

# Unfair trade practices: Burning issue in India

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## Abstract

Every person in India is consumer. He shall entertain human rights; the constitution also guarantees certain fundamental rights to every Indian. Consumerism is part and parcel of the guideline given by constitution. In day to day life every consumer is cheated by the well organized and trained seller/trader or manufacturer of goods and services. Exploitation of the consumer by the seller is a white collar crime. There is no ill intention in the minds of the sellers. The sole motto is achieving abundant profits and profits only ten rupees for one rupee investment. For this purpose, the adopt certain restrictive and unfair trade practices.

Adulteration of food, selling goods injurious to the public health, selling narcotic drugs, liquor, pan masala, cigarettes, obscene literature, etc. Are some of white collar crimes done by some one of the seller. Adopting restrictive and unfair trade practices, adulteration of food, selling the expired drugs, etc. are socio-economic crimes. These are not violent acts. They are committed by illegal acts by means of concealment and the purpose being to get the huge profit. "Consumerism" prevents such illegal and unfair practices.

Although the legal frameworks under Consumer protection Act 1986 are available to control and regulate unfair trade practices in India, there is tremendous increase in corporate crime. Number of Various financial scams is increase day by day. The legal framework under Consumer protection Act 1986 is insufficient to control and regulate unfair trade practices. Though the Consumer Protection Act 1986 passed for protecting interest of consumer at large and for that purpose several redressal agency established but still all this efforts fail to protect consumer in full satisfaction. Hence there is need to drastic changes in consumer protection Act 1986.

Consumers are not aware about their right and the laws which are available for their protection. There is no significant difference in the awareness level of male and female customers about unfair trade practices and about their right and the laws which are available for their protection. Hence Consumers are cheated and exploited by the well organized and trained seller/trader or manufacturer of goods and services is white collar crime. Customers don't have same opinion about various parameters. Unfair trade practices can damage consumer confidence to the extent that overall growth in the corporate sector is affected. So unfair trade practices adversely affect corporate sector in India and public at large.

Supreme Court of India as highest judicial authority provides guidelines in various cases relating to unfair trade practices but these guidelines are not properly implemented and strictly followed. Hence Unfair trade practices have now become burning issue in India, causing economic degradation of nation. This research work creates and awareness among the consumer about their rights and try to solve the problem of unfair trade practices.

**Key words** – Unfair Trade Practices, Consumerism, and Consumer right, consumer exploitation, Consumer Dispute redressal.

## Introduction

Unfair trade practice is a burning issue in India. In the new corporate and business world today where there is cut throat competition the business persons daringly use unfair trade practices to edge over the other. This may give them advantage for short term but in long run it affects the organization and eventually the entire industry and society. Customers are not aware about their rights and the laws which are available for their protection and safeguards. There is no significant difference in the awareness level of male and female customers about unfair trade practices and about their right and the laws which are available for their protection<sup>1</sup>.

It has been seems that, the consumer protection Act 1986 law has been enacted and the legal frameworks are provided to control and regulate unfair trade practices in India. But the legal frameworks under consumer protection Act 1986 is proved insufficient to control and regulate unfair trade practices in India. So there is need to make drastic changes in the provisions of existing consumer protection Act 1986 and also need to improve the legal frameworks under the consumer protection Act 1986.<sup>2</sup> Due to the unawareness of consumer's, they are always cheated and exploited by the well organized and trained seller/trader or manufacturer of goods and services is a white collar crime Cheating and exploitation of customers now become a common things in India is big problem but it become an ignored issue due to unawareness of customers and insufficiency of legal frame works under consumer protection Act 1986.

It has been seems that, big business houses do not think about the welfare of society they always think about how to make profit by hook or crook and apply unfair trade practices in business. It is very dangerous and prejudice to the society and it can damage consumer confidence to the extent that overall growth in the corporate sector is affected. Different customers have different opinions about various parameters regarding unfair trade practices it is a very big barrier in the way of total eradication of unfair trade practices from Indian corporate sector<sup>2</sup>.

Supreme court of India a big Judicial Authority in India, time to time provide various Guidelines in various cases regarding unfair trade practices. But unfortunately these are not strictly be followed by implementing authority it is very serious thing. Unfair trade practices, now becoming a burning issue in India causing economic degradation of nation. Hence it is most necessary of complete eradication of unfair trade practices from corporate sector for growth and development of corporate sector, social welfare and economic up gradation of nation.

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

1. False Representation
2. False Offer of Bargain Price
3. Free Gifts Offer and Prize Schemes
4. Non-Compliance of Prescribed Standards
5. Hoarding, Destruction, Etc.

Any practice that permits the hoarding or destruction of goods, or refusal to sell the goods or provide any services, with an intention to raise the cost of those or other similar goods or services, shall be an unfair trade practice.

## Consumerism and Consumer right

It has been found that the common consumer is neither knowledgeable, nor well informed. He needs support and protection from unscrupulous sellers. Liberalization, privatization and globalization of our economy gave a large scope for unfair trade practices in our country. So an alert consumer is need of the hour. Consumerism is a social and economic order that encourages the purchase of goods and services in ever-greater amounts. In economics, consumerism refers to economic policies placing emphasis on consumption<sup>3</sup>. It is believed that the consumers are free to make choice and should dictate the society's economic structure. According to Prof. Philip Kotlar "Consumerism is not limited to organized efforts only but, is a social movement seeking to augment the rights and powers of the buyers in relation to sellers". Consumer right is 'the right to have information about the quality, potency, quantity, purity, price and

<sup>1</sup> Singh Avatar, Company law, eastern book company edition 2015, p. 144

<sup>2</sup> Consumer Protection (Distance Selling) Regulations 2000

<sup>3</sup> Majumdar, P.K. (2003), Law of Consumer Protection in India, Prentice Hall of India, New Delhi.

standard of goods or services' There are strong and clear laws in India to defend consumer rights. Out of the various laws that have been enforced to protect the consumer rights in India, the most important is the Consumer Protection Act, 1986. According to this law, everybody, body, including individuals, a firm, a Hindu undivided family and a company, have the right to exercise their consumer rights for the purchase of goods and services made by them.

### **Forms of consumer exploitation in Indian Market**

It has been found that, in a commercial society, the customer should be king. Even so, there are plenty of ways establishments rip consumers off and treat them below par. No matter what types of goods you buy, you need to be on the guard for consumer exploitation. Some types of exploitation are small and somewhat unimportant, but other types of exploitation can be quite costly. Goods that are sold by weight or volume are subject to short-changing and consumers are left to pay the price when businesses short-change their consumers. In some cases the short-changing is unintentional, the result of a mechanical failure or an improperly rectified scale. In other cases, the short-changing may be a deliberate repetition, intended to bring the company more business. From the butcher holding his thumb on the gauge while counting out the steaks to a gas station whose pumps provide three-quarters of a gallon instead of a full one, there are many ways consumers are cheated and exploited in this way Underweight and under measurements, Selling at a higher price, Product risk, Duplication, Substandard goods and services, Artificial scarcity, False claims. Causes of Consumer Exploitation are Illiteracy and Ignorance, Spurious Goods, Deceptive Advertising, Malpractices of Businessmen<sup>4</sup>.

### **Consumer Dispute redressal Adjudicatory Body**

The Consumer Protection Act, 1986 envisages a 3-tier quasi-judicial system. There are Consumer Disputes Redressal adjudicatory bodies established at three levels i.e. District, State and National. They are known as District Forums, State Commission and National Commission. These decentralized infrastructures help the consumers who are aggrieved to approach the appropriate forum.

### **Guidelines of Supreme Court on Unfair Trade Practices**

In an appeal in the case of Cadila Healthcare Ltd vs. Cadila Pharmaceuticals Ltd, the Supreme Court has laid down various guidelines for the courts dealing with the cases of goods being passed on deceptively by a new entrant in the market, encashing on the goodwill of another company<sup>5</sup>. The guidelines, as issued by Mr Justice B.N. Kirpal, Mr Justice Doraiswamy Raju, and Mr Justice Brijesh Kumar are:

It has been observed that, the action of passing off of one's goods as the goods of others is a kind of unfair trade practice. That action can be taken under the common law for causing deception by attempting to gain economic benefit out of the reputation established by the other party by adopting similar name and overall similarity in features with a view to misrepresenting the product. The nature of marks on the goods is to be considered, whether the marks are words or label marks or composite marks, i.e., both words and label works are similar or not. The degree of resemblance between the marks, phonetic similarity and similarity of idea. The nature of the goods in respect of which they are used as trademarks. The similarity in the nature, character and performance of the goods of the rival traders<sup>6</sup>. The class of purchasers who are likely to buy the goods bearing the trade mark depending on their education and intelligence and a degree of care they are likely to exercise in purchasing and using the goods. The mode of purchasing the goods or placing orders for the goods. And, any other surrounding circumstances which may be relevant.

### **Methodology**

The researcher while studying the above topic uses Doctrinal method which is also called as non-empirical study of research it is thus, a fact research. In order to handle this proposed work in an appropriate manner and giving useful output from the work, the doctrinal (i.e. analytical) method would be most suitable and perfect. It Hence, in the proposed work, this method have been and will be utilized very well.

<sup>4</sup> Agarwal, V.K (1989), Consumer Protection in India, Deep and Deep Publications, Bangalore.p.167

<sup>5</sup> Sherlekar, S.A. (1997), Trade & Practices & Consumerism, Himalayan Publishing House, Bombay.p.67

<sup>6</sup> Chaudhary, R.N.P. Consumer Protection Laws Provisions & Procedure, Consumer Protection Act -1986.p.157

Doctrinal method involved arranging, ordering and systematizing legal propositions, analysis of case laws and study of legal institutions through legal reasoning. Will seek to identify and appraise the degree of variable which influence the outcome and legal decision making.

Methodology is an important part of any research work. Method is the way of doing something methodology. It is the science to study of a particular subject. Research Methodology is much wider. Research methodology is a systematic investigation to gain new knowledge about the phenomena or problem. The method a researcher follows in pursuing a research methodology.

### **Hypothesis**

1. There is no significant difference in the awareness level of male and female Customers about unfair trade practices and about their right and the laws which are available for their protection.
2. The legal framework under Consumer protection Act 1986 is insufficient to control and Regulate unfair trade practices in India.
3. Consumers are cheated and exploited by the well organized and trained Seller/trader or manufacturer of goods and services is a white collar crime.
4. Unfair trade practices can damage consumer confidence to the extent that overall Growth and development in the corporate sector is affected.
5. Guidelines provided by Supreme Court regarding unfair trade practices are not strictly followed.
6. There is need to drastic changes in various corporate laws in India.

### **Conclusion**

This study aimed to highlight the Unfair trade practices in presence of existing law and to develop an understanding of the regulation of companies and to provide through knowledge of the various provisions of the Consumer protection Act 1986 in India as well as Schedules and Rules made there under including their interpretation through case laws, departmental circulars, clarifications, notifications, etc.

It can be concluded that, the legal framework under Consumer protection Act 1986 is insufficient to control and Regulate unfair trade practices in India and there is no significant difference in the awareness level of male and female Customers about unfair trade practices and about their right and the laws which are available for their protection.

It can be suggested that, Consumers are cheated and exploited by the well organized and trained Seller/trader or manufacturer of goods and services is a white collar crime and unfair trade practices can damage consumer confidence to the extent that overall Growth and development in the corporate sector is affected.

This study showed that, Guidelines provided by Supreme Court regarding unfair trade practices are not strictly followed and there is need to drastic changes in the provision of consumer protection Act 1986 in India.

There is tremendous increase in unfair trade practices in India. This study will help in finding out the reasons behind insufficiency of legal frame works under Consumer protection Act 1986 and awareness of consumers about their rights and duties. This study will also prevent the consumer from cheating and exploitation by business houses.

### **References:-**

#### **Books**

1. Leon G. Schiffman, Laslie Lazar Kanuk, (2003) 'Consumer Behaviour', Pearson India Pvt. Ltd. New Delhi.
2. Jain K Ashok Consumer Protection Act, 1986 (Theory with Q.A.) , Jain Book Agency, 2013
3. S.S.Gulshan,G.K.Kapoor.Economic and other legislation
4. Singh Avatar, Company law, eastern book company edition 2015

#### **Articles**

1. Lewis D. Eigen, A Solution to the Problem of Consumer Contracts That Cannot be Understood by Consumers Who Sign Them, Scriptamus, 2009.

2. A.R. Wig, "Making the consumer aware of Rights"- The Hindustan Times, 31st Aug, 1986.
3. Federal Trade Commission Act - Section 5: Unfair or Deceptive Acts or Practices
4. "Study and analyze the situation in India regarding unfair trade practices and limitations of the law enforcement" consumer unity & trust society d-217, BhaskarMarg, Bani Park

**Legislation**

1. Consumer Protection Act, 1986
2. Companies Act, 2013
3. Consumer Protection (Distance Selling) Regulations 2000

**Law Reports**

\Ministry of Food Processing Industries (2011), "Annual Report 2010-11", Ministry of Food Processing Industries,

"Consumer safety and satisfaction- a key to successful marketing" Report on Consumer Action Forum Survey, Calcutta, May 1987.

