulterated wines from the market, that being the matter for national authorities. The Commission is under no obligation to publish the identity of traders who may be involved in scandals. The information system established to detect fraud and irregularities in the wine sector and avert dangers which might arise from the use of consumable products leaves it to the national authorities to take steps to inform the consumer.”²⁰

It is a question of interpretation of Article 9 of the Product Safety Directive whether or not it contains an obligation of the Commission to take appropriate measures against hazardous products on the internal market. Since the procedure can be initiated only when certain requirements are fulfilled, the Commission is under no obligation to intervene and hence cannot be held liable under Article 215(2) in case of inaction. If however, requirements are fulfilled one could argue that the Commission may be held in case of non-action.

As far as member state liability is concerned, this must be seen in the light of the Francovich and later Dillenkofer judgments, which were concerned with situations where the directive has not been transformed into Member State law. It depends on a sufficiently serious breach of Community law and must, according to new case law, be balanced against the legislative discretion of Member States. These prerequisites are satisfied in the case of Germany, which has not implemented the Product Safety Directive. The Directive may trigger a direct effect in favour of injured consumers if, by taking measure possible under it, Germany could have prevented consumer harm.²¹

As a result, subjective rights are conferred upon European citizens only in those cases where they may claim damages arising out of unsafe products. Therefore Directive 85/357 on product liability²² is important in this context. While the general Safety Directive is concerned with obligations and duties of producers, distributors and the Community, without giving directly enforceable rights to the citizens or consumers, the Product Liability Directive confers individual rights on the consumer, which he or she may enforce in case of

¹⁹Cases 326/86 and 66/88 (1989) ECR 2087

²⁰At 2113 Nos. 21 – 2

²¹N. Reich (1996) EuZW713; Dir. 92/59 was implemented only in April 1997.

²²(1985) J L210/29

injury. The basis of this right is the legitimate safety expectations of consumers. They depend on factors similar to those mentioned in the general Safety Directive, for instance the presentation of the product, the use to which the product could reasonably be expected to put and the time when the product was put into circulation. Under Community law, this right to safety can be imposed against manufacturers, importers and, eventually, suppliers for products which come under the Directive. The consumer has right to compensation under Community law, with the exclusion of the non-pecuniary damage which may or may not be provided for by Member States. The Directive which has been enforced in most Member States, with the exclusion of France, can be said to take effect.²³ In those cases where it has not yet or incorrectly been enacted the principles of the Marleasing and Dori judgments must be applied.

However, the weakness of this Directive so far as consumer's right to safety is concerned is quite obvious. The Directive is aimed only at compensation, not at prevention. There is no compensation for pain and suffering imposed by Community law, which considerably weakens the position of the consumer. There are many exclusions and limitations which put the consumer on an unequal footing which uses his/her right to free entry without being obliged to pay adequate compensation in case of consumer loss.

Environmental Quality as Directly Enforceable Right

Environmental quality is even less regarded as directly enforceable right under Secondary Community law. This is especially true of waste regulation which is limited to adequate management. Citizens do not have a Community-wide right to environmental quality.

In cases where environmentally hazardous products, waste or production methods are used one could atleast envisage a right to compensation. The Commission has, therefore, put forward proposals for liability for hazardous wastes and environmental damages.²⁴ These proposals attempted to transfer the polluter pays principle into systems of civil liability, which would give injured persons a right to compensation under certain circumstances. Most interesting in this respect was the amended Commission proposal of 1991 concerning liability of hazardous waste.²⁵ According to Article 3, the producer of waste shall be liable under civil law for the damage and impairment of the environment caused by waste, irrespective of fault on his part. The producer is under an obligation to include in his annual report the name of his insurers

²³N. Reich, *Europaisches Verbraucherrecht* (3d ed., 1996), No. 198.

²⁴Commission Communication of 14 May 1993, Com (93) 47 final.

²⁵(1991) OJ C251/3; Seibt, *Zivilrechtlicher Ausgleich für ökologische Schaden* (1994), at 120 – 131.

for civil liability purposes; this reporting obligation indirectly amounts to an obligation to conclude mandatory insurance. Article 4 leaves it to Member States to determine the person who may take legal action in event of damage to or impairment to the environment caused or about to be caused by waste. Member State's law will also determine remedies, including availability of injunctions. The Member States are also competent to decide on the extent of damages for loss of profit or economic loss that may be recoverable. Finally, the Directive shall be without prejudice to national provisions to relating to non-material damage.

This Directive is the first time that an effort was put in, to establish in the law of the Community and many Member States an individual or group right to enjoin against or compensate for environmental damage caused by hazardous waste. There would be limits to the damages but the Directive makes it clear that certain types are irrecoverable, that certain persons must be entrusted with bringing actions against Member States and that this action can include injunctions. The Directive would also have allowed parallel enforcement of legislation against hazardous waste and would therefore, give new ecological rights to citizens and citizen's groups. Unfortunately, the European legislator has rejected the adoption of this Directive.

Participation in Environmental and Safety Decision Making

Participation of citizens and citizens'-groups in decision-making relating to environmental and product is a relatively new issue for member States. This eventual right to participation will not be found in constitutional documents of member states, but rather in administrative regulations and considerations which differ considerably. So far community law has not been very explicit on this issue. Environmental and safety policy is seen as a joint responsibility of the member states and the Community/ Union on the basis of the subsidiary principle. Citizens do not play an important role in environmental and safety policy and enforcement.²⁶

So far as secondary law is concerned, only early indicators aimed at increased participation can be seen. In this area, environmental law is more than consumer law, and may serve as a model for increasing consumer participation in safety decisions. It also is important for the theory of consumer rights because it is not concerned with individual rights but with collective rights and group participation as part of a "post – modernist" theory of rights.²⁷

The Impact of Environment Impact Assessment

With regard to projects which have a substantial environmental impact, citizen participation can only indirectly influence these projects to the extent

²⁶Koppen/Ladeur, 'Environmental Rights' in Cassese/Clapham/Weiler, III.

²⁷N. Reich, "*Reflexive Law and Reflexive Legal Theory*", *Melanges Argyrios* 773 at 767, 1995

that the impacts on the environment are made transparent and information on this impact is made public. If environmental impact studies are not undertaken, this should be reason enough to stop the project until the environmental impact is clarified.

Council Directive 85/337/EEC of 27 June 1985, as amended by Directive 97/11/EC of 3 March 1997,²⁸ is concerned with the assessment of the effects of certain public and private projects on the environment. According to Article 2, the Member States are under an obligation to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, *inter alia*, of their nature, size or location are made subject to an assessment with the regards to their effects. The Directive then goes on to describe the projects and the assessment in more detail. Article 6 contains detailed rights of information and consultation of citizens. Member States are obliged to ensure that the public is given the opportunity to express an opinion before the project is initiated or, under the amended Directive, before consent is given. It is up to Member State law to make detailed arrangements for such information and consultation by ascertaining the public concerned.

Conclusion

The paper has tried to highlight how Europe with the help of Directives has tried to make consumer protection and ecological quality part of objectives of the Community. Thus it can be said that drawing an example from the European markets and the European treaties, the global society can set a standard of ecological quality of products to protect the interest of the consumers.

The European experience is a lesson for the global economy to treat consumer protection as part of international standards, particularly ecological quality. This includes within its scope, access to safety and environmental quality, which means that there is a duty on the producer and also to a lesser extent on the supplier to market only safe products in the community and bringing in those as the role of the Community Directive 92/59 in ensuring the same. This also entails that safety requirements should not differ significantly from one state to the other and free movements of goods can be secured only if this is taken care of. Further, Directive 85/357 on product liability is also important as it confers individual rights on the consumers.

Learning a lesson from the European experience the global economy and Indian market, in particular, can ensure consumer protection and ecological safety in a better way. Perhaps the European experience is a model for the world to adopt and hints at establishing a unified consumer law in the form of a convention for a transnational business to consumer contract.

There are many advantages of having such a unified consumer law. It

²⁸(1985) OJ L175/40 and (1997) OJ L73/5

would remove the reluctance of the business people to trade cross – border in fear of very high and stringent product standard and also of very strict consumer protection laws. It would remove the lack of confidence of the consumer in purchasing some foreign made product because of the possibility of its quality being bad. Both these points would provide better value for money as it would lead to more choice. It would help promote alternate dispute resolution mechanism for resolving of consumer disputes in transnational transactions, both the parties would be aware of the uniform laws. Global consumer education could be carried out by stating not just that the consumers have rights but by stating what those rights actually are. The protection should be given to consumers in a transnational business – consumer contracts which are increasing by the day due to the spread and growth of globalization, especially in a country like India which is expanding by the day.

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GLOBALISATION AND GREEN CONSUMERISM A CASE STUDY OF CHHATTISGARH

R.N. PATI

Introduction

The General Agreement on Tariffs and Trade (GATT) and Trade Related Aspects of Intellectual Property Rights Agreement (TRIPs) fail to address the challenges and threats encountered by tribal shamans and herbalists in forest regions of Asia and Africa. The Green Consumerism drive along with growing demand of the consumers for herbal products worldwide has led to corresponding growth of business sectors manufacturing herbal food supplements, cosmetics and agro-products both at national and international market. The dynamics of these market forces are complex which has led to consumer exploitation. India is one of the leading countries in terms of richest plant medical tradition of the world. As many as 25,000 effective plant based formulations are utilized by folk healers of India. Annually, about 2000 tonnes of herbs are consumed by not less than 7800 pharmaceutical companies operating in India.¹ A significant number of modern pharmaceutical drugs are developed on raw material of medicinal plants. The market for Ayurvedic medicine is expanding annually at 20 percent whereas the marketing of medicinal plant based products have increased by nearly 25 percent during 1987-96. It is the highest growth in the world.²

¹Ramakrishnappa, K., "Impact of Cultivation and Gathering of Medicinal Plants on Biodiversity: Case Studies from India", in Biodiversity and the Ecosystem Approach in Agriculture, Forestry and Fisheries [online], FAO, 2002 [cited 25 March 2003]. Available from Internet: <http://www.fao.org/DOCREP/005/AA021E/AA021e00.htm>.

²Masood, E., "Medicinal Plants Threatened by Over-use", *Nature*, February 1997, Vol. 385, No. 6617, p. 570.

The dietary supplement companies of western countries have identified and commercialized Indian herb through exploring traditional knowledge of herbal folklore of tribal communities of Chhattisgarh. These companies have validated that natural herbal solutions to widespread conditions such as common cold, lack of vitality and sleeplessness, respiratory disorder could provide millions of consumers with a more natural lifestyle. The multinational pharmaceutical companies have mined herbal folklore of tribal communities in Chhattisgarh to create new health and wellness potions that fulfilled consumer demands. A good number of multinational pharmaceutical companies involved in bio-piracy have wide network of traders and their agents in all metropolitan cities of India. These companies have facilitated availability of herbal tradition to consumers who prioritize value of herbs in their life. The application of “push-marketing” strategy in herbal or dietary supplements has stimulated over consumption and consumerism. The issue of safety, efficacy of herbal products is an ethical question. It is very often missing from market dynamics.

The ethics of “Green Consumerism” has influenced the lifestyle of urban elites and increased Indian consumer choice for organic food, herbal cosmetics and herbal dietary supplements promoted by multinational pharmaceutical companies. The growing market demand has stimulated expansion of marketing network of plant based products. The corresponding growing awareness on biodiversity conservation and protective use of plant resources has added new dimensions to entrepreneurial initiatives for promotion and development of plant based products. The efforts of Indian spiritual leaders have transformed western life-style through message of living with nature, adoption of yogic life-style and consuming organic and herbal products. The consumer interest for use of natural and herbal products has been boosted up. The increased consumer demand on herbal products both at national and international market has dramatically multiplied the trade of medicinal plants. Well over 95 percent of medicinal plants are collected from wild to sustain the growing market demand. The bio-piracy and over exploitation of habitat of medicinal plants in forest regions have been multiplied very rapidly in absence of appropriate regulative mechanism.

This paper is based on empirical investigation of traders, shamans, bone setters, members of MFP committees in districts of Bastar, Dhamtari, Rajnandgaon, and Bilaspur of Chhattisgarh. The study explores various dimensions of supply and demand dynamics relating to marketing of non wood forest products including ingredients of medicinal and aromatic plants. As many as ten villages surrounding the Medicinal Plant Conservation Areas in four districts were covered. The MPCAs covered were Gaurella (Bilaspur), Dugali (Dhamtari), Darbha and Mankdi (Bastar) and Salhewara (Rajnandgaon). The study covered 32 Kochias, agents of traders, 57 folk healers and 271 community elites. The paper also critically examines the impact of globalization

and green consumerism drive on market dynamics at grass roots apart from assessing their correlation with bio-piracy and community experimentation on organics paddy cultivation. The findings will significantly contribute towards reformation of policy framework relating to trading of non wood forest products in regional markets of Chhattisgarh and curbing wide spread bio-piracy activities by multinational agencies through their network of vendors and traders.

Green Consumerism Movement

The concept of Green Consumerism is a buzzword these days all over the world. Choice for organic food, herbal cosmetics and food supplements constitute the market drive for Green Consumerism Movement. The ethics of western consumerism coupled with forces of globalization have influenced the dynamics of market forces both at regional and national level. The increased demand on Indian herbal products at global level has stimulated unexpected growth of herbal pharmaceutical companies as well as entry of large number of entrepreneurs in manufacturing of herbal food supplements, cosmetics, agro-products and medicine in Chhattisgarh over span of last five years. The incentive based programmes and proactive policy of State Government to boost up domestication, conservation and processing of medicinal plants have attracted business houses and entrepreneurs from other sectors to capitalize on sensitive dimensions of demand and supply dynamics of Green consumerism movement.

The impact of this movement has percolated deep into market scenario at grassroots and influenced the behaviour of local traders in different forest regions of the State. The lion's share of the benefit has been grabbed by middlemen isolating the stakeholders targeted for overall development of herbal sector in this premier herbal state of India. The local knowledge has been exploited and commercialized. The ethics of benefit sharing with knowledge holders has been overlooked. The villagers have been utilized as agents of traders who monopolise over marketing of herbal products. The trade of herbal medicine depends largely on plants species diversity and the related knowledge of their use as herbal medicine. The pharmaceutical industries collect raw materials and explore traditional knowledge as prerequisite information.³

The forest communities in Chhattisgarh are poor, but they possess rich indigenous knowledge on biodiversity conservation and use of wide variety of plant species for treatment of different ailments. They have contributed to discovery of plant derived prescription drugs widely used by urban elites of India. The traditional knowledge relating to plants and tubers can be explored

³Tabuti, J.R.S.; Lye, K.A. and Dhillon, S.S., "Traditional Herbal Drugs of Bulamogi, Uganda: Plants, Use and Administration", *Journal of Ethnopharmacology*, September 2003, vol. 88, no. 1, p. 19-44.

for preventive health care of nourishing mothers and tackling starvation.

The green consumerism drive is closely related to market dynamics regulating collection and harvesting of non wood forest products by forest dwelling communities of the region. The forest dwellers of Chhattisgarh use a wide range of non wood forest products and services which differ in their source, characteristics, utilization and nature. They depend on these products and services not only to maintain a harmonious relationship with nature but also to promote community welfare since time immemorial. They depend on wide range of MAP habitats surrounding their villages which very often overlap the demarcation area of PPA and MPCA categorized by forest officers on the basis of vegetation zones. It is essential to explore traditional knowledge of the community to make biodiversity asset mapping and take appropriate steps for conservation and prevention of bio-piracy. The conservation, management, trade, utilization of the non wood forest products pose a wide range of problems which need to be remedied. Non wood forest products cover wide range of products such as food and food additives, fibre, fodder fertilizer, phytochemicals and aroma chemicals, oils, latex, resins and other exudates, organic construction materials, decorative articles, and animal products.

The urban elites use a large number of items for their day to day living. These items are derived from non wood forest products. These items are medicines, perfumes, suntan lotions, nail polish, mouth wash, hair conditioners, toiletries, cheese, chewing gum, ice cream, soft drinks, juice drinks, peanut butter, edible nuts, breakfast cereals, culinary herbs, canned fish, dairy deserts, fancy bags, decorative buttons, chess pieces, golf balls, paints, corrosion inhibitors, fungicides. It is evident that green consumerism and modern man's attitude to live with nature is significantly related to dynamics of conservation, management, trade and utilization of non wood forest products.

Dependence on Forest Resources

The forest dwelling communities not only draw their livelihood and employment from non wood forest products but also the local health tradition is intricately related with these resources. The local artisans sustain the tradition of craft production by conserving these resources. The non wood forest products have strong linkage with community based strategies for conservation of biodiversity and sustenance of local health tradition and forest dwelling communities of Chhattisgarh. The gaps in trade, conservation, utilization of these resources have led to bio-piracy and over exploitation of natural resources by the middlemen. The classification of Minor Forest Products and non wood forest products and related exemptions and marketing relaxation granted on these categories of products by forest department very often provide opportunity to traders and pharmaceutical companies to capitalize on gaps in the legal provisions and promote bio-piracy. There is an urgent need to classify these products on the basis of following indicators.

- Classification of organism from which the product originates.
- The categorization of parts of plants and animals from which the product has originated.
- The procedure of collection and harvesting of the products.
- Physical and chemical components of the products.
- Type of industrial and trade uses of the products.

These indicators are important for assessing the market dynamics of these products as well as reforming the policy framework of the government. The concept of green consumerism may be conceptualized in terms of forest dwellers dependence on biodiversity since time immemorial. This relationship has been disturbed by globalisation and bio-piracy activities by big players and over exploitation of biodiversity. The forest dwellers collect root, tubers, green leaves, fruits and nuts from forest to sustain household food security in lean season. This wild store house of food materials contain many essential vitamins and contribute to household nutrition. The forest dwellers draw adequate quantum of protein and minerals from gums, saps and mushrooms. Roots, tubers, nuts, seeds provide fat and carbohydrates. The forest dwellers also draw animal protein from meat of wild animals. Forest ensures food security of the forest dwellers for major period of the year.

The forest dwellers collect required quantity of fodder from forest for their domestic animals all through the year both in rainy and dry season. The medicinal plants constitute valuable non wood forest products which are over exploited and traded by the agents of pharmaceutical companies capitalizing on the gaps in existing policy framework. The large scale destruction and degradation of habitats of medicinal plants in different forest regions of Chhattisgarh would not only affect the future potential of these rich natural resources but also lead to degeneration of rich local healthy tradition. This sector is challenged by a series of constraints which call for immediate redressal intervention. These constraints are inadequate policy measures, lack of infrastructure, poor access to technology, absence of systematic research, absence of quality control mechanism, absence of regulatory mechanisms and pharmacological evaluation. The medicinal and aromatic plants as major components of non wood forest products contribute significantly towards generating household food security and employment for forest dwellers of Chhattisgarh.

The forest dwellers have realized the adverse impact of globalisation in terms of growing bio-piracy and related damages cause to habitat of MAP resources around their habitation during the last couple of years. The reduction of income drawn from collection of non wood forest products has given a death blow to their household economy. The following threats encountered for sustainable development of non wood forest products need to be addressed appropriately.

- Inappropriate management and regulation of non wood forest products.
- Over emphasis on timber production instead of non wood forest products.
- Wide destruction of habitat of non wood forest products by cattle grazing and bio-piracy activities.
- Wasteful harvesting.
- Absence of efficient and proper market chain.
- Absence of technology development and research relating to non wood forest products.
- Absence of appropriate policy support for development of non wood forest products.

There is an urgent need to evolve integrated management strategy with holistic approach for wood and non wood forest products. Research on traditional knowledge and ethno biology can contribute significantly towards developing an integrated development of these resources. There is an urgent need to develop timber inventory and investigation on prospecting of non wood forest resources utilized for fibre, phytochemicals, aromatics, gums and resins. The documentation must cover the density of occurrence; extend of distribution and nature of these plant resources. The economic value of the plant is very important for promoting *in-situ* genetic conservation.

The forest dwelling communities involved in collection of non wood forest products are responsible for destructive harvesting and damage caused to the habitat, because they adopt unskilled and unscientific methods for harvesting. A very little effort is made to harmonise non wood and wood products. The traders involved in marketing of non wood forest products ignore taking precautionary measures against wastage which occur during collection, transport and storage. Adequate physical infrastructural arrangements are not provided for delicate or perishable products. These issues are to be addressed for maintaining equilibrium between demand and supply dimensions of these products in the market.

A good number of vendors are involved in trading of these products. A section of them sell the products collected by them for yielding additional family income. A large segment of these vendors are supported by network of traders and several levels of buyers and sellers based at metropolitan cities of India. They are exploited by traders due to following deficiencies.

- There is no cooperative network of collectors.
- Poor knowledge on market and price information.
- Lack of access to credit to meet operational needs.

The importance of non wood forest products has been recognized in the era of green consumerism where greater importance is given on environmental conservation and preference for natural products.

The trading of medicinal plant products and non wood forest products involves software based and hardware based components. The knowledge information about market price, attitude of consumers, skill of traders constitute software based components. The traders play a very vital role in entire chain of production, collection, transportation to marketing of these products.

The marketing of medicinal and aromatic plant resource materials cover a series of processes such as harvesting, storage, processing, standardization and marketing. These areas are most neglected because they are considered as suitable for local consumption only. There is an urgent need for developing protocol for long term investment and improvement through participation of local communities in conservation, domestication and management of MAP resources. The benefits accruing from marketing always go to traders and middlemen which isolate the collectors from equitable income from harvesting. They are discouraged to get involved in conservation and sustainable management of these resources. The land tenure security, autonomy and economic incentives are important components for evolving participatory conservation approach.

Green Consumerism and Conservation of Biodiversity

The global demand for herbal products stimulated by Green Consumerism Movement has not only promoted wide scale bio-piracy, but also transformed a section of poor villagers to work as village agents of traders (Kochia) to harvest medicinal plant resources from forest. In absence of regulating mechanism and poor participatory involvement of JFM Committees, these forces availed free access to over exploit the local biodiversity resources. A good number of habitats of MAP species have been damaged due to premature harvesting. The pharmaceutical companies not only collect the raw materials from the traders, but also take active part in commercialization and domestication of medicinal plant resources of the state. The entry of these forces in sector of conservation, domestication and manufacturing and processing of medicinal plants has isolated the real stakeholders from effective participation in the programme. The involvement of middlemen (Kochia) in this premier sector has influenced the market dynamics and chains of domestication, conservation, processing, manufacturing and marketing of herbal products. In absence of appropriate regulatory mechanism, the traders dominate the marketing of herbal products both at regional and national level. The following deficiencies and gaps are to be remedied.

- Easy Transit Pass (TP) to traders for transporting truck loads of rare herbs across the border regions under the tag of non-nationalised minor forest produce.
- No regulative mechanism for traders to procure the herbs from local MFP Committees.
- Lack of availability of adequate fund with Government outlets to

buy directly from MFP collectors the huge quantity of herbal materials available.

- No mechanism to prevent traders trapping MFP collectors with high bid compared to fixed price index of the Government.
- Greater emphasis is prioritized on marketing and cultivation of medicinal species ignoring linkage with marketing outlets.
- Openness of market leads to free access and dominance of traders.
- Lack of standardized certification formalities.
- Conservation approach is given backseat.
- Lack of marketing personnel and expertise available with Forest Department.

The liberalization of market economy has brought more openness for entry of outside entrepreneurs with free access to rich biological resources in forest regions of herbal state like Chhattisgarh. This openness has expanded market of herbal products. The demand for new resources, materials and herbal products has been enhanced. The number of small and home based medicinal plants based industries is growing day by day without creating adequate linkage with national and global market. These industries do not only commercialise the traditional knowledge base of local communities and involve in bio-piracy activities but also manage their marketing strategies on traditional ethos and practices. In absence of appropriate regulative policy and mechanism by government, the unregulated trade of medicinal plants is growing dramatically day by day. The marketing dimensions have adversely affected the supply and demand dynamics of herbal products. The undocumented and poorly reported bio-piracy initiatives have deep root in global green consumerism movement. The growing global demand for herbal products has been reflected in grass root level bio-piracy activities and premature harvesting of medicinal plant resources. The bio-piracy activities by multinational companies have banked on administrative slackness and poor empowerment of JFM committees in conservation of bio-resources. The administrative slackness has been manifested in following directions which need rectification for bottom up conservation approach.

- Poor empowerment of JFM committees (Van Prabhadhan Samities) by target oriented approach instead of process oriented approach.
- Preparation of Micro-Plan by NGOs without appropriate involvement of community.
- Micro-plan developed by target oriented approach and not followed for grassroot action.
- Poor awareness of villagers on micro-plan and entry point activities.
- Poor linkage of micro-plan with local resources.
- Poor baseline data for entry point activities.

- Poor involvement of community in collective identification of entry point activities.
- Poor empowerment and mobilization of JFM Committees in checking premature harvest of medicinal plant resources by local agents of traders.
- Absence of regulative mechanism to market herbal products through JFM Committees and recommendation for issue of transit passes to traders.
- Inordinate delay in releasing the claims on JFM Fund of vibrant JFM Committees for years together (e.g. Jabarra, Duguli Forest Range)
- Missing of Monitoring and Evaluation mechanism towards spearheading empowerment and entry point activities by JFM Committees.

The supply of raw materials of herbal products is affected by unsustainable and exploitative process stimulated by marketing protocols of pharmaceutical companies. These companies have encouraged inefficient, imperfect, informal and opportunistic marketing of medicinal plants. This has led to corresponding damages to conservation efforts by Forest Department.

Green Consumerism: Over Exploitation of Bio-resources at Micro Level

The forest dwelling communities of Chhattisgarh in interactive meeting with conservationists have prioritized different ecological challenges encountered by them during the last couple of years.

The villagers of Buharbada under Bhatua Medicinal Plants Conservation Areas (MPCA) of Kondagaon Forest Division, Jagdalpur district have raised serious concern over premature harvesting and transportation of trucks load of rare herbs like “Rasana” “Sarpagandha” (*Rauvolfia Serpentina*), “Velwa” (*Semecarpus anacardium*) “Malkagni” (*Celastrus paniculata*) by traders and their local agents at regular intervals. The pharmaceutical companies manufacturing medicated hair oil consume seeds of “Malkagni” in huge quantity that has led to over exploitation of habitat of this herb and its extinction. A good number of rare species are on the verge of extinction. Rare species like “Kalihari” (*Gloriosa superba*), “Lady Pipara”, “Bhojaraj” (*Flemingia nana*), “Tejaraj” (*Pimpinella*), “Sabarbhanj” , “Badesureya”, “Samar Kand”, “Hatikanda” and “Kundurkand” have been overexploited by traders and are missing from the habitat. Poor sense of community ownership of bio-resources coupled with inadequate empowerment process of MFP committees have facilitated local traders based at Keshkal and Makadi of Kondagaon in promoting long term bio-piracy activities since last couple of years. The macro level green consumerism driven market demands have stimulated lucrative bio-piracy activities and over exploitation of MAP habitat at grassroots within forest regions of this herbal state.

The growing market demand on certain species has not only led to scarcity of these herbs but also stimulated the practice of adulteration of raw materials by mixing of other look-alike, non-medicinal plants. The scarcity of “Geloy” (*Tinaspona cordifolia*) in the market has forced the local traders for over exploitation of the habitats of species like “Cherisingha” (*Crypsolepis buchananii*) for adulteration in raw materials to respond to the growing global demand of “Geloy” (*Tinaspona cordifolia*)

Green Consumerism: Organic Farming at Grass Roots

The growing global demand for organic food has been manifested in community efforts on experimentation of cultivation and export of organic paddy species with government patronage in adopted villages under Jabarra MPCA region in Duguli Range of Dhamtari District. The organic paddy species like “Dubraj” cultivated and exported through marketing outlets of “Sanjeevani” under patronage of Chhattisgarh Minor Forest Cooperative Federation Ltd. has revolutionised the organic movement at grassroots. The organic rice of “Dubaraj” variety is marketed by farmers at lucrative rate of ₹ 60/- per kilogram. This has added additional income to local farmers who have been motivated to revolutionise organic farming of paddy cultivation in a good number of forest villages. The positive reflection of global green consumerism drive needs to be replicated in other regions of the state for curbing massive use of chemical fertilisers and pesticides by farmers and to promote economic transformation at micro level.

Conclusion

A holistic management and participatory conservation action plan is needed to protect the rich biodiversity resources of the herbal state. The empowerment of JFM committees at villages through capacity building approach has proved efficient in curbing bio-piracy activities by middlemen (*Kochia*) and conserving MAP resources with collective sense of responsibility of the communities. The administrative slackness of Forest Department in granting transit pass (TP) to traders without physical verification of forest product materials or approval of JFM committees has facilitated transportation of rare herbal materials by traders in huge quantities. The medicinal plant based raw materials need to be marketed as nationalized minor forest produce instead of non-nationalised minor forest produce. The traders manage to obtain easy transit pass for transport and marketing of non-nationalised minor forest produce. The restriction needs to be imposed on marketing of these raw materials through herbal mandies.

The success stories of network of seven JFM Committees of Jabarra under Duguli Forest range need to be replicated in other regions. The micro-plan in these villages has been formed with active participatory approach of the villagers. The base line data has been generated for effective entry point

activities prioritized by villagers. Appropriate linkage has been made with local resources for conservation and compensation of loss due to closer of forest range. The interference of local agents of traders and their involvement with premature harvesting of medicinal plant resources has been restricted by collective action. The arrangement for issue of transit pass by forest officers to traders has been made for compulsory procurement of herbal materials from network of JFM Committees. Reformation of monitoring mechanism linked with empowerment process of JFM committees would check illegal transportation of Medicinal Plant Products from the state. Strict regulatory mechanism is needed on trading of medicinal plants so that mushrooming growth of trade centers on raw medicinal plant products can be regulated. The wide gap between Macro and Micro level policy framework very often creates bottlenecks in translating global and national environmental agenda into reality at grassroots. The provisions of National Biological Diversity Act, 2002, have not been given shape in good number of states. The State Biodiversity Board has been formed. The State level Biodiversity Cell, District Level Biodiversity Council and District Biodiversity Cells have not been formed. A very little effort has been made to evolve People's Biodiversity Registry at community level directed towards creation of biodiversity inventory as well as sense of collective ownership of the community on indigenous biodiversity resources around their territory. In absence of creation of these service delivery units at state and district level, the following activities of the agenda have been adversely handicapped.

- Research on biological resources and indigenous knowledge.
- Maintaining *in-situ* and *ex-situ* conservation of Medicinal Plant Species.
- Protection of Intellectual Property Rights on Indigenous Knowledge.
- Entering into agreement with bio-prospectors.
- Evolving benefit sharing mechanism with local community.

The supply and demand dynamics of global as well as national market can be balanced efficiently through translation of global agenda at grass root minimizing gaps between macro and micro level policy framework.

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LABELING OF GENETICALLY MODIFIED FOOD

VINITHA JOHNSON AND GEETANJALI SHARMA

Introduction

Genetically Modified Organisms (GMOs) can be said to be the rebirth of Frankenstein in the world of food shortage and increasing needs and claims of food security. Gregor Mendel has identified two types of GM-foods; one having undergone selective breeding and the second which utilizes rDNA techniques which is a more advance step involving the transfer of the gene from one organism and transferring it to another¹. The levels of functionality could be to either infiltrate pesticide resistance or to go a step further and add nutritive value.

In India the Department of Biotechnology was set up in the year 1986 under the Ministry of Science and Technology. The body is responsible for granting consent to conduct research and field-trials in the field of biotechnology². The Genetic Engineering Approval Committee (GEAC) is supposed to license the release of such organisms into the environment. It is also the authority for according food-safety approval for food products.³ Agriculture is basically a State (government) subject in India (the federal structure). The State Biotechnology Coordination Committees are the bodies

¹John S. Applegate, "Sustainable Development, Agriculture, and the Challenge of Genetically Modified Organisms", 9 *Ind. J. Global Legal Stud*, 207.

²Compulsory Labelling stipulated though - 1997 Amendment, through Commission Directive 97/35/EC, 18 June 1997, OJ L 169, 27 June 1997, pp. 73 ff.

³Raju, *Genetically Modified Organisms, Emerging Law and Policy* Found at <http://www.indiagminfo.org/information.htm>

operating at the State levels. The approval is granted for a period of four years. The Food Safety and Standards Act, 2006, is aimed at consolidating all food related concerns. Fraudulently labeled goods are covered under the Prevention of Food Adulteration Act (PFA) of 1954, with the PFA Rules of 1955.⁴

Article 21 of the Constitution of India puts forth the right to live meaningfully; such right will include in its purview the right to clean water and related rights. Consumer rights in India have been codified in the Consumer Protection Act, 1986 which deals with misrepresentation in case of an advertisement. Consumers have a 'Right to Know' the ingredients of the food they consume. This right of a consumer has been expounded in a civil writ petition demanding the banning of Coca-Cola and Pepsi Co. owing to the fact that their beverages were replete with pesticides. Even though the judgment held that the presence of pesticides was inherent in the water and not introduced through the Company's treatment, it was concluded that the customers deserve to know the details of the composition, the nature and quantity of pesticides and chemicals, if any, present in the product of the manufacturer.⁵

The paper enunciates the ideal labeling requirements which GM- foods must be subjected to in India and argues that given the controversy about GM foods it is imperative that consumers are given adequate information on the label. Otherwise GM food may fail in Indian market if not well communicated.

Purpose of Labelling

Labelling can be likened to a submission on the part of the producer which is at par with a declaration made to interested stakeholders in the light of accountability and must be viewed with the same lens. However, as per the author a clear distinction will have to be drawn between the labelling required for customs clearance purposes and that which reaches the consumer in terms of both requirements and costs concerned. Negative Labelling comes into play where technology has not evolved to the extent of ensuring that a product is 100 percent GM-ingredient free.⁶ A research scholar has described labelling as possessing the same functionality as a 'regressive tax'.⁷ Such labelling is intended to expose the manufacturer to a liability on grounds of

⁴USDA Foreign Agriculture Service, *Global Agriculture Information Network Gain Report Number IN9113* Indian: Food and Agricultural Import Standards and Regulations, Prepared by A. Govindan (New Delhi, 9-4-2009)

⁵*Santosh Mittal Vs. State of Rajasthan and Ors.* R.L.W. 2005 (1) Raj 486

⁶Study prepared by Diana Wong, *Genetically Modified Food Labelling*, Hong Kong Legislative Council Secretariat, retrieved from <http://www.legco.gov.hk/yr02-03/english/sec/library/0203rp05e.pdf>

⁷Rousu, Matthew and Huffman, Wallace(2001). *GM Food Labeling Policies of the U.S. and its Trading Partners*: Matthew Rousu and Wallace Huffman, Department of Economics, Iowa University, Available on the World Wide Web.

misrepresentation and hence shifts the burden of regulation from the authorities to the producer itself.

Indian Labeling requirements

A “label” as enunciated by a notification by the Directorate General of Foreign Trade means any written, marked, stamped, printed or graphic matter affixed to or appearing upon any commodity or package containing any commodity which gives specific and authoritative information about the commodity/goods or contents therein so as to enable its identification or recognition and could distinguish it from other products. The mark or marking could include a device brand, heading ticket name signature word, letter, and numeral shape of goods.⁸ Part VII of the PFA Rules, 1955, and the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 deal with labelling. The requirements of the label include amongst others a green circle for vegetarian products, the date of expiry, presence of coloring matter, usage of processes such as irradiation etc. There are special requirements in place for special products like baby foods. The point of labelling is required to be performed prior to the customs clearance and the languages allowed are Hindi and English. Absence of a ‘self declaration’ that ‘imports are biotechnologically engineered’ could result in penal action under the Foreign Trade (Development and Regulation) Act, 1992.

Indian Structure

A draft rule was issued under the Prevention of Food Adulteration Act which foretells the possible stance of India with respect to labeling. India always wanted to engage in mandating labeling requirements. However, the trading interests with different countries play a role.

1. Very wide coverage of the foods to be labeled makes India one of the strictest regimes in the world – trace presence, processed foods and so on.
2. The presence of GM foods tag does not show any relation to the regulatory authorities leading consumers to distrust the same.⁹
3. India also requires country of origin approval to be marked on the package.¹⁰

⁸General Commentary on Labelling and Marking DGFT Notification 44-(RE) Dated 24 November 2000. Labeling Rules for Imports state requirements which need to be fulfilled prior to customs clearance.

⁹Gruère, G.P, and Rao, S.R. (2007), “A Review of International Labeling Policies of Genetically Modified Food to evaluate India’s Proposed Rule”, *AgBioForum*, 10(1), 51-64, available on the World Wide Web: <http://www.agbioforum.org>.

¹⁰Indian Draft Rule 37, Excerpt from the Draft Rules to amend Prevention of Food Adulteration Rules, 1955.

CODEX and India

The Codex Alimentarius (CODEX) Commission is an international food standards organization established in the year 1962 which although does not constitute hard law, but is used in negotiations by the World Trade Organisation. The Ministry of Food Processing Industries (MFPI) heads the Codex Shadow Committee on Labelling. The Codex Committee on Food Labeling is hosted by Canada. It reviews labelling policies and includes within its purview the advertising policies and possible incidence of misrepresentation. The implementation of Codex Standards follows a mode of consensus after amending an initial draft agreed on by the participating members.¹¹

General Legal Framework for GMOs

The United States and Canada lean towards a ‘voluntary labeling policy’ whereas the European Union, Australia and Japan tend towards ‘mandatory labeling’. Despite various attempts to reach a consensus on issues such as negative labeling, threshold labeling as a result of adventitious inclusion of the ingredients etc., it has been widely observed that no consensus can be achieved on this issue.¹² Cartagena Protocol on Bio-safety primarily reiterates the precautionary principle requiring the 130 signatories to engage in efficient research prior to unleashing a particular genetically modified product into the ecosystem of that trading environment. This allows for the creation of trade restrictions even in the absence of scientific proof as to the adverse effects regarding the same. The ‘teeth’ of the protocol however, operates only on imports of such goods. The OECD task force seeks to harmonise the regulatory process for these ‘Novel Foods’ and stress on their safety standards by taking a product-by-product approach.

The trading interests of the largest markets worldwide will reveal that the countries which produce GM-Foods (the United States, Argentina and so on) are those who are against mandatory labeling, whilst those countries which import Genetically Modified Foods are wary about the same and hence demand compulsory labeling. The possible impacts could be on the human health and encompasses environmental impacts – there exists concerns as to which effects are specifiable, definite, should be communicated and to what extent. The related parties could include consumers, farmers who are tangentially hurt in an environment of trade and so on. Product Liability negligence was imputed on the authorities who had been engaged in the

¹¹*Codex Alimentarius*, Web site: <http://www.fao.org/codex/manual/Manual12ce.pdf>

¹²Phillips, P.W.B., and McNeill, H. (2000), “A Survey of National Labeling Policies for GM Foods”, *AgBioForum*, 3(4), 219–224. Available on the World Wide Web: <http://www.agbioforum.org>.

¹³Zambia – United Nations, <http://www.ifg.org/pdf/cancun/issues-GE%3BWTO&EUmoratorium.pdf>, International Forum of Globalisation

licensing of the product without having taken into consideration the possible impact. This brings us to duly consider the point on precautionary principle¹³ and whether or not application of the same is admissible in the context of restraining trade in an international trading environment.¹⁴

Regulatory Framework

United States (Permissive Approach)

The three-fold framework has been both cited as leading to ‘confusion’ and being ‘thorough’. The United States Development Authority (USDA), the Environment Protection Agency (EPA) and the Food Development Agency (FDA) all handle different aspects of GMOs – whether they can be licensed to be planted, the possible harm to the environment and the consumerist health concerns. The test employed is that of ‘substantial equivalence’ where the goods fall under ‘like’ products. The United States mandates self-regulation, apparently not engaging in pre-assessment testing and not requiring labeling, allowing the players to decide for themselves if they want to engage in the same (Honour System) because the goods are GRAS (Generally Recognised as Safe)¹⁵.

European Union (Precautionary Approach)

Even though the EU after having caused a significant dent in the resources due to the farmers of the United States, concluded that GM-Foods were not unsafe to consume but still they continued to insist on mandatory labeling.¹⁶ Japan engages in Mandatory Health Testing (Pre-Assessment) and has a threshold limit of 5 percent by weight while it is 1 percent by weight in case of Australia. Japan also puts forth the ‘dominant ingredient’ idea. Brazil banned import of such goods along with the support of Greenpeace. On a consideration of who consumers trust and it has been understood that consumers trust NGOs. Hence, it is better for these companies to engage in thorough and complete sustainability reporting. However, the downside is that revealing such excessive details which are not easily understood by the consumers are an effective manner of alienating a large consumer base. This is the delicate balance which has to be struck. China is the only developing country with a mandatory labeling policy in place. Initially welcoming such innovations, China gradually turned demanding and exercised more control owing to the trading interests with the European Union.

¹⁴In re StarLink Corn, 212 F. Supp. 2d

¹⁵http://www.fsis.usda.gov/about/labeling_&_consumer_protection/index.asp [Food Safety and Inspection Service, United State Department of Agriculture]

¹⁶Moon, W., & Balasubramanian, S.K. (2003), “*Is there a Market for Genetically Modified Foods in Europe? Contingent Valuation of GM and Non-GM Breakfast Cereals in the United Kingdom*”, *AgBioForum*, 6(3), 128-133. Available on the World Wide Web: <http://www.agbioforum.org>.

The following are illustrations of the change in the labeling policy with the change in trade interest.

United States	Australia
<ul style="list-style-type: none"> • 1992- US government issues notification stating that there is no need for labelling if the GM foods are substantially similar • 1996- GM foods relatively unknown worldwide • 2001- ‘Guidance for Industry’ statement on Labelling issued by the FDA when exhibiting different characteristics. 	<ul style="list-style-type: none"> • 2001- standards similar to the EU on 1% genetically modified ingredients
EU	Japan
<ul style="list-style-type: none"> • 1997 – Novel Foods Regulation [state that it is not harmful to human health; mention when <i>detectable</i> traces of GM foods¹⁷] • 2000- Modified Standard enunciating threshold limit of 1% genetic modification in the ingredient • 2001- stricter measures, also ensuring traceability all through the food chain 	<ul style="list-style-type: none"> • 2001 – Labelling for 28 specified products • Content of label should specify ‘genetically modified’ or ‘no GMOs present’

Harmonisation of Food-Labeling Policies Worldwide

Ultimately it is the consumer who is affected by consuming GM foods and therefore, his interest has to be kept in mind. Effects on the human health could include both allergenicity, unknown hazards giving rise to conflicting interests in trading interests and the consumer interests. The problems with requiring extensive labelling include implementation and transition time and the cost associated with the labeling is quite high depending on the level of detail required.

The United States has always taken the stand ‘innocent until proven guilty’ with respect to requiring labeling for GM-foods. It has submitted to the WTO that such framework will encourage fraudulent labeling claims and undermine consumer confidence. However, the right of the consumer to be informed has been ignored in this aspect. On an exploration of the reasons as to why

¹⁷Compulsory Labelling stipulated though - 1997 Amendment, through Commission Directive 97/35/EC, 18 June 1997, OJ L 169, 27 June 1997, pp. 73 ff.

such information has been denied to be ‘unnecessary’ and ‘futile’ and ‘cumbersome’ could discover that consumer sentiments world-over differ vastly and an understanding of the same could be primordial in designating trading interests. The triangle of the interested parties – the trading members, the consumers and the regulatory organizations whose role is not to be downplayed given the claims against them for both increasing trading barriers by the trading members and the consumers as in the case of Starlink for having carelessly given a license to operate and function. To arrive at a general harmonization with respect to labeling may not be the answer – even though requiring that a general consensus be arrived at with respect to the regulatory procedure is verifiable. Contrasting two countries such as the European Union and the United States on the labeling requirements of the policy would lead us to a conclusion that there can be no uniformity reached, without having substantially suffered unnecessary losses in both the countries.

Indian Consumers

Generally consumers consider that traditional foods (that have often been eaten for thousands of years) are safe. When new foods are developed by natural methods, some of the existing characteristics of foods can be altered, either in a positive or a negative way. According to the surveys in 2001 and 2003 by the Pew Initiative on Food and Biotechnology, an independent biotechnology group, only one in five people thinks he or she has eaten a genetically modified product.¹⁸

The Retail Phenomenon and Indian Consumers

The retail phenomenon - Economic Intelligence Unit (EIU) 2005 estimates the retail markets in India will grow from \$ 394 Billion in 2005 to \$ 608.9 Billion in 2009. Juxtaposing the same with an informed electorate – the mention of ‘GM Foods’ or ‘Genetically Modified Foods’ might discourage the consumer base in India especially unless incentives are offered to try products. Third party certification has been identified by various authors in the United States to further the case for GM Foods. This could serve to annul the arguments raised by GM activists.¹⁹

Country Specific Preferences

On difference in consumer preferences worldwide, United States consumers require nutrition labelling to be detailed to a standard which was challenged by the EU. In defence the United States put forth the unique health

¹⁸Pew Initiative on Food and Biotechnology, Factsheet: Genetically Modified Crops in the United States (2004) [hereinafter Factsheet], available at <http://pewagbiotech.org/resources/factsheets/display.php3?FactsheetID=2>

¹⁹Henry I . Miller and Peter Van Doren, *Food Risks and Labelling Controversies*, retrieved from <http://www.cato.org/pubs/regulation/regv23n1/miller.pdf>

characteristics, and nutrition conscious nature of its people. Draft food labelling rules were released by Food Standards Australia New Zealand (FSANZ) on 12 August 2005. Provisions were made for mandatory country of origin labelling (CoOL).²⁰ Of the multiple directives issued by the European Union, the specifics related to specifying possible allergens on the list of nutrients.²¹ A study in the European Union found the consumer's right to know was not being adequately implemented in the absence of redressal agencies. Mandatory origin labelling has also been highlighted with specific reference to EU consumers.²² Further the visibility, the linguistic consideration, the font size and 'front of pack' requirements were also discussed.

Categories of food such as baby food and ketchup portray the cautious attitudes of the consumers along a spectrum which needs to be taken note of – consumers will not in an attempt to save money buy products which contain GM ingredients where the final consumer is a baby. In the United States owing to retailers removing GM-foods from their shelves, there resulted a situation wherein farmers cancelled their order of Genetically Modified seeds as did major manufacturers stop using such ingredients in their products. However, the costs of foods with these ingredients are lesser than those grown without and it is harder to achieve predictability and precise results with any other mode of selective breeding with as much accuracy. The concern which rises here is whether the regulatory authorities should be playing a more proactive role in promoting such foods after having ascertained to a certain limit that they are not harmful so as to induce consumer trust in them.

The consideration which flows is that the regulatory authorities might lack the technical expertise to assess the products which relates back to the rationale of labeling which apart from informing consumers also places a duty on the producer to confirm the details which he represents on the label. What is the general impact of viewing such a label on the cover of a food one might have wanted to purchase where it has not been adequately communicated that the same has been approved by the requisite governmental regulatory body has been largely negative – it has also opened the doors to a large amount of criticism by Anti-GM activists.

²⁰Michael Priestley, "Country of Origin Labelling: Are Consumers Willing to Pay More for Australian Products?", *Economics, Commerce and Industrial Relations*, Section 5 September 2005, Research Note no. 8 2005–06

²¹Article 6 Paragraph 11 of Directive 2000/13/EC, Directive of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs OJ L 109, 6.5.2000, p. 29.

²²Evaluation of the Food Labelling Legislation as submitted by the European Evaluation Consortium EFFL-Draft-Final-TEXT-20Nov03-FINAL-ex summary.doc

Costs of Mandatory Labeling

There have been studies conducted in various countries world over dealing with the allocation of costs as a result of increased labeling requirements and the doling out of portions of the increase to the consumer and handling production costs. The tradeoff which is generally arrived at includes a calculation of the market risk and the possible impact of the labeling on the product which could prove to be negative as it is in most cases and the lower costs of the GM ingredients in the foods.

The second consideration is whether there could be different prices for the products with GM ingredients and the products without thus throwing open the choice to the market rather than the producers themselves.

Interests in Trade – Challenges to Labelling Requirements

The WTO case on Biotech Products was supposed to be decisive in allowing for the application of the precautionary principle in restricting trade on ending the moratorium imposed by the EC.²³ However, the labelling requirements were the answer the EU gave to removing such barriers. It may even be understood that the trade barrier is being transferred from the regulatory organs of the State to the market forces. It has been observed that the market for GM foods in the EU is not very bright.

Import control systems of developing countries are of insufficient capacity and technical assistance is due to the country for implementing the same.²⁴ There were ideas to allow for a single certificate to be applicable for an entire consignment.²⁵ Food safety has been a primary mandate as considered by the World Health Organisation and this is in conjunction of transferring risk across the food chain.²⁶ Studies have shown that selective breeding through genetic modification is more predictable and safe than other scientific methods. However, threats of conversion while using such seeds, allergic reactions etc. can hardly be precluded to the interest of the layman.

TBT and SPS Agreements

The Sanitary and Phytosanitary Measures (SPS) agreement is a two-edged dagger. On the one hand it is an efficient mechanism for protecting the health of

²³Steve Suppan, *U.S v. E.C Biotech's Case WTO Dispute Background*, A publication of The Institute for Agriculture and Trade Policy (Trade and Global Governance Program)

²⁴*Report of The Fifteenth Session of The Codex Committee on Food Import And Export Inspection and Certification Systems*, Mar Del Plata, Argentina, 6 -10 November 2006

²⁵Proposed Draft Revision of the Guidelines for Generic Official Certificate Formats and the Production and Issuance of Certificates (Agenda Item 3a) Cx/Fics 06/15/3; Cx/Fics 06/15/3-Add

²⁶Food Safety News, an electronic newsletter published regularly by the WHO Food Safety Department in Geneva (<http://www.who.int/foodsafety/publications/newsletter/9/en/>)

the citizens, animal, plant life and health, on the other hand it warns against using such measures to create trade barriers. The Technical Barriers to Trade Agreement (TBT) on the other hand has been instrumental in extending a claim towards labeling requirements as formulating a technical barrier to trade. Rationale of a mandatory labelling requirement can be opposed by the TBT (Technical Barriers to Trade) Agreement, Article 2 – when such a requirement restricts international trade more than is necessary to comply with a requisite, legitimate objective, taking account of the risks non-compliance would create. Alternatively Article 2 of the SPS (Sanitary and Phytosanitary) Measures Agreement states that a labelling requirement designed to protect human, animal or plant life if undertaken without relevant scientific evidence would deem it illegal. Article 3 of the SPS Agreement establishes the validity of referring to the CODEX recommendations for consideration by the WTO Dispute Settlement Panel.²⁷

Article 5 requires members to ensure such provisions are not more trade-restrictive than it is absolutely essential they be taking into account economic and technical feasibility. [Whether referring to the State's capability or that of the trading members]. The second case would be handled under trade facilitation measures also. If it is understood to mean the State's capacity, developing countries especially should be allowed greater leverage to indulge in strict labelling requirements, both to provide for consumer knowledge and to transfer the burden of verification and approval. The United State Trade Representative has brought about the defence that in the absence of an identified and documented risk, it would be illegal to require labelling of soyabeans which are contained in a product as was required by the European Union²⁸- this was directly related to the precautionary principle in this case, as also responsibility of the State to ensure safety of the foods.

Consumer Interest

Sometimes when it is required that the production process be specified the same can be directly linked to the belief that the consumer is conscious of his contribution to the environment and so on. The product ingredients specifications might have purely dealt with the situation wherein the consumers who are health conscious want to be informed of the presence of such ingredients in the food processed. The mandatory labeling requirements which were undertaken by the EU led to the retailers making a choice to remove GM foods from their shelves. As per the Tata Energy Research Institute (TERI) Europe report as regards '*Who Do Indians Trust?*'²⁹, the results varied among

²⁷World Trade Organization. (2006). Notifications by WTO members to the SPS and TBT. Retrieved March 2006 from <http://www.wto.org>.

²⁸*Supra* Note 19

²⁹Shi Shankar Tripathi, "*Corporate Social Responsibility: An effective Tool in Gaining Mindshare of the Customer*", *The ICAI Journal for Corporate Governance* 6, (1) 30, (2007)

sections of the society. The general public believes in religious groups and Media. As per traditional Indian values, the way the Indian consumer regards the industry can be understood irrespective of the level of literacy possessed. Dharma is composite in Loka Sangraha (public good), Swartha Prartha (seeking your gain and catering to the welfare of others), and Kausalam (efficacy in using essential resources). Information has to be conveyed to the diverse stakeholders they cater to and whose trust is primeval to their doing well.³⁰ Hence, the key is to report and advertise to the relevant audience.

India's Concerns in CODEX

Agenda item 5(a) on the discussion agenda related to the draft amendment to the General Standards for the Labelling of Prepackaged Foods.³¹ Amongst the purposes enumerated, the consumer choice is included with consumer health, and protecting interests in trade. The scope enumerated is wide and includes processed from GMOs even if the same is not present in the food, gene technology and substantially different from the counterparts. The focus was not on safety concerns in the nature of trade but for informing the consumer.³² It was observed that there were sharp differences between countries on continuance of work relating to the same. The United States wanted to terminate the research whereas India was of the opinion that the base work having been done, the same should continue.

'Modern Biotechnology' or 'Genetically Modified'? It was suggested that the foods be denoted by 'modern biotechnology' as opposed to 'genetically modified foods' while labelling a genetically modified organism. 'Modern Biotechnology' was resisted by the Baby Food Network as being promotional and it was suggested that 'genetically modified' remain in the definition to ensure minimal confusion for the customer.³³ This is in direct contrast with the case of voluntary labelling the US government has stated that 'prepared through genetic engineering' is preferable to 'genetically modified' considering consumers may believe that certain traits were changed.

Specifics in Labeling: The ingredients of the label are supposed to include nutritional value, intended use and composition. Threshold levels are stipulated

³⁰John Stubbs, "Marketing must Reflect and Interpret Changing Consumer Culture", *Ethical Corp.*, (2002)

³¹(Proposed Draft Recommendations for the Labelling of Foods Obtained through Certain Techniques of Genetic Modification/Genetic Engineering (Proposed Draft Guidelines for the Labelling of Food and Food Ingredients Obtained through Certain Techniques of Genetic Modification/Genetic Engineering)

³²*Report of the Thirty-Fourth Session of the Codex Committee on Food Labelling Ottawa, Canada, 1 – 5 May 2006, Available on the World Wide web*

³³6 (a) *Draft Amendments to the General Standard for the Labelling of Prepackaged Foods: Definitions (Step 7), as suggested by the International Baby Food Action Network CX/FL 09/37/10-ADD.1*

for the requirement of mention of both accidental inclusion of the GM foods in the processing of other goods and the inclusion below a certain level.

Misrepresentation Standards: The misrepresentation claims flow from the earlier standard on Codex General Standard for the Labelling of Prepackaged Foods and the Codex General Guidelines on Claims, final product characteristics must be denoted.

Implementation Mechanism: The final consideration deals with the implementation and cross-checking of the labelling performance by certain scientific techniques validated detection methods; establishment of verification (for example, documentation) systems; and efforts for the development of supporting capacity and infrastructure.

The efforts to further mandatory labelling are to be undertaken by a group of countries including India with Norway as the forerunner.³⁴

Food-Labeling Policy

Substantial equivalence based on 'like' products is the first debatable point where it is stipulated that a nearly similar market found in the domestic market would warrant that the GM-food is treated on a similar platform. It has to be observed that India requires the ingredient of publishing the approval from the country of origin. It is relevant to ponder on how tobacco remains a sought after good, despite the negative shroud surrounding it, ban on advertising and the large 'label' which seeks to drive away customers.

The consumer movement has to consider as to how one gradually evolves or degenerates into wanting to be more aware of the food one consumes. In India, the increase of the diet-conscious nutrition labelling is directly in the spotlight as well as labelling dealing with corporate social reporting in case of genetically modified foods. The role of the retailer in removing those goods which are not customer-friendly or wanted by the customer also ensures the failure of these goods in the market. Another interesting consideration here is the factum of distinguishing between GM Foods which are designed for direct intake and those which are feed, or those utilized in the further processing of foods and also whether the consumer's interests are weakened as a result of the product in question merely constituting 'feed' and not 'food'. It is, therefore, suggested that there has to be a two system labelling requirement-one for the system of imports and the second, once the goods have entered the country with the focus being on the end user and communicating the relevant information to them. The costs of the operation can be balanced out by removing irrelevant information during transition. The labelling costs with respect to the import can also be reduced if mass labelling is performed on the contingent of goods package-wise. The labelling on the individual goods

³⁴Report of the Indian Delegation on the Thirty-Fourth Session of Codex Committee on Food Labelling, Ottawa, Canada (1-05 May 2006), Available on the World Wide Web

might be delegated to the level of the retailer.

The need is to evolve appropriate strategies and frame regulations as the common consumer will not be able to understand the technical details on the GM food label.

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(LACK OF) CONCERN FOR ENVIRONMENT UNDER LAW OF CONSUMER PROTECTION: A BLACK HOLE IN THE UNIVERSE OF RIGHTS JURISPRUDENCE

DEBASIS PODDAR

Introduction

At the threshold of this effort, it is imperative to spend few words to set the effort in proper perspective. Nowadays, in the wake of emerging passion for right(s) of consumer, a classical juridical equation of Hohfeld is so often than not subject to popular oblivion even within our legal fraternity- more so out of overarching articulation of the occidental mode of rights jurisprudence extended to every sundry sphere of the oriental praxis- jurisprudence of consumer protection being one of them.¹ In our anxiety for vulnerability of innocent individual consumer in the wake of well organized vested interest of globalized market forces, another side of the coin is conveniently set aside to escape jeopardy within otherwise neat texture of consumer protection. This another side contains minimum morality of consumer towards larger interest of social order which includes duty of consumer to protect habitable environment and reduce human induced climate change.

To initiate this effort with jurisprudential reference of Salmond, the term

¹See generally, Wesley Newcomb Hohfeld, “*Some Fundamental Legal Conceptions as Applied in Judicial Reasoning*”, *The Yale Law Journal*, Vol. 23, No. 1. (Nov., 1913), pp. 16-59; Wesley Newcomb Hohfeld, “*Fundamental Legal Conceptions as Applied in Judicial Reasoning*”, *The Yale Law Journal*, Vol. 16, No. 8. (Jun., 1917), pp. 710-770.

'right' refers to individual or collective interest recognized and protected by law.² By and large, there is no dispute over this rudimentary conception of right. Under given definition of right, let us explore related concepts, e.g., duty and wrong as per the juridical equation of Hohfeld which poses right as no unique legal grandeur but subject to corresponding duty being a factor working for its efficacy. According to Hohfeld, 'right' and 'duty' constitute jural correlative of one another.³ To theorize the same, this may safely be presumed that existence of one implies that of another. On the contrary, however, existence of 'right' refers to absence of 'no right'. Together 'right' and 'no right' constitute jural opposite of one another and thereby construct ontology of wrong as an instance of violation of right to invite claim for action toward legal remedy.⁴ In legal parlance, therefore, consumer is entitled to right to avail full value of one's own hard-earned resources and, at the same time, a seller of goods or a service provider is under corresponding duty to offer no defective goods or deficient service to consumer. While this is a duty of seller, any deviation from the same constitutes wrong and, in consequence, attracts sanction (civil or criminal) under existing law for the time being in force.

Under present legal regime vis-à-vis consumer protection, the jural equation above mentioned is well recognized in India despite all its major limitations in terms of implementation. Fault line within scheme of consumer protection lies elsewhere. There is no existence of other jural equation which contains a duty of consumer or a wrong committed by consumer through deviation from such duty which may attract legal sanction. Out of myopic worldview, however, the Consumer Protection Act, 1986 of India (hereafter referred to as 'the Act') falls too short of its vision to address such socio-legal issues of universal concern in a more comprehensive manner.

Such shortfall in terms of legislative vision seems strange atleast in India. Duty and not right was the fulcrum of juridical scheme in Indian antiquity.⁵ In fact, discourse of rights is a unique contribution of common law system in

²P.J. Fitzgerald (ed.), *Salmond on Jurisprudence*, 12th ed., Universal Law Publishing Co. Pvt. Ltd., Delhi, 1966, Indian economy reprint 2002, p. 217.

³See Wesley Newcomb Hohfeld, "Some Fundamental Legal Conceptions as Applied in Judicial Reasoning", *The Yale Law Journal*, Vol. 23, No. 1. (Nov., 1913), p. 30; Wesley Newcomb Hohfeld, "Fundamental Legal Conceptions as Applied in Judicial Reasoning", *The Yale Law Journal*, Vol. 16, No. 8. (Jun., 1917), p. 710.

⁴*Ibid.*

⁵See generally A.L. Basham, *The Wonder that was India: A Survey of the History and Culture of the Indian Sub-continent Before the Coming of the Muslims*, Rupa and Co., Calcutta, 1995; Fali S. Nariman, *India's Legal System: Can It be Saved?* Penguin Books, New Delhi, 2006; M. Rama Jois, *The Legal and Constitutional History of India*, N.M. Tripathi Pvt. Ltd., Bombay, 1990; Hemchandra Raychaudhuri, *Political History of Ancient India: From the Accession of Parikshit to the Extinction of the Gupta Dynasty*, 7th ed., University of Calcutta, 1972.

this subcontinent. Also there is contribution of international legal regime to this end being a product of its renaissance. For all practical purposes, therefore, this article is an effort to offer a constructive critique of the Act for betterment of legal regime through prescription of green consumerism to be included in the years ahead.

Hierarchy of Rights Jurisprudence

Like other branches of law, rights jurisprudence does maintain a hierarchy of rights. Accordingly, certain rights receive status of preemptory norms and invariably prevail over other norms while in irreconcilable conflict with the same. For convenience of this effort, a term "*jus cogens*" used in public international law may be hypothecated to refer to preemptory rights which may prevail over others in cases of irreconcilable inconsistency.⁶

With no prejudice to consumer protection, there may unlikely be confusion while there is question of preference between protection of environment and that of consumer. Indeed consumer deserves legal protection for plenty of socio-economic reasons- more so in the wake of a globalized world order-being conversant with jurisprudence of consumer protection since last decade, the author may put more value addition to inventory of consumer protection. However, a contentious legal issue hereby put forth is more fundamental in terms of comparative human rights jurisprudence. A habitable environ for *homo-sapiens* and other life forms on the Earth deserves better protection for understandable reasons as per Latin maxim- *salus populi suprema lex*⁷ which puts paramount priority to collective interest of all over that of an individual. Under hypothetical circumstance, human civilization may somehow manage to continue despite compromise with consumer protection while a compromise in terms of physical environ conducive for sustenance of life on one and only living planet known so far may not be prudent at all. After all, consumer-howsoever vulnerable may be- constitutes a part in terms of extended family of all living beings on the Earth. As a trustee of life in this planet, therefore, consumer as responsible human being cannot indulge in evil practices which may put all life forms on the dock.

Further, consumer is not relevant to habitable physical environment on the Earth, but the latter is relevant to the former as well as to others on the Earth including goods' producers, service-providers along with all other members of human population. Indeed that does not mean that consumer protection may take backseat leaving steering wheel to greater concern for environment; rather an axiomatic truism lies in the perception that all rights are unique in terms of their respective perspectives. However, environmental

⁶See Article 53, *the Vienna Convention on the Law of Treaties*, 1969.

⁷*Trayner's Latin Maxims*, 4th ed., Universal Law Publishing Co. Pvt. Ltd., Delhi, first Indian reprint 1997, p. 562.

concern may be considered to be an imperative requirement of consumer protection as consumer oneself needs habitable environment to continue on the Earth. In one's own interest, therefore, consumer can no longer be allowed to harm habitable environment on the Earth with impunity- a similar rationale for strict prohibition on consumption of narcotic drugs and psychotropic substances consumption of which offer lethal effect(s) on consumer.⁸

Juridical Underpinning of Environmental Protection

A cursory reference of *jus cogens* set earlier requires brief details to move ahead with the moot point of this effort. A theoretical construct of public international law, *jus cogens* refer to a set of peremptory norms of public international law, any deviation from which constitutes anathema toward international legal order. A classic instance of the same may be illustrated through citation of the International Covenant on Civil and Political Rights, 1966 (hereafter referred to as the ICCPR) through which a set of inalienable human rights is immune from violation under any circumstance including state of emergency.⁹ In last few decades, post-war world experienced cases of humanitarian intervention of the Security Council under the auspices of the United Nations. There is no overt reference of environmental protection as an integral part of *jus cogens* to this end. But such an inclusion through a creative interpretation of Article 4.2 of the ICCPR may hardly be subject to concerted criticism in post-Rio world.

In its judgments on a series of contentious cases vis-à-vis nuclear tests, the International Court of Justice (hereafter referred to as the ICJ) expressed its concern for environment irrespective of other areas of its concern.¹⁰ Despite its pronouncements not being encouraging for environmental advocacy- arguably for diplomatic wire-pulling on behalf of defendant state- the Court has repeatedly asserted its apprehension over human-induced deterioration of habitable environment and thereby contributed to the then international environmental jurisprudence in post-Stockholm world.¹¹ Of late, the ICJ has

⁸See generally, the Narcotic Drugs and Psychotropic Substances Act, 1985.

⁹See Article 4, the ICCPR, 1966.

¹⁰Nuclear Tests cases, e.g., *Australia v. France* judgment (general list no. 58, dated 20 December 1974) and *New Zealand v. France* (general list no. 59, dated 20 December 1974).

¹¹“As the United Nations Scientific Committee on the Effects of Atomic Radiation has recorded in its successive reports to the General Assembly, the testing of nuclear devices in the atmosphere has entailed the release into the atmosphere and the consequent dissipation, in varying degrees throughout the world, of measurable quantities of radio-active matter. It is asserted by New Zealand that the French atmospheric tests have caused some fall-out of this kind to be deposited, *inter alia*, on New Zealand territory; France has maintained, in particular, that the radio-active matter produced by its tests has been so infinitesimal that it may be regarded as negligible and that any fall-out on New Zealand territory has never

entertained a contentious case, the first case of its kind, with overt bearing on environment.¹² The case is on emerging jurisprudence of Transboundary harm propounded under the auspices of International Law Commission (hereafter referred to as the ILC).¹³ This is submitted that under given threat of climate change the ICJ is left with no other option but to allow such cases in collective interest of international community.

Even within national jurisdiction of the Republic of India, there are many judicial precedents in favour of a liberal extension of the fundamental right to life¹⁴ to include the right to environment as a virtual fundamental right. The Supreme Court of India went to an extent to declare that any disturbance of the basic environmental elements, namely air, water and soil, which are necessary for life, would be hazardous to life within the meaning of Article 21 of the Constitution.¹⁵ Such a progressive judicial position of the Court is culmination of a prolonged discourse since the first environmental litigation of its kind during mid-eighties.¹⁶ Interestingly enough that such an epiphany occurred long after inclusion of a directive principle of state policy towards protection and improvement of environment and safeguarding of forest and wildlife.¹⁷ Whether the scripture of Article 48A fell on deaf ears due to its genesis being a condemned constitutional amendment is a point apart. The

contd..

involved any danger to the health of the population of New Zealand. These disputed points are clearly matters going to the merits of the case, and the Court must therefore refrain, for the reasons given above, from expressing any view on them.”

The ICJ judgment in the Nuclear Tests case (*Australia v. France*), on 20 December 1974, paragraph 18. Also the ICJ judgment in the Nuclear Tests case (*New Zealand v. France*), on 20 December 1974 paragraph 18.

¹²The International Court of Justice,
Composed as above,

... ..

Having regard to the Application filed in the Registry of the Court on 31 March 2008, whereby the Republic of Ecuador instituted proceedings against the Republic of Colombia in respect of a dispute concerning “Colombia’s aerial spraying of toxic herbicides at locations near, at and across its border with Ecuador” which “has already caused serious damage to people, to crops, to animals, and to the natural environment on the Ecuadorian side of the frontier”;

... ..

Reserves the subsequent procedure for further decision.

The ICJ order in the case concerning aerial herbicide spraying (*Ecuador v. Colombia*) on 30 May 2008.

¹³See generally, draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, 2006 adopted by the ILC at its fifty-eighth session, in 2006.

¹⁴See Article 21, the Constitution of India, 1950.

¹⁵*M.C. Mehta v. Kamal Nath* (AIR 2000 SC 1997).

¹⁶*Rural Litigation and Entitlement Kendra v. State of U.P.* (AIR 1987 SC 359).

¹⁷See Article 48A, the Constitution of India; as per the Constitution (Forty-second Amendment) Act, 1976.

fact is stranger than this fiction in a sense that even a decade after environment becoming a concern for formulation of state policy in India, a judicial process initiated its odyssey toward elevation of right to pollution-free environment to a fundamental right. This is a classic illustration of rights-centric inertia of apex judiciary in India after the occidental legal heritage out of its colonial legacy. Accomplished in good faith, the judiciary follows footprints of the rights jurisprudence predominantly emanated from the West and thereby abandoned indigenous legacy of Indian subcontinent. Perhaps the emerging international conscience since Stockholm Declaration, 1972 may be instrumental to such a judicial process. In ancient India, however, duty and not right was the *mantra* of its juridical system.

Juridical Trajectory of Consumer Protection

Under modern welfare paradigm of state as omnipotent political institution, consumer as a community becomes an increasingly important stakeholder of the existing system due to its contribution to the market economy around which its political economy revolves. Even from the reverse perspective of goods' producer and service provider, therefore, protection of consumer is an imperative requirement and deserves priority in their own interest. For a market economy to continue, consumerism ought to be encouraged, even if not pampered. Defective goods and deficient services discourage the very ontology of consumerism which is, in its essence, an engineered state of mind artificially motivated for consumption at random of whatever material resources available in market. Under law of consumer protection, however, consumer means any person who buys goods or avails services for a consideration, etc.¹⁸ As an instrument for maintenance of *status quo*, or for whatsoever reason may be, legislative instruments so often than not offer simplistic definitions (and thereby bypass some critical underpinnings of the same as a matter of convenience) and the Act is no exception at all to this end. Even under the given definition of consumer, there are strategic economic agenda underlying in use of its language by and large in tandem with the epistemology of capitalism.

This is axiomatic truth that capital is locomotive of contemporary system. Lion's share of capital is accumulated in few hands and driven by the force of accumulated capital. More the accumulated capital will be strong; better will be the state of affairs in the affairs of state- at least in its theory.¹⁹ A consumer contributes to the process of accumulation and thereby becomes an integral part of this chain. Nowadays there are two untoward trends which pose

¹⁸See section 2(1)(d), the Consumer Protection Act, 1986.

¹⁹For details, refer Adam Smith, *The Wealth of Nations* (as excerpted by A.C. Kibel). Available in: <http://www.fcs.edu.uy/enz/desarrollo/THE%20WEALTH%20OF%20NATIONS.pdf> accessed on October 2, 2009.

potential threat to this chain. First, after the decline of erstwhile second world under the leadership of the USSR, hostile public resistance toward unfair trade practices has virtually collapsed in India in the wake of organized vested interest of the business world. Second, unlike earlier era, the community of entrepreneurship prefers cooperation (read nexus) rather than competition. This is more so in cases of giant entrepreneurship and, so often than not, intended toward the detriment of small entrepreneurship. Together these two pose potential threat to consumer which cannot be met only by the Act. No wonder that the Competition Act, 2002, is in operation to complement and supplement the Act.

After study of the crucial role of consumer as a player in market economy, let us come back to classical rights jurisprudence including human rights. Consideration to be offered by consumer is a part of one's own resource—either hard earned by oneself or acquired by one through gift, succession or otherwise. Whatever the case may be, while offering a consideration for goods or services, consumer is entitled to have value for the consideration. Defective goods and deficient services cause legal injury to consumer even in the absence of a damage in true sense of the term and thereby enable a consumer to claim 'damages' (a legal term which refers to compensation) without real damage under Latin maxim '*injuria sine damno*' which prescribes damages even in case of no damage provided any legal right is somehow injured in course of action. Without exploring merit(s) of the position, while this is established position under common law over last three centuries,²⁰ There is other side of the same coin under Latin maxim '*damnum sine injuria*' which proscribes damages even in case of real damage unless and until a legal right is injured in course of action. This is an established position under common law since last six centuries.²¹ Till date, archaic English judgments as per classical law of tort(s) are so often referred to by the modern judges in like cases to decide accordingly in the name of doctrine of precedent. A critical review of the same is essential need of this hour.

Whether and how far the Tames flows alike over centuries is a point apart. Before irreparable damage to habitable environ on the Earth, pending threat of climate change may not allow enough time to rethink over major points of convergence and divergence between stream water and human existence. A moot point to be submitted is that law in changing society cannot remain the same (or even similar) as a static instrument irrespective of its context may have perennially changed. Like many other socio-political instruments, law must situate within its context and not without. Continuity of archaic law may thereby act to the detriment of progressive social order.

While continuity of survival of all life forms (including the *homo-sapiens*) on the Earth is at stake, human law cannot be stoic to global catastrophe in

²⁰See *Ashby v. White* [(1703) 2 Lord Raym 938].

²¹See *Gloucester Grammar School case* [(1410) Y.B. Hil. 11 Hen. 4].

the name of value of precedent. A precedent is meant for certainty in law and law is meant for certainty in human society. Neither precedent nor law, therefore, may be meant for leading human existence toward uncertainty. Substance of law prevails over procedural nitty-gritty of judicial process.²² Also substance of any law is always intended to tend towards welfare and triumph of humanity even at the cost of procedure if so required. No wonder that public interest litigation is introduced by constitutional courts in India to get rid of procedural hurdles on its way to implement access to justice atleast as a matter of state policy.

Towards a Transcendental Order

Through socio-legal discourse articulated so far, one may hardly dispute that there is no state of the art system in the existing legal regime. Further, in its anxiety for protection of consumer, the Act offers only a set of rights and leaves a vacuum in terms of corresponding duty which provides space for arbitrary (in) action on the part of consumer. Consequently, the Act lacks balanced jurisprudence to address complicated and multidimensional socio-legal issues including (lack of) concern for environment being hyperlinked to a more fundamental question, *viz.*, continuity of survival of the human and all other life forms on the Earth.

In its passion for all hitherto major constitutions of the then world, the Constituent Assembly of India committed the same blunder and thereby left a vacuum in terms of duty of its individual citizens toward their community with the result that after quarter century of its operation, the Parliament has inserted a set of fundamental duties to be observed by every citizen of India though there is no overt implication over violation of the same.²³ In a way,

²²The position now is that Article 21 as interpreted in Maneka Gandhi's case requires that no one shall be deprived of his life or personal liberty except by procedure established by law and this procedure must be reasonable, fair and just and not arbitrary, whimsical or fanciful and it is for the Court to decide in the exercise of its constitutional power of judicial review whether the deprivation of life or personal liberty in a given case is by procedure, which is reasonable, fair and just or it is otherwise. The law of preventive detention has therefore now to pass the test not only of Article 22, but also of Article 21 and if the constitutional validity of any such law is challenged, the Court would have to decide whether the procedure laid down by such law for depriving a person of his personal liberty is reasonable, fair and just. But despite these safeguards laid down by the Constitution and creatively evolved by the Courts, the power of preventive detention is a frightful and awesome power with drastic consequences affecting personal liberty, which is the most cherished and prized possession of man in a civilized society. It is a power to be exercised with the greatest care and caution and the courts have to be ever vigilant to see that this power is not abused or misused.

Francis Coralie Mullin v. Administrator, Union Territory of Delhi and Others [MANU/SC/0517/1981], paragraph 4.

²³See Article 51A [Part IVA] inserted by the Constitution (Forty-second Amendment) Act, 1976.

such insertion of Part IVA may be construed to be return to a jurisprudential constitutional position through a jural intercourse of right and duty to attain balance of power between institutions of government and the governed. The Parliament has thereby addressed the politics of the governed left out so far. Similar assignment is pending before the Parliament to fill in the gap created by the Act. In its operation during nearly a quarter century, the Act illustrates its limitation to prevent unscrupulous consumer from any act or omission detrimental to habitable environment on the Earth.

While legislating provisions for protection and promotion of a set of rights for the consumers,²⁴ the Act escapes to provide for corresponding duties, e.g., duty not to encourage sale of prohibited goods or services, or duty not to encourage spread of dark trade practices (which are potential threat to environ) in addition to detailed provisions for restrictive trade practices²⁵ and unfair trade practices²⁶ or duty to encourage affirmative actions like organization of movement for green consumerism, etc. This is submitted that there may be express embargo on rights of consumer in the absence of performance of allied duties and, in extreme cases, sanction against unscrupulous consumer, which may be civil, or criminal, or both. The Act may accordingly be recommended to be amended for better performance of the same in the years ahead. Except a relevant report (no. 105) in 1984, Law Commission of India is yet to proceed further though there is space for law reform to this end.

So far as composition of several consumer disputes redressal agencies are concerned, there are inbuilt crisis involved therein. About half of the strength having judicial background, such a forum often resembles and sometimes replicates the mainstream judiciary which seems no more than multiplicity of judicial process. Further, there is lack of representation from concerned civil society. Nowadays consumer protection being a subject in itself, there is no mention of the same in terms of knowledge and experience under sections 10(b)(iii), 16(b)(iii), and 20(b)(iii) of the Act. Nor there is provision for inclusion of any such person having knowledge and experience in terms of environment. Environmentally blind in true sense of the term, the Act with its present provisions cannot facilitate green consumerism or prevent consumer from dark consumption.

Not only for consumers, even for goods producer, service provider or dealer of such goods or services, the Act cannot offer minimum resistance against unscrupulous trade practices to the detriment of environment. No wonder that being an Act to provide for better protection of the interests of consumers,²⁷ the Act is yet to provide for protection to habitable environment

²⁴See section 6, the Consumer Protection Act, 1986.

²⁵See section 2(1)(nnn), the Consumer Protection Act, 1986.

²⁶See section 2(1)(r), the Consumer Protection Act, 1986.

²⁷See preamble to the Consumer Protection Act, 1986.

on the Earth- a matter of collective interests of consumers. While intended to act against restrictive trade practices, the Act is itself restrictive in terms of its coverage as environment being a matter of collective interest of consumers is set aside and only a set of individual interests is taken care of. Further, pollution of environment affects indigenous people despite being unrelated to modern society and its market economy.

While National Human Rights Commission has revolutionized process of entertaining grievances from every nook and corner of a subcontinent-like country, the National Consumer Disputes Redressal Commission (hereafter referred to as the NCDRC) remains miles behind and its state counterparts lack basic infrastructure to this end. Also there is reverse side of the coin with a result that the NCDRC sometimes found consumer riding on entrepreneur as a matter of strategic advantage under the guise of protection of his statutory interests under the Act. In a typical case of its kind, the NCDRC has turned down such a contention that even after concerned rules of a bank stands amended, consumer is entitled to earn interest in foreign currency as she earned during earlier term before amendment of concerned rules.²⁸ This is only tip of the iceberg of such abuse.

Implementation of International Wisdom

Since mid-eighties, there is international concern for consumer protection. The UN Guidelines for Consumer Protection is such international instrument of universal application and most authentic among documents of its kind. According to these guidelines as expanded in 1999, concern for environment is integral part of consumer protection. By and large, reference of environment may be divided in four parts: (1) policymaking (2) consumer education (3) control of hazardous goods or services (4) research on consumer behaviour and consumption pattern. The instrument thereby has introduced a new mantra in tandem with that of Rio-promotion of sustainable consumption²⁹ and thereby set new height to attain not available earlier.³⁰ But, there is also, a blind spot of rights jurisprudence just under its nose- the delinquent consumer behaviour over which there is clear diagnosis

²⁸See the recent NCDRC judgment in *Ganga Devi Joshi v. Bank of Baroda* (first appeal no. 99 of 2005); available in official website of the Commission.

²⁹"Unsustainable patterns of production and consumption, particularly in industrialized countries, are the major cause of the continued deterioration of the global environment. All countries should strive to promote sustainable consumption patterns; developed countries should take the lead in achieving sustainable consumption patterns; developing countries should seek to achieve sustainable consumption patterns in their development process, having due regard to the principle of common but differentiated responsibilities."

The United Nations Guidelines for Consumer Protection as expanded in 1999, paragraph 4.

³⁰See generally, resolution no. A/RES/39/248 of the General Assembly on consumer protection, dated 16 April 1985.

but no treatment.³¹ As a soft law, however, the UN Guidelines is applicable to all state parties to the UN Charter including India.

Sustainable Consumption

A juridical extension of sustainable development, sustainable consumption is, in its essence, combination of principles of intergenerational equity and intra-generational equity. This resembles an age-old talisman of Gandhi.³² Interestingly enough, India so often than not discovers its indigenous wisdom after the same is pronounced by the West. Whether and how far the West will follow Gandhi to identify inbuilt limits of consumerism is a point apart.³³ For the time being, by courtesy potential threat of climate change, ancient Indian vision of the Earth as mother (since the planet holds all life forms into its own lap) seems back with a much less spiritual syndrome to regain the paradise lost. The same is recently reiterated by Justice A.P. Misra with his take-off toward spiritual firmament rather than hitherto material track.³⁴ This is submitted that such erstwhile paradise of nature may be regained, if at all, through (t)his vision and not through intention of the West to lead rest of the world to get rid of crisis created by its materialist worldview.³⁵ Only an antithesis may undo

³¹“Governments and other relevant organizations should promote research on consumer behaviour related to environmental damage in order to identify ways to make consumption patterns more sustainable.”

The United Nations Guidelines for Consumer Protection as expanded in 1999, paragraph 55.

³²“I venture to suggest that it is the fundamental law of Nature, without exception, that Nature produces enough for our wants from day to day, and if only everybody took enough for himself and nothing more, there would be no pauperism in this world, there would be no man dying of starvation in this world.”

Nirmal Kumar Bose (ed.), *Selections from Gandhi*, Navjivan Publishing House, Ahmedabad, 1948, third reprint 1996, p. 75; as quoted from *Speeches and Writings of Mahatma Gandhi*, G.A. Natesan and Co., Madras, fourth ed.

³³“The rich man will be left in possession of his wealth, of which he will use what he reasonably requires for his personal needs and will act as a trustee for the remainder to be used for the society. In this argument, honesty on the part of the trustee is assumed.”

Harijan, 25.08.1940, p. 260; quoted from Nirmal Kumar Bose (ed.), *Selections from Gandhi*, Navjivan Publishing House, Ahmedabad, 1948, third reprint 1996, p. 78.

³⁴“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.” Proceedings of National Seminar on Consumer Protection in India: Problems and Prospects (February 25-26, 2008), jointly organized by G.B. Pant Social Science Institute, Allahabad and the Centre for Consumer Studies, Indian Institute of Public Administration, New Delhi. Available at: http://consumereducation.in/Proceedings_8.pdf accessed on October 2, 2009.

³⁵“The EU can foster its contribution to tackle these issues through an ambitious industrial and sustainable consumption and production policy. On one hand, a sustainable industrial policy can aim at turning the environmental challenges into economic opportunities for

such cumulative jeopardy hitherto happened by means of an existing occidental thesis. Immediate affirmative intervention of enlightened population can transcend such heedless and headless trend of consumerism to the detriment of global population. A continued process of political socialization toward spiritual emancipation may serve the purpose in the decades ahead.

Conclusion

While protection of consumer is imperative for survival of economic order, protection of environment is also imperative for survival of life on the Earth. Being oneself a vulnerable community, consumer cannot indulge in practices detrimental to environment and thereby open floodgate of new vulnerability for human being and all other life forms on the Earth. Existing legal regime in India must take care of consumer protection. At the same time, however, there must be due care and caution that consumer behaviour may not pose potential threat to environment. Besides inclusion of few punitive provisions under the Act for prevention of intended breach of environment, formulation of informed consumer opinion may be instrumental for better environment of consumption to curb consumption of environment.

The above mentioned social engineering may be instrumental for legal reform to this end. A set of amendments in the Act may take care of better performance of the Act in the years ahead. A process of consumer awareness vis-à-vis duty, however, deserves paramount priority without which such intervention will end in smoke. In given circumstance, civilization is left with no other practical option but to attain a sustainable consumption pattern and thereby continue in its fragile habitat on the Earth through a triumph over oncoming human induced catastrophe.

contd..

society. On the other hand, as the EU is one of the biggest consumers at global level and as products are traded globally, European policies standards to foster sustainable consumption and production will tend to become global benchmarks. By developing robust sustainable consumption and production policies, the EU can therefore contribute in a concrete way to sustainability worldwide."Background document to the consultation on the action plans on sustainable consumption and production and sustainable industrial policy, page 1, paragraph 3. Available at: <http://ec.europa.eu/enterprise/environment/sip.pdf> accessed on October 2, 2009.

CONSUMERISM, ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

K. N. BHATT

Introduction

Consumer society carries with it many economic benefits. Yet, the staggering growth of consumption over the years suggests that the impact on water, air quality, forests, climate, biological diversity and human health has been severe. Consumption may not be considered a bad thing, people must consume and the poorest need to consume more to lead lives of dignity and opportunity. But consumption puts at stake and threatens the well-being and environment when it becomes an end in itself or is taken as ultimate measure of success of economic development. Consumption pattern among world's wealthy and middle class today has gone well beyond limits. The world is now glamorized by a consumption revolution as the amount spent on goods and services at household level swelled from \$ 4.8 trillion in 1960 to \$ 20 trillion in 2000 as per 1995 prices.¹ However, the overall quality of life has been found suffering in some of world's richest countries as people experience greater stress, time pressures and less satisfying social relationships in the wake of more and more signs of deterioration in the natural environment. In the poor countries quality of life is experiencing degradation by a failure to meet people's basic needs.²

¹Gardner, Gary, Erik Assadourian and Radhika Sarin: *The State of Consumption Today, Chapter 1, State of the World: Progress Towards a Sustainable Society*, Worldwatch Institute Report, Earthscan, UK, London, pp. 4-5, 2004.

²Gardner, Gary, Erik Assadourian: *Rethinking the Global Life, Chapter 8, State of the World: Progress Towards a Sustainable Society*, Worldwatch Institute Report, Earthscan, UK, London, p. 165, 2004.

Over consumption is now resulting in depletion of resources as many are being used far beyond their carrying capacity. About 1.7 billion people, 27 percent of the world population, have entered the consumer society. Nearly half of these global consumers live in developing countries, including 240 million in China and 120 million in India. North America and Western Europe with only 12 percent population account for 60 percent global private consumer spending, while one-third living in South Asia and sub-Saharan Africa account for only 3.2 percent. In 1999 about 2.8 billion people were living on less than \$ 2 a day and 1.2 billion were in extreme poverty with less than \$ 1 per day. On the other hand, the global consumer class accounted for some 1.7 billion people, out of which 20 percent belonged to China and India.³

Large share of consumer spending by the rich focuses on unnecessary goods which are supposed to make life more enjoyable. However, providing adequate food, clean water and basic education for the worlds poorest could all be achieved just by spending what the rich people spend annually on makeup, ice cream and pet food. Our appetite for goods and services is driven largely by influences from technological advances and cheap energy for new products, powerful communication media, population growth, and even social needs of human beings. These drivers have interacted to swell production and demand to record levels. In the process, they have created an economic system of unprecedented bounty and unparalleled environmental and social impacts. Adam Smith claimed that consumers are “sovereign” actors who make rational choices in order to maximize their satisfaction. However, consumers make imperfect decisions using a set of judgements that are shaped by incomplete and biased information. Their decisions are primarily driven by advertising, cultural norms, social influences, physiological impulses, and psychological associations, each of which can boost consumption.⁴

This paper reviews the inter-linkages between consumerism, environment and sustainable development. It examines the design defects of the modern economic development process and consequences of over consumption, mass production and environmental resource extraction on unlimited scale. Pursuits of intrinsic values, well-being and happiness are analyzed and the available policy options to ensure conservation of basic natural resources for sustainable development are highlighted.

Modern Economies with Design Defects

Today, 40 percent of the ‘Net Primary Production’ (NPP) that the primary producers, the plants, make available to the rest of living species is appropriated by human beings in terrestrial ecosystems. This ‘Human Appropriation of Net Primary Product’ (HANPP) is further increasing with highly accelerated

³Gardner, Gary, Erik Assadourian and Radhika Sarin: *Op. Cit.*, pp 4,7, 2004.

⁴Gardner, Gary, Erik Assadourian and Radhika Sarin: *Op. Cit.*, pp 10-12, 2004.

pace with the increasing numbers of humans, leaving lesser amount of NPP for other non-domesticated species resulting in their extinction. Some densely populated European countries, Japan or Korea occupy eco-spaces ten or 15 times larger than their own territories. These issues of 'ecological-space' and 'ecological footprints' have serious concerns for sustainable development. Another serious challenge is related to 'Energy Returns on Input' (EROI). Decrease in energy efficiency in different sectors of the economy including energy sector itself has serious consequences. Paradoxically, increased energy efficiency in some sectors also might lead to increased energy use by reducing its cost. As the sources of energy are more problematic for sustainability than sinks for waste, the increased energy use has inherent dangers for future.⁵

Modern industrial workers now produce in a week what took their counterparts four years. Accordingly, prices of the produced goods reduced. Similarly, globalization has also lowered prices and stimulated consumption, as tariffs are drastically reduced and cheap labour is easily available from anywhere in the world. Technological innovations, reduction in transport costs, innovative business practices like credit cards, government subsidies help supply markets with inexpensive goods for greater consumption. However, the existence of waste all around shows that the industrial economies are defective in their design. In contrast to the goods and services produced by millions of other species on our planet which generate useful by products but not worthless waste, human economies are designed with little attention to the harmful residuals from production and consumption. The impact of this design flow is enormous, starting with the extraction process. For example, for every usable ton of copper, 110 tons of waste rock and ore are discarded. Roughly 3 tonnes of toxic mining waste are produced in mining the amount of gold needed in a single wedding ring.⁶

An analyst warns the world about the threats to the global environment posed by Chinese economic development. The billion-strong population of China uses 45 billion pairs of chopsticks every year. These account for 25 million full-grown trees. A pertinent questions that arises here is should they not move to eating with their fingers and steel utensils instead?⁷ An average resident of an OECD country generates 560 kilos of municipal waste per year, while Americans produce 52 percent more than this. The trends in use of resources and ecosystem health indicate that natural areas are also under stress from growing consumption pressure. Living Planet Index, a tool developed by WWF International to measure the health of forests, oceans,

⁵Martinez-Alier, Joan: *The Environmentalism of the Poor: A Study of Ecological Conflicts and Valuation*, Oxford University Press, New Delhi, 39-42, 2004.

⁶Gardner, Gary, Erik Assadourian and Radhika Sarin: Op. Cit., pp 13-16, 2004.

⁷Friedman, Thomas: *Asian Age*, Oct. 27 and 26, Cited in Guha, Ramachandra (2006): *How Much Should a Person Consume? – Thinking Through the Environment, Permanent Black*, Distributed by Orient Longment, Bangalore, pp. 237-38, 2005.

freshwater systems, shows a 35 percent decline in planet's ecological health since 1970. Similarly, ecological footprint, a measure of the impact of human consumption on global ecosystem which measures the amount of productive land out of which economy requires for producing the resources it needs and to assimilate its waste, shows that the Earth has 1.9 hectares of biologically productive land per person to supply resources and absorb wastes. But, average person today uses 2.3 hectares worth of productive land, ranging from 9.7 hectares for an average American to 0.47 hectares for Mozambican. Diseases as a result of over consumption continue to surge. Tobacco consumption, overweight and obesity affect more than one billion people, costing billions in health care.⁸

In mass consumption societies laws and economic incentives often encourage people to cross key economic environmental and societal thresholds. Consumers in these societies do not always find what they actually need with affordable options. In a world where there are more people living on less than \$ 2 per day than there are in the global consumer class, the continued pursuit of greater wealth by the rich where there is little that increases happiness, raises serious ethical questions. Such lack of attention to the needs of the poorest results in greater insecurity for the prosperous and increased spending on defensive measures, as failing to invest in poorest comes back to haunt the wealthy. By reorienting societal priorities towards improving people's well-being rather than merely accumulating goods, consumption can act not as the engine that drives the economy but as a tool that delivers an improved quality of life.⁹

In Pursuit of Intrinsic Values, Well-being and Happiness

Studies on happiness index reveal that even after ever rising levels of personal wealth the share of people who claim to be very happy in rich countries has remained stagnant. However, self-reported happiness among poor tends to rise with increased income, but that linkage between happiness and rising income is broken once modest levels of income are reached. Studies also show that consumption-oriented societies are not sustainable for environmental or social reasons. The personal costs associated with mass consumption; the financial debts; the time and stress associated with working to support high consumption; the time required to clean, upgrade, store or maintain possessions; and the ways in which consumption replaces with family and friends are enormous. However, the quality of life is often improved by operating within clear limits on consumption as a forest can be available to all indefinitely if they are harvested no faster than the rate of re-growth. Unlimited consumption is fundamentally at odds with life patterns of the natural world and teachings of religious leaders and philosophers.¹⁰

⁸Gardner, Gary, Erik Assadourian and Radhika Sarin: Op. Cit., 2004, pp 17-18.

⁹*Ibid*, pp. 20-21.

¹⁰*Ibid*, p. 19.

Findings from a world values survey of life satisfaction in more than 65 countries conducted between 1990 and 2000 indicate that income and happiness tend to track well until about \$ 13,000 of annual income per person as per 1995 PPP. After that additional income appears to yield only modest additions in self reported happiness. Studies also suggest that happy people tend to have strong supportive relationships, a sense of control over their lives, good health, and fulfilling work. These factors are increasingly under stress in mass consumption highly industrialized societies. LOHAS consumers in USA are those who lead lifestyles of health and sustainability, buy only products that pay a just wage to producers or that have a lighter environmental impact than mainstream purchases do. This group now includes nearly one third adult population of Americans and in 2000 accounted for about \$ 230 billion in purchases, 3 percent of total US consumer expenditure. Now people in developed countries aspire for something deeper: happy, dignified, and meaningful lives, termed here in a word as well-being.¹¹

John Kenneth Galbraith in his book *The Affluent Society, 1958*, warned about the consequences of the preoccupation with productivity and production in post war America and Western Europe and peoples' desire for more elegant cars, more exotic food, more erotic clothing, more elaborate entertainment. He also clearly noted about the mismatch between private affluence and public squalor.¹² Considering the infinite multiplicity of wants of modern civilization Mahatma Gandhi termed satanic and cautioned India against imitating the West. He categorically said that the world has enough for everybody's need, but not everybody's greed.¹³ Pointing towards the unsustainability of the Western Economic Development Model, Gandhi in 1928 wrote: "God forbid that India should ever take to industrialization in the manner of the West. The economic imperialism of a single tiny island kingdom (England) is today keeping the world in chains. If an entire nation of 300 million took to similar economic exploitation, it would strip the world bare like locusts."¹⁴

For Gandhi an ideal Indian village is: "It will have cottages with sufficient light and ventilation, built of a material obtainable within a radius of five miles of it. The cottages will have courtyards enabling householders to plant vegetables for domestic use and to house their cattle. The village lanes and streets will be free of all avoidable dust. It will have wells according to its needs and accessible to all. It will have houses of worship for all, also a common meeting place, a village common land for grazing its cattle, a co-

¹¹Gardner, Gary, Erik Assadourian: Op. Cit., 2004, pp. 166-167, 178.

¹²Galbraith, John Kenneth (1958): *The Affluent Society*, Boston: Houghton Mifflin, Cited in Guha, Ramachandra: Op.Cit, 2006, p. 221.

¹³Gandhi, Mahatma (1927): *Young India*, Cited in Guha, Ramachandra: Op.Cit, 2006, p. 231.

¹⁴Gandhi, Mahatma (1928): *Young India*, cited in Guha, Ramachandra: Op.Cit, 2006, pp. 231.

operative dairy, primary and secondary schools in which (vocational) education will be the central fact, and it will have Panchayats for settling disputes. It will produce its own grains, vegetables and fruit, and its own Khadi. This is roughly my idea of a model village.”¹⁵

Ramachandra Guha explains asymmetries in patterns of consumption today by an analytical framework dividing Indian population into three socio-ecological classes called omnivores, ecosystem people and ecological refugees.¹⁶ The third group of people ecological refugees are those who are forced to be uprooted from their native surroundings and migrate in distress to urban centres.¹⁷ He writes: “Thus omnivores, who include industrialists, rich farmers, state officials, and the growing middle class based in cities (estimated at in excess of 100 million), have the capability of drawing upon the natural resources of the whole of India to maintain their lifestyles. Ecosystem people, on the other hand, who include roughly two-thirds of the rural population or about 400 million people-rely for the most part on the resources of their own vicinity, from a catchment of a few dozen square miles at best. These are small and marginal farmers in rain-fed tracts, landless labourers, and miscellaneous resource-dependent communities of hunter-gatherers, swidden agriculturists, animal herders, and wood-working artisans, all stubborn pre-modern survivals in an increasingly post modern landscape...The process of development in post independent India has been characterized by this basic and massive asymmetry between omnivores and ecosystem people. A one-sentence definition of such economic development over the last sixty years would read: Development is the channelizing of an ever-increasing volume of natural resources, via the state apparatus and at the cost of the exchequer, to serve the interests of rural and urban omnivores.”¹⁸

Research evidence shows that the more people value money, image, status and personal achievement, the less they care about other living species and the less likely they are to recycle, to turn off lights in unused rooms, and to walk or bicycle to work. Materialistic self imaging values contribute to climate change; the pursuit of intrinsic values has been empirically associated with more sustainable and climate-friendly ecological activities. A shift towards intrinsic values will again be beneficial as such value system promotes more empathy and higher levels of pro-social and cooperative behaviours. These values and goals lead to greater personal well-being. Studies reveal that the people who work fewer hours per week are more likely to be pursuing intrinsic goals, are happier and are living in more sustainable ways. Therefore, the

¹⁵Gandhi, Mahatma (1928): *Young India*, cited in Guha, Ramachandra: Op.Cit, 2006, pp. 239-40.

¹⁶Guha, Ramachandra: Op.Cit, 2006, p. 234.

¹⁷*Ibid*, p. 235.

¹⁸*Ibid*, pp. 233-34.

world today needs to reorient itself from the pursuits of material affluence to time affluence. Flawed measures of development like gross domestic product may be replaced by new indicators such as the Happy Planet Index that incorporate values like people's well-being and environmental sustainability. Similarly, reduced levels of consumption are essential to avoid massive climate change and create a new and better life with happiness.¹⁹ Individuals, communities and governments can focus on delivering what people most desire by redefining prosperity to emphasize a higher quality of life rather than the mere accumulation of goods. Good life can be built not by the accumulation of wealth but by ensuring well-being of all with having basic survival needs met, along with freedom, health, security and satisfying social relations.²⁰

Conclusion

The unequal incidence of environmental harm gives birth to environmental conflicts and insecurity among the poor. Sustainable livelihood is the top priority for the large number of the world's poor over marketed goods. Livelihood depends on clean air, available soil and clean water.²¹ Therefore, these basic resources need utmost care and protection for ensuring sustainability of development in future. Today, the earth has lost enormous amount of tree cover, large areas engulfed by desertification, thousands of plants and animal species extinct, large quantity of top soil lost, and the world population touching around 7 billion marks. How to design a vibrant world economy that does not destroy environmental systems and basic resources on which it depends. Now the effects of the emergence of a modern consumer economy are being recorded to ring the alarm bells. Twenty years after the publication of the study by the Club of Rome, Meadows, Meadows and Randers in 1991 have again concluded that the world has already over shot some of its limits. If present trend continues, we face the prospect of a global collapse. The study gives a clear choice to the world community between rapid and uncontrolled decline in food production, industrial capacity, population, life expectancy or a sustainable future.²² Basically, the three factors are having direct impact on the environment - population, consumption and technology - which decide how much space and resources are used and how

¹⁹Tim Kasser: *Shifting Values in Response to Climate Change, Climate Connections, State of the World: Confronting Climate Change*, Worldwatch Institute Report, Earthscan, UK, London, 2009, pp. 122-25.

²⁰Gardner, Gary, Erik Assadourian: Op. Cit., 2004, pp. 165.

²¹Bhatt, K.N.: "*Population-Environment Interlinkages: Emerging Concerns*", in K.N. Bhatt (Ed.): *Population Environment and Health – Emerging Issues*, Rawat Publications, Jaipur, 2008, pp. 99-100.

²²Meddows, D., D Meadows and J. Randers: *Beyond the Limits: Confronting Global Collapse, Envisioning a sustainable Future*, Earth Scan Publication Ltd., London, 1991.

much waste is produced to meet consumption needs of ever growing human numbers.

Today, a moral obligation of the present generation to save future of humanity is to think and act about the future that could benefit the planet in the long term. Unfortunately, even after two decades from the Rio Conference on Sustainable Development, a clear consensus of the world community could not be worked out on the issue of climate change. Such temporary shocks may delay the process of restoring ecological balance. However, what has certainly been achieved during past 4-5 decades is the convergence of different points of views. Ecological studies have developed its own body of knowledge and the process of social mobilization has already begun. People are increasingly taking the environment into consideration. The world is becoming aware of the unity and diversity of nature. This awareness produces the basis for a new hope for our planet and the future of humanity.