INTRODUCTION

There is a general recognition of the need for consumer protection in the context of widespread prevalence of market imperfections. The study of consumer protection requires analysis of both the legal as well as the economic dimensions of the problem. In recent years considerable interest has been evinced in the economic analysis of consumer protection by involving models of asymmetric information, nature of goods and misperception of product risks by the consumer. Similarly, there has been growing interest in the legal analysis of consumer protection by emphasising the weaker party protection and unequal bargaining power between the consumer and producer. The fact is that consumer protection is essentially interdisciplinary in nature calling for legal economics. Recent researches in the field are oriented towards economic analysis of the alternative legal system that is liability and regulation, in order to induce the tortfeasor to take precautionary measures that would reduce the risk of harm.

Statement of the Problem

Under perfect market conditions, consumers are protected by the equilibrium price and there will be hardly any need for state intervention. However, in the context of imperfect market condition and the inability of the market-induced correctives to reduce the market imperfections, state intervention is favoured to protect the interest of the consumers. The state intervention may be either by way of a liability system or a regulatory system or a combination of both. According to the theory of 'liability versus regulation' none of these systems is unique in providing the tortfeasor to take precautions in order to reduce risk of harm. Thus, the mixed use of these alternative legal systems is a necessary condition. In India, the consumers are protected by both the liability system (the Consumer Protection Act, 1986) and the regulatory system (the Bureau of Indian Standards Act, 1986). The present study attempts a critical evaluation of each of the systems in India. In addition, the functioning of the German consumer protection is compared with a view to draw some possible lessons for India.
Importance of the Study

India, being a developing country, has to face a lot of challenges in order to provide a good quality of life for her citizens. In the case of consumers, especially when the country is in transition from an agricultural economy to an industrial economy, the adaptation of liberalisation policies, looking forward to globalisation may certainly raise a doubt about the position of the consumers in the market place. In addition, rapid changes in science and technology may perhaps change the nature of goods from search goods to experience and credence goods. The presence of the experience goods in the market place may increase the asymmetric information about the attributes of the products between the consumer and the producer. Thus, there is a possibility of presence of not only race to the bottom situation in the market place but also there is the possibility that a consumer may have misperception about the product risks. The presence of limitations to correct the market imperfections by the market induced correctives as well the ignorant and the unorganised consumers are unaware of their rights and obligations in the market place stress the importance of consumer protection by the state intervention. Thus, for accelerating the pace of consumer protection in a developing country like India, there is a need to have sustained consumer research, information, education and advocacy. The economic analysis of the alternative legal systems and the review of the experiences of consumer protection in a civil law country like Germany, are intended to make the study not only interdisciplinary but also comparative in nature.

Growing Literature

Economic theory predicts that consumers are sovereign, and the prevalence of the perfect market conditions does not stress the need of much state intervention in order to protect the interests of the consumer. However, not only the divergence of perfect market conditions because of consumer exploitation, unequal bargaining power, externalities, nature of goods, and asymmetric information but also the market induced correctives such as signals, reputation, no asset specificity, and misperception of product risks by the consumers may not be able to correct the market imperfections and call for state intervention in order to protect the consumers. The works of Akerlof, P. Nelson, M. R. Darby and E. Karn, G. C. Priest,
Once the need of state intervention is recognised to protect the consumer interests, then, the question arises as to what are the methods and means to protect the consumers by the state? There are several ways and means to protect the consumers such as mandatory disclosure of information, enacting anti-trust laws, alternative legal system etc. For one reason or the other the study will be limited to the alternative legal system. Before going on to examine the functioning of the alternative legal system in India, it is necessary to examine the justification of the legal economics analysis of the alternative legal systems in reducing the risk of harm. Here, one could ask what are the merits and demerits of the liability and regulatory systems? Why do we need an alternative legal system to protect the interests of the consumer? And what will be the optimal mix of alternative legal system? The theoretical arguments of ‘liability versus regulation’ indicates that none of the approaches has a uniqueness in providing the incentives to the tortfeasor in order to take the precautions to reduce the risk of harm, and stress the need of the use of a mixed form of liability and regulatory systems.

Normally every one agrees that the use of mixed form of alternative legal system reduces the risk of harm, but no one knows about what is the optimal mix of the alternative legal systems? The optimal mix of ex-post and ex-ante approach varies not only from case to case but also from country to country. However, the optimal mix of alternative legal system is to be one in which the regulatory system sets the standards as minimum and the courts also take the minimum standards into the consideration and awards the compensation to the victims whenever the regulatory standards are unable to internalise the risk of harm. Similarly, the minimum regulatory standards may perhaps reduce the risk of harm up to some extent whenever the liability system is unable to provide compensation to the victim. The literature has been reviewed based on the works of S. Shavel, S. Rose-Ackerman, H. B. Schäfer & C. Ott, A. I. Ogus, C. D. Kolstand, T. S. Ulen & G. V. Johnson and R. A. Cooter.
Objectives

The main objectives of the study are:

i. To explore the theoretical foundations of the economic analysis of consumer protection;

ii. To examine the economic justification for alternative legal systems;

iii. To evaluate the functioning of the alternative legal systems of consumer protection in India;

iv. To review the experiences of consumer protection in Germany; and

v. To draw inferences from the comparative experience towards possible improvement in the consumer protection in India.

Limitations

One of the limitations of the thesis is that the survey will be restricted to two district level Fora viz. Nellore and the Ranga Reddy, districts, one state level commission viz. as the State Commission of the Andhra Pradesh and the National Commission. Generalisations on such limited observation may be too sweeping to be widespread relevance. However, the study will be either directly or indirectly helpful to the policy makers towards improving the alternative legal system in protecting the interests of the consumers. An attempt is also made to put together some guidelines for further research in the areas of legal economics as well as in consumer protection law.

Methodology

The applicability of the theoretical arguments of the economic theory of consumer protection and the prevalence of the alternative legal system in India make interesting study the functioning of the alternative legal systems such as the Consumer Protection Act, 1986 (as an ex-post approach) and the Bureau of Indian Standards Act, 1986 (as an ex-ante approach) in protecting the interests of the consumers.

In India, consumer protection raises a number of questions. In the case of an ex-post approach, why do we need separate courts (Consumer Dispute Redressal Agencies- CDRA)?
What are the objectives of the Consumer Protection Act, 1986? Have these objectives been fulfilled by the CDRAs?

The civil courts are unable to provide adequate redressal to the consumers because of law’s delay, higher litigation costs and a complex legal procedure. At the same time much of the rules and regulations enacted by Parliament were not only non-compensatory in nature but also not implemented effectively. Thus, the Consumer Protection Act, 1986, which is compensatory in nature, was enacted by Parliament in order to provide speedy, inexpensive and simple redressal to the consumers by establishing a separate three-tier court (CDRAs) at District, State and national levels.

In order to have a critical evaluation of the functioning of Consumer Fora as an ex-post approach, one would need data especially on the nature of cases filed, law’s delay, decision on the cases. The Study will be based on both primary and secondary data. The empirical study tries to provide some insights about efficiencies and deficiencies on the effectiveness of the liability system in India in protecting the interests of the consumers.

The secondary data obtained from the Department of Civil Supplies, Andhra Pradesh and the Ministry of Civil Supplies, Consumer Affairs and the Public Distribution System, New Delhi are used for selecting two District Forums in Andhra Pradesh, one which has the highest number of cases filed by the consumers (the District Forum of Nellore) and the other which has the least number of cases filed by the consumers (the District Forum of Ranga Reddy). In addition, in order to cover all the three-tiers of the system of CDRAs, one State Commission that is State Commission of Andhra Pradesh and the National Commission are chosen for study.

Consumers’ opinion about the functioning of the CDRAs has been collected by way of a sample survey of the aggrieved consumers. Out of 50 selected consumers from the District Forum of Ranga Reddy and the State Commission of Andhra Pradesh based on stratified random sampling, only 32 consumers responded. The data collected has been subjected to rigorous analysis including testing of certain hypotheses with the application of Multiple Regression Analysis. The factors such as education as well as engaging of a lawyer are analysed for their impact on the court success.
Empirical investigation was extended to the functionaries of the CDRAs, and the views of the members of the Fora and the consumers counsel have been collected by way of oral interview. In addition, personal observation on the functioning of the CDRAs has also been taken into the consideration.

The inferences drawn from the empirical work will be examined with the theoretical arguments of the alternative legal systems in order to find out whether the CDRAs, as an ex-post approach, are really protecting the interests of the consumers in India.

In the case of an ex-ante approach, the collected data from the Bureau of Indian Standards, will be used for critical evaluation of the functioning of the regulatory system. The empirical study tries to analyse not only the Bureau of Indian Standards' ability to protect the interests of the consumers through standard formulations and certification marks but also tries to throw some insights about efficiencies and deficiencies on the effectiveness of the regulatory system in India in protecting the interests of the consumers. The material will be analysed with the help of the theory of the alternative legal systems.

An attempt is made at a comparative analysis of the CDRAs and the BIS, which may provide some indications about the optimal mix of these two systems in order to protect the interests of the consumers effectively.

The experiences of the consumer protection in Germany is analysed in order to draw some possible lessons for India in improving consumer protection by suitable changes in the alternative legal system. One can ask why one needs to review the experiences of the consumer protection in Germany? The main reasons are:

- There are parallels and differences between developed and developing countries which justifies comparison with a view to improve the systems by drawing appropriate lessons;
- Germany is the most populated state in Western and central Europe with considerable experience in consumer protection;
- Germany is a non-common-law country with considerable experience in codified law and regulation; and
There is absence of any comparative study between a civil law country like Germany and the common law country like India in the field of consumer protection, which excludes the possibility of deriving mutual lessons. Thus, it is interesting to have such a study in order to draw some possible lessons from Germany for India.

In Germany, in the case of an ex- post approach, the study will be focused on a review of the importance of contract and torts of German Civil Code, the German Product Liability Act, 1990 and the EC Directives. From the drawn inferences some suggestions will be made for India to improve the consumer protection by modifying liability system. The works of N. Reich, H. Kötz, B. S. Markesins, J. M. Kellam, K. U. Link Esq, T. Sambuck, P. Kelly, R. Attree and A. Geddes have been used to review the German liability system.

In the case of an ex- ante approach, the study will focus on a review of the Appliances Act, 1968 (Amendment, 1992), the German Institute for the Standardisation- DIN, and the EC Product Safety Act, 1992. From the drawn inferences some suggestions will be made to India to improve consumer protection by modifying the regulatory system. The works of J. Folke, H. W. Micklitz, T. Askhan and A. Stoneham have been used for a review of the German Regulatory system.

Chapter Outline

The thesis contains five chapters. The first chapter provides an account of the economic theory of consumer protection with a view to set the analytical framework within which the study is to be located. The second chapter focuses on the issues of the alternative legal system, which are central to the analysis of the legal economics relating to consumer protection. The third chapter deals with the consumer protection in India. The fourth chapter is about the consumer protection experiences in Germany. The last chapter makes a certain suggestions on the working of the alternative legal systems in India relating to consumer protection, in the light of the comparative experience of Germany.