Chapter-VII.
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CONCLUSION AND SUGGESTIONS

To conclude let us move a step backward to have an overview of earlier chapters and especially chapter-wise observations. In previous chapters those factors have been briefly outlined which are the main root causes of consumer exploitation and harassment. In developed countries like U.K, U.S.A consumer themselves have strived to raise their standard of living but in our country more often in the State of J & K consumers though expect fair deal take things for granted without seeking information even though the goods are fake, spurious and adulterated. They take goods without asking about their purity even at the cost of their life and safety just because the goods are cheap and have excessive schemes, gifts and discounts etc. It has been noticed that most of gifts with the schemes are not given to the consumers by the private business concerned people. They are all appropriated by the traders. This is because buyers do not check, read and study the products they buy. False guarantees and warranties are laid down without any intention to fulfill. Consumer is not ready to fight for his rights. It is estimated that forty percent of goods in our country are either sub-standard or adulterated but it is also expected that in the state of J & K this figure may be more horrible and enlarged one because here major portion of the food, drugs and essential commodities are brought from outside the state and it is rightly commented about the people of the State that they are crazy to use foreign goods like shampoos, hair dyes etc without caring about their ill effects and irreparable damage.

New products are coming in the market but consumer hardly knows about them. It is the backwardness and illiteracy on the part of the consumers which is responsible for this sorry state of affairs.
Advertisements instead of informing consumers often misled them. Great care regarding standards both in goods and services is the ultimate name. In this connection rules, regulations and various Acts have been passed to do the needful by providing civil and criminal remedies. However, it has been recognized that in spite of encouraging legislative and governmental role consumers have failed to take advantage of the law. Rules concerning packaged goods are very clear and precise that all packaged items must be clearly marked as to their date of manufacture, date of expiry, contents in the product, MRP etc. but most of the markets are full of such goods where packaging does not give any information and there are many items whose shelf life is over, yet they are being sold and when the consumers use them they do not give the desired results. The consumer is the looser both ways, one in money spend, the other getting a useless item of no value. Who is to be blamed? Big producers or retailers who are driving huge profits, or government who is responsible partly because it has a big monopoly in trade and business and partly it is the duty of government to protect the life and lives of consumers and/or consumers themselves. In fact all the three can play their respective roles to work in cooperation and for promotion of consumer protection.

What is said above about the defective and spurious goods the same is true as to the deficient services in public, private and cooperative utilities. In chapter - V we have seen this problem is more acute in case of monopoly services like banking, electricity, insurance, telephones, post, transport etc. One pays even though the electricity and telephone service is not up to the standard mark. The same is true in transport service. One pays even though the price hike is unjustified. One could cite many examples when banks would found rendered services neither courteous nor professionally up to the mark. In insurance service we
have seen in the said chapter how inordinate and unjustified delay in appointing the surveyor is made by the various Insurance Companies. In these circumstances question arises what is the remedy?

In chapter-II after identifying some consumer problems and their possible solutions we have scrutinized provisions of various enactments with a view to spell out their efficiency and shortcomings. Briefly to state these legislations though primarily aim to control sale, supply and production of food, drugs and other essential commodities etc. they vehemently failed to make a common man conscious enough to make a distinction between fair and foul, good and bad. Further, the tedious time consuming and uncertain procedure involved in reporting complaints under these Acts have discouraged even those consumers who are conscious of law and their rights. Not only this, these Acts have not kept pace with some of the sophisticated trade practices in respect of which consumers need protection. For this and many other like things consumer protection Act, 1987 was introduced in pursuance of U. N. General Assembly Guidelines on similar lines as Central Consumer Protection Act for rest of the country. This Act is a comprehensive legislation to provide cheap and speedy remedy which enables the redressal agencies to impart justice. At present as discussed in chapter – IV there is a two tier, quasi-judicial machinery at divisional and state level to dispose of cases within a stipulated time and it provides protection to consumers against defective goods, deficient services and restrictive and also unfair trade practices. This Act covers also goods and services unless exempted by the Govt. by notification in gazette. This Act does not replace the available remedy as provided under other Acts.

Despite the fact that Redressal Agencies under the CP Act are busy and overloaded with their work consumer awareness/consumer resistance in the state is at its infancy. Our overall survey of thousands of cases
chapter-V and VI reveals that there is flood of cases against insurance service and rare instances are in other field of services. The greater the action the greater will be the consumer movements. Unless consumer awareness and consumer resistance becomes a mass movement the standard and quality of goods and services is not going to improve. If more exposure is given to fake items or spurious drugs and medicines, adulterated food items, under weight or overcharged goods then this public exposure will make it difficult for manufacturers or the traders and retailers etc. to market them. Today a choice before a consumer is between a substandard item and one that is known to be adulterated. Similarly though the Apex Court has brought all government and semi-government bodies under the purview of the Act these services continue to provide deficient services and have repeatedly claimed before the consumer forums that they are not answerable under the CP Act as they are statutory bodies working under the direct control of the Govt. But this claim was firmly turned down by the Apex Court in *Lucknow Development Authority V/S M. K Gupta*.

Here it is noteworthy to have a bit of discussion about our case study also. Our case study reveals that there have been allegations that the construction (under building and housing service) that the construction is substandard, arbitrary raising of prices and inordinate delay in allotment of flats or plots. Since the housing services are being rendered not only by statutory boards but also by private builders or contractors, Consumer forum have awarded not only the value of services but also compensation for the injustices suffered by the consumers. However, it has been observed from the above cases relating to building and housing that the commission has refused to entertain complaints of class action suits which contain the question of law and fact relating to houses on the ground that issues raised were complicated questions of law and fact.
Consequently what has been given by legislature as a facility to the consumer has been taken away by the Apex Commission. The State Commissions on the other hand have entertained complaints filed by several consumes in a representative capacity. However, directions have been issued under the CP Act (Central Act) for removal of latent defects which could not have been known at the time of taking possession of the house or land. The fact that the house allottee had signed a declaration at the time of taking over possession that the house was complete in all respects was held not to constitute any estoppel against recipient and the complainant has been entitled to all the expenditure incurred for removing such defects. By this ruling of Apex Commission consumer of housing service are likely to be greatly benefited. These rendering services have been allowed to increase charges equal to the amount of cost escalation during the period of delay may not be allowed. The demand of a reasonably moderate escalation is not a deficiency in service, it would be so if it has been in the nature of an unscrupulous exploitation of the consumers. This approach seems to be justified because of the fact that inordinate delay, arbitrary and exhorbitant increase in costs are all consumer wrongs and therefore, jurisdiction of consumer forums cannot be denied on these matters.

Cases regarding the business of courier service for carriage of mail or parcels falls within the purview of the CP Act and delay in delivery of the articles or non-delivery thereof amounts the deficiency in service. However the procedure for acceptance of packets particularly of uninsured and undisclosed packets have created complicacy causing harassment to the consumer. The objection of the couriers that their liability is limited to Rs. 100 containing in the memo containing such a condition does not carry weight with such printed memo has been neither signed nor there has been any evidence to show that the terms there in
were brought to the notice of consigner or the consignee or that the same were agreed upon by the consigner. In these cases a clause in the contract which restricted payment of compensation to a fixed amount should not be given effect.

Another category of service which has already became part of our discussion is education. No doubt CP Act does not expressly include education in the definition of service but I am incomplete agreement with the minority view expressed in Mohiuddin Kadeer's case. The time has gone when education was treated a mission and vocation rather than profession, trade or business. There is mushroom growth of institutions who make lofty but false claims about the affiliation recognition, facilities and job prospectus with a view to allure the un-employed youth and thus mint money by charging exhorbitant sums from their students. Charging Rs. 300 to 500 per month (the month forming twenty days only rest holidays) from a group of as many as 100 to 250 students no limits whatever. In every nook and corner of our state coaching centers are seen everywhere. Thus placing educational system outside the purview of the CP Act will do more harm than good to the society as a whole. So these institutions shall have to be accountable towards the students in the future.

As already mentioned while analyzing various cases under heading electrical service – supply of electricity has been held to be a consumer service even if the energy is being put to a commercial use. As in other services under this Act for example housing construction etc. CDRA's are refusing to decide the question of law and fact in life insurance cases. No doubt the contract insurance is the contract of uberrimae fidie, but rigor of the maxim suppression of veri suggestio falsi in life insurance cases can be subterfuged by directing LIC to employ competent doctors for ascertaining the state of health of consumers.
Here it is also important to comment on medical service. Perusal of a number of cases reveal that this medical profession is claiming immunity and has developed phobia of CP Act. Supreme Court in a case has held that only private hospitals and nursing homes fall within the Section 2 (1) (o) of this Act and the persons who avail themselves of the facility of medical treatment in Govt. hospitals are not consumers and the said facility cannot be regarded as service rendered for consideration this view has sounded the death knell of emerging consumer jurisprudence. After all, doctors are paid by the government in a welfare state. By virtue of this decision only private doctors are made liable. In this case though the Apex Court has authoritatively set at rest the controversy regarding the applicability of the CP Act to medical profession but this dichotomy made between private hospitals and government hospitals has no logic. There is no justification in a welfare state to exonerate a medical practitioner from liability for negligence while serving in a Govt. hospital.

So for as the postal and telegraphic services are concerned both are claiming immunity from the CP Act. Regarding Postal service NC in *The Partner, Monickbag Automobiles Case (1997)* observed that the services rendered by the post office are merely statutory and there is no contractual liability. Establishing the post offices and running the postal service the Central Govt. performs a governmental function and the Govt. does not engage in commercial transaction with the sender of the articles transmitted by post is in the nature of charges imposed by the state for the enjoyment of the facilities provided by the Postal Department and not consideration of any commercial contract. The post office cannot be equated with a common carrier. But the attitude of the Redressal Agencies has been progressive in certain cases where postal authorities were held liable for their carelessness.
As postal department contended the applicability of this Act likewise telecom department denied the same. However, this contention has been rejected by the Apex Commission on the ground that the telephone service is not provided free of charge and nor is there any contract of personal service. The CP Act gives the consumers additional remedy besides those which may be available under other existing laws.

It has been repeatedly held that the consumer forums will not be legally justified in taking over the function of estimating by application of the rule of thumb the precise number of calls made unless there is adequate evidence to show that metering equipment was defective or there has been misuse of the particular telephone by some unauthorized person in collusion with employees of the department particularly in cases, where a subscriber has the STD facility. This is the reason that sometimes people get inflated bills for no valid reasons. However, this test evolved by the Apex Commission that it was for consumers of telephone services to establish that their inflated bills were due to the collusion between the post and telegraphic employees and third parties seems to be an erroneous one and has become handle for the telephone department throughout the country as in the instant state to harass the consumers. The most unique and unfortunate future of this service is that unlike electricity or water meters which are installed in the premises of the consumer, the telephone meter is installed elsewhere-away from the gaze or access of the subscriber from where it is possible to use the telephone of the subscriber without his knowledge. Moreover, the NC is split as regards the texts to be applied in protecting consumer who complain of sudden excessive billing of their telephones. In the absence of any special circumstance one cannot justify an immediate disconnection of the telephone without notice. Not surprisingly therefore, a large number of subscribers apply for disconnection of this facility. It has been observed that it is the
consumer who is at the utter mercy of these operators and officials of the telephone department.

Lastly we have studied transport service with the help of decided cases and it is observed that the Railway Act and the Railway Claims Tribunals Act have nullified the express provision of the CP Act that its provisions are in addition and not in derogation of any other law for the time being in force. The existence of this statutory bar against to the award of compensation is resulting in gross in justice to the consumers.

The above discussion round defective goods and deficient services in the light of recent pronouncements of Supreme Court, National Commission and Consumer Forums of the State provides CP Act is a principal consumer legislation and if effectively implemented will prove boon to consumers and will do wonders by providing better remedy to the aggrieved consumers. However, there is a greater demand for accountability not only on the part of private and public sectors but as well as services rendered by professional persons, unscrupulous businessman, unethical professionals and non-responsive Governmental undertakings.

Thus to conclude it is proper to say that the State of J & K which constitutionally has a special status has not raised above the level of satisfaction in providing and ensuring consumer protection in the state. The reason is obvious in spite of the significant role of consumer fora there is actual lack of consumer awareness in the state. In order to create awareness and ensure consumer protection there is urgent necessity that Govt. should establish more consumer courts in the state, so that justice will be accessible to the common man and it is natural when courts will be setup at block and district level people will become more and more aware about the nature and purpose of these courts and also of their rights. Further there is need of making amendments and corrections in the
penal laws dealing specifically with adulteration, labeling, packaging of goods, advertising etc. so that the technical flaws will be removed and the persons entrusted with the responsibility of enforcing such laws—say for example Food and Drug Inspectors and/or non-judicious Members of Consumer Fora etc. be recruited and provided high qualified and well trained in their respective fields. Not only this, media should play its important and legitimate role in awakening the masses. Business sector must establish their code of ethics which must be purely consumer oriented. The most important thing is that if consumers and consumer organizations will remain vigilant major improvements will be brought in the quality of goods and standard of life. Furthermore both Govt. and private services including professionals be brought expressly under the purview of the CP Act so as to avoid future unnecessary objections, denials and doubts about the amenability of the CP Act. This way they will show improvements in terms of responsibility and competence.

Now before concluding the whole discussion on the subject matter the following suggestions for facilitating consumer protection in the state are as follows:

i. The State Level Consumer Protection Act made by the Govt. has many flaws in it which deserves or need to be amended, on the lines of Central Act though Central Act itself needs amendment but the State Govt. must incorporate some provisions (for example third separate consumer forum) from it to benefit general masses.

ii. There is a need of creating awareness among the masses about consumer rights and creating confidence among them by disposing off the cases within specified time period. This is possible by making better position (by providing more facilities) of consumer forums in the state. So Govt. should exploit its resources in generating
consumer awareness and redress the grievances of the people of State.

iii. There is an immediate need for the establishment of District Consumer Forums in each district of the State. In spite the fact that Amendment Act, 2002 provides for district level consumer courts Govt. has not taken steps so far to act in accordance with the new Amendment Act. This makes mockery of the J & K CP Act. So Govt. should fulfill legislative mandate without delay because mere statutory words will not help actual establishment of forums in each district of the State will provide door to door justice to the consumers.

iv. Govt. and other agencies of Consumer Affairs should make all efforts to involve more and more people, particularly the youth who can carry the message to the masses about their rights, laws etc. in this connection. It is the educated and enlightened youth who can carry the message not only to city areas but also to the rural population as well.

v. Govt. must create and strengthen more institutions which would serve people of far flung areas. It is observed that Food and Supplies Department is busy in various matters so the Govt. for the very purpose of the CP Act must also create an independent Consumer Affairs Ministry and make other departments to co-ordinate.

vi. Govt. should thrust on improving all services being rendered to the consumers.

vii. Necessary Amendment should also be carried into the CP Act whereby Consumer Forums should be empowered to entertain complaints having unlimited pecuniary jurisdiction.

viii. Consumer Forums should be established at Block and Tehsil level. If it is not possible due to financial restraints etc. then for time being panchayats be empowered to decide complaints pertaining to
consumer rights. If this will be done it will prevent time and money of consumers.

ix. There is hardly any voluntary organization in this State which is devoted to consumer cause. Steps should be taken by both Govt. and Consumers to establish such Organizations so that the consumer grievances can be better redressed.

x. There is dire need of setting up a separate product testing laboratory in the State.

xi. Consumer education should be given through posters, folk arts, street plays, T.V., dramas, seminars etc. because no law can become forcefull unless the consumer movement gains momentum.

xii. Consumer disputes and complaints should also be settled by pre-litigation, negotiation, counseling etc.

xiii. Consumer Awareness camps should be organized in remote areas.

xiv. Consumer Education should be introduced in educational institutions from primary to higher level as a subject in their curriculum.

xv. Educated youth specially students of colleges and universities should gear up for creating awareness among people about their rights and redouble efforts for mitigating their sufferings.

xvi. Govt. should establish a consumer cell under CP Act which will strive for achieving its objective and take effective measures towards welfare.

xvii. Regular contact with people in far off places will enable consumer cell to know their miseries and finding solution to these.

xviii. Govt. must make it obligatory for sellers and manufacturers to display price and stocks of essential commodities in other articles of mass consumption.

xix. The Govt. should authorize police and/or other independent agencies to look after and ensure that the Consumers should not be defrauded
by offering sub-standard goods even on low cheaper prices if those commodities affect the consumer health and wealth. Businessmen, producers, dealers, retailers should be compelled to maintain standards of quality, durability etc.

xx. Govt. should fix as already suggested prices on almost all consumer commodities. Net retail price should be printed on packaged commodities instead of printing local taxes extra.

xxi. The Govt. departments (Police squads etc.) should be made more active and efficient in conducting raids. Corrupt officials must be summarily dismissed from service without going through the existing procedure. The law must be amended for this purpose.

xxii. The culprits should be given prompt and duly publicized punishment. Laws should be made more stringent for selling sub-standard products, adulterated products, underweight products, overcharging and misleading advertisement.

xxiii. There must be speedy trial and decisions on food adulteration cases preferably by specially assigned tribunals or forums.

xxiv. An advisory body with powers to hear the public should be setup to regulate quality in food and essential commodities. Such an advisory body can advice the administration when it faces problems involving the safety of consumers or when changes in law or rules are planned.

xxv. All food products should carry information and care labeling. Provisions requiring the manufacturer to give his full address on the label should be made compulsory. Manufacturers, producers and even retailers must ensure that the product going into the market is wholesome, pure and properly labeled.
xxvi. Lastly CP Act provides only compensatory provision and not for penal provision. It provides penalty only in those cases where the defaulter fails to comply with the orders of the consumer forums. So in this Act penal provision and in other Acts say for example Prevention of Food Adulteration Act etc. compensatory provision be incorporated.