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Criminal Law: A Tool for Consumer Protection in India

* Aneesh V. Pillai

* Faculty of Law, Hidayatullah National Law University, New Raipur, Abhanpur, Chhattisgarh

ABSTRACT

The protection of consumer's interest is not new, but it has assumed added significance because of the vast expansion of business and trade in this century. Exploitation of consumers in this century manifested itself in various forms such as price hikes, production and supply of substandard and hazardous goods, use of false weights and measures, adulteration, false and misleading advertisements, misbranding, black marketing and hoarding etc. As a welfare state it is the duty of the State to see the consumers are not to being exploited in the market. In response to the increasing malpractices in the market place, many countries have adopted various legislations to protect the consumers. India has also adopted its Consumer Protection Act in 1986. Most of these legislations are in civil nature, so provides only civil remedies. Thus this paper tries to examine the nature and scope of criminal law in protecting rights of consumers.

Keywords : Consumer, Consumer Protection, Criminal Law

Introduction:

The protection of consumer's interest is not new, but it has assumed added significance because of the vast expansion of business and trade in this century. Exploitation of consumers in this century manifested itself in various forms such as price hikes, production and supply of substandard and hazardous goods, use of false weights and measures, adulteration, false and misleading advertisements, misbranding, black marketing and hoarding etc. As a welfare state it is the duty of the State to see the consumers are not to being exploited in the market. It is the supreme function of the state to protect the rights of the individuals. Under the social contract agreement, state is the only agency vested with the power to make laws for the protection of individual rights. For the protection of consumer's interest the state can take resort to two forms of legal proceedings i.e. civil and criminal proceedings. When the proceedings aim at the enforcement of a right it is called civil; when it aims to punish a wrongdoer it is called criminal.

The criminal law tries to establish that a criminal act will not end as a profitable enterprise but only as an ill bargain to the offender. The temptation to conserve or promote one's selfish interest is at the bottom of every crime. The criminal law by imposing an adequate penalty on the offender as a consequence of his crime, seeks to create an artificial counter motive to avoid the path of crime. To this end it inflicts physical evils on the offender, which vary in proportion to the gravity of the offence or magnitude of its temptation. Such evils are imprisonment, fine and confiscation of property etc. In response to the increasing malpractices in the market place, many countries have adopted various legislations to protect the consumers. India has also adopted its Consumer Protection Act in 1986. Most of these legislations are in civil nature, so provides only civil remedies such as removal of defects in goods and deficiency in services, replacement of goods, refund of charges or prices, compensation for loss or injury, discontinuance of unfair or restrictive trade practices etc. These remedies are no doubt in one way or another directly beneficial to the individual consumers. Now the moot question is how far these legislations are effective to control and prevent the use of unfair trade methods by greedy traders. Some authors are of the view that consumer fraud is a more harmful kind of social behavior than traditional crime. This paper tries to examine the nature and scope of criminal law in protecting rights of consumers.

Criminal Law and Consumer Protection:

Use of criminal law for the protection of the interests of consumer is not a new idea. Even in the ancient Vedic period, the offences affecting consumers were elaborately discussed in the Vedas. Four broad types of relevant criminal offences were prominent in the ancient period: Adulteration of food stuffs, Charging of excess prices, Fabrication of weights and measures, Sale of forbidden articles. For all these offences, statutory measures and punishments were discussed in prominent texts like Kautilya's Arthashastra, Manusmriti and Naradasmriti. During those days exploitation of consumers was considered as a sin. The history of other countries is not different in this regard, for example, in Austria, the seller of adulterated goods had to swallow all of the adulterated products publicly and in France in the 16th century there was one law under which people were allowed to throw eggs at those who had sold eggs of lower quality. Thus the criminal law can play a role in the process of preventing, detecting and punishing the malpractices in the market place.

It is relevant to mention here that a free market is essential for protecting the rights of the consumer and it can be achieved only through state intervention. In numerous instances the state has intervened to protect rights of consumers. However it is seen that the civil law has been used for this purpose. This practice of use of civil law by majority of countries as well as in India has revealed that the civil law is inadequate to deal with such cases. Hence, the argument of the author is that criminal can be used as an effective tool for protection of consumer.

Criminal Law as a Desirable Tool for Consumer Protection:

There are five major reasons which make criminal law as a desirable tool for consumer protection. Firstly, the consumers as we all are aware, are ordinarily not inclined to file a suit or even approach the redressal agency, if the amount involved is not substantial. For example if the petrol consumer buys at the filling station is adulterated with kerosene or if the grocer sells him black pepper which contains papaya seeds or the sweets actually weigh less than what he pays for? If the trader sells adulterated, sub-standard, spurious or short weight articles, earnings from each consumer may not be very high, but at the end of the day the total profit of the seller is very high. Further the consumers are usually reluctant to get involved in a lengthy and expensive litigation over

such matters. This tempts and encourages traders to indulge in such mal-practices with impunity. To avoid such situations in any civilized society and particularly in a welfare state, such malpractices are branded as crimes against the entire society. Therefore even if the individual consumer may or may not claim damages in a civil action, it is essential that the state should interfere to prosecute the offender.

Secondly, the major remedy provided in Consumer Protection Act is compensation to the injured consumer. But it can be pointed out here that such type of punishments has nothing to do with preventing the repetition of the act by the particular trader. The major reason is that the companies or the trader are able to pay the fine or compensation, because it is only a negligible amount compared to the amount they have obtained from consumers through exploitation or unfair means. Thus in most cases the trader is happy to pay this negligible amount and may consider it as a license amount to continue or proceed with their malpractices. In comparison if criminal law is applied in such situation it will have a different impact. This is because a director of a company, manufacturer, retailer, shop keeper or a seller would not like to go the jail and serve a sentence of imprisonment for committing a crime. The impact of punishment in a jail is much severe than paying compensation due to the humiliation and embarrassment and the offender may not like to repeat it again.

Thirdly, criminal acts and its punishments receive wide publicity. The response of the society, the consequential adverse remarks by public and its impact on the family and friends would help to deter the likeminded persons from committing and repeating such crimes.

Fourthly, the collection of evidence in civil cases is initiated at the instances of injured party. The expenses are to be borne by the injured consumer. In contrast the collection of evidence in criminal cases is done by the government and the samples are tested in government laboratories. Thus the state as the prosecutor is in a better position when compared to the individual consumer in civil cases. Hence it is desirable to apply criminal law in such cases.

Finally, in civil cases the expenses are to be borne by consumer. But in criminal cases the state as a prosecutor will bear all expenses. One opposite argument in this regard is that in civil cases the consumer is entitled to get compensation while in criminal cases there is no compensation. However this argument is baseless because the section 357 of Criminal Procedure Code is sufficient enough to award compensation to consumers in appropriate cases.

Criminal Laws in India vis-à-vis Consumer Protection:

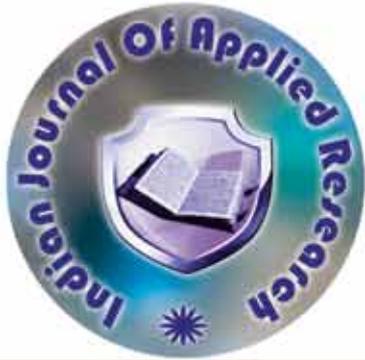
There are numerous criminal legislations in India which deal with protection of consumer. One of the oldest and major criminal law which contains provisions relating to consumer protection is the Indian Penal Code. The IPC contains specific provisions with respect to offences relating to Weights and Measures, Adulteration of Food and Drugs, and also goods having spurious marks. The essential Commodities Act, 1955

is a permanent piece of legislation on the statute book. In order to ensure the availability of some essential commodities at fair prices, the Act confers power on the central government for regulating production, sale, distribution, storage, transport and trade and commerce in these commodities. The Prevention of Food Adulteration Act, 1954 was passed by the Parliament to bring about uniformity in the standards of food throughout India. Its primary objective is, "to prevent, in the interest of the health of the community, the supply of adulterated food stuffs by a person as a part of his business activity". The rules made under this Act deal with various matters fixing standards for of quality for food, use of preservatives and flavoring, licensing procedure for packing and labeling of foods. However this Act now stands repealed and the various aspects of food safety have been consolidated under the *Food Safety and Standards Act, 2006*. Further, the Drugs and Cosmetics Act, 1940 provides for regulation of import, manufacture and sale of drugs and cosmetics. The Act seeks to protect consumers from misbranded, adulterated and spurious drugs. The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 was enacted to provide protection to consumers against the mischief of advertising by quacks and also false advertisements of magic remedies. The Standards of Weights and Measures Act, 1976, take care of weights and standards of packaged goods. The Trade and Merchandise Marks Act, 1958 was enacted to protect the trademarks of trader from being copied by dishonest competitors. It also protects the consumers. Thus there are various legislations for protecting the consumers. One main feature of all these legislations is that it establishes strict liability offences. In contrast to traditional crimes where *mens rea* is essential for proving the crime, in these legislations *mens rea* is not required to be proved.

Conclusion

Criminal law can be used as an effective tool for protecting the rights of the consumers. There is a need to amend the present Consumer Protection Act, 1986, to include defect in goods and deficiency in services as criminal offences. Some of the suggestions are as follows:

1. The defect in goods and deficiency in services should be considered as socio-economic offences. Classification of some practices as a crime would itself help to deter the persons from practicing that.
2. The element of *mens rea* should be relaxed in these types of cases. These offences should be considered as strict liability offences. It will help to solve the problem of evidence relating to guilty intention.
3. Consumer Organization and public spirited persons should be allowed to file complaint and initiate prosecution. If they are allowed to interfere in between a trial, it would help to overcome the problem of inaction on the part of state.
4. Along with punishment to the offender, the compensation to consumer should also be given.
5. Consumer Redressal Forums should deal with consumer offences. For this purpose they should be equipped with judges from legal side.



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