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## Research Article

# THE PITFALLS THAT CAN ARISE IF AN ORGANISATION DOES NOT COMPLY WITH CONSUMER PROTECTION LAWS

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### ABSTRACT

‘Consumer is king’ as the famous tag line goes. But is he really the king or is he a subject or rather a victim of unfair trade practices, spurious goods and services, expired goods packaged as fresh stock, misleading/intentional misrepresentation of uses and benefits of goods, etc., all in all packaged as profits of the companies/organizations supplying such misleading/intentional misrepresented goods and services. Companies/Organizations’ fail to understand that consumers play a crucial role in the overall economic and financial growth of a particular country. Hence, the Consumer Protection Act, 1986, to protect consumers and simultaneously acts as a check and balance on companies/organizations to be aware of the repercussions of misleading/intentional misrepresented goods and services. Earlier, yes it was always the ‘caveatemptor’ rule as in, ‘let the buyer beware’, but now rather in modern times, with the Consumer Protection Act, 1986, and in consonance with the US Consumer Protection Laws in place, a principle of ‘caveat venditor’ rule which means ‘let the seller beware’ is also in place and a responsibility is also laid upon the seller in case of misleading/intentional misrepresented goods and services.

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## INTRODUCTION

### REVIEW OF LITERATURE

‘Caveat Emptor’ which lays a responsibility on the buyer is the only principle/rule that is followed in India wherein consumer laws are concerned and due to the said principle/rule there apparently is a major flaw/drawback in the Consumer Protection Laws. Although there is another rule/principle that is being followed in the US that is ‘Caveat Venditor’ which lays a responsibility on the seller also, India has been following the said rule in spirit but no such rule/principle was laid down. The same can be seen the Nestle Maggi case and Cadbury India Ltd., case. There is a limited mention of ‘Caveat Venditor’ in NachiketMor Panel on ‘Comprehensive financial services for small businesses and low income households’. This research paper through the ideal principle/rule of caveat emptor followed in the Consumer Protection Laws in India now shifts the responsibility from the consumer to the seller through the caveat venditor rule/principle which holds equally the buyer and seller responsible judicially rather than just the buyer arbitrarily.

### Who is a consumer?

As per Section 2(d) of the Consumer Protection Act, 1986, “‘consumer’ means any person who

1. buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
2. hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purposes; “

### **What Complaints / Allegations / Grounds Can Be Raised Under The Consumer Protection Act, 1986?**

As per Section 2(b) of the Consumer Protection Act, 1986, “‘complaint’ means any allegation in writing made by a complainant that

1. an unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider;
2. the goods bought by him or agreed to be bought by him, suffer from one or more defects;
3. the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;
4. a trader or service provider, as the case may be, has charged for the goods or for the services 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 ant package containing such goods;
  - c. displayed on the price list exhibited by him by or under any law for the time being in force ;
    - agreed between the parties;
5. goods which will be hazardous to life and safety when used or being offered for sale to the public –
  - a. in contravention of any standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force;
  - b. if the trader could have known with due diligence that the goods so offered are unsafe to the public;
6. Services which are hazardous or likely to be hazardous to the life and safety of the public when used, are being offered by the service provider which such person could have known with due diligence to be injurious to life and safety.”

From the above definitions as per the Consumer Protection Act, 1986, it is evident that a major responsibility is now laid on the seller/trader which in turn reverts back to the retailer, the wholesaler, the company/organization and the manufacturer.

### **Rights of the Consumer**

**Right to information** – A consumer needs to be informed about the quality, quantity, potency, purity, standard and price of goods and services. All consumable products have been labeled containing the cost, quantity, ingredients, manufacturing date, expiry date and instructions for usage of the product. It is the responsibility or rather duty of the seller to disclose everything about the product truthfully and honestly meaning the defects as to any wherein the quality is concerned, the side effects, if any.

**Right to safety** - As per Section 2(b)(v) of the Consumer Protection Act, 1986, rightly states a consumer has the right to be protected against goods and services which are hazardous to life, safety and property showcased in the markets in areas like healthcare, pharmaceuticals, food processing and adulteration. No person better than the manufacturer/company/organization of a product is aware of the detriments of the product which is harmful to the consumers using it. The question being isn't the manufacturer/company/organization accountable for the non-disclosure?

1. Right to choose – A consumer has the right to be assured and to have access to a variety of goods and services at competitive prices. The said right to choose is further assured by the Competition Act, 2002. It is unethical for companies/organizations to collude and discourage the consumers' bargaining power.
2. Right to be heard – As one of the principles of natural justice every consumer is empowered to put forth his complaint against defective goods and deficiency in services before the appropriate consumer forum against companies/organizations. It is further ensured by the Consumer Protection Act, 1986, that all consumer issues will be considered and expedited without unnecessary delay.
3. Right to redressal – A consumer has the right to seek redressal against unfair and restrictive trade practices and deceitful manipulation. The powers given to the Consumer Forums under the Consumer Protection Act, 1986, namely, the District Consumer Disputes Redressal Forum, the State Consumer Disputes Redressal Forum and the National Consumer Disputes Redressal Forum all have a fiduciary, territorial and pecuniary jurisdiction to address consumer complaints.
4. Right to consumer education – Consumers should be educated on consumer rights and consumer protection laws provided in the Consumer Protection Act, 1986 as ignorance of law is no excuse although ignorance of fact is excused. Consumer education should as far as possible be provided at schools and colleges, further consumer awareness campaigns should be run by governmental and non-governmental agencies. One such effort made by the government to educate consumers is through 'JagoGrahakJago'.

### **Where There Are Rights, There Are Duties / Responsibilities**

1. Duty to identify ones wants and needs – What a consumer wants and needs, only the consumer can identify. To be clear on the same is the consumer's duty. Normally a prudent consumer knows what he wants, accordingly he/she identifies the product, the brand, is aware of the quality requirement as per his/her means and requirements and then purchases the product or services.
2. Duty as to collect information about the product and services – Like stated in point III (i), a prudent consumer is well aware of his/her wants and needs thereby obtaining proper and appropriate information about the product and services, the information of which is well and wholly available in the market or online through advertisements or other means well suited to the product and services and the company/organization.
3. Duty as to awareness of quality of goods and services – Since a consumer enjoys the right to be informed about a product he/she is duty bound to inquire and collect information and identify as to what he/she is purchasing as per his/her needs and wants. Simply not being well informed about your wants and needs and the lack of collecting proper information as to quality of products will not act as a patent right to complain, as you, as a consumer are yourself not aware of what you want, therefore pointing a finger at the seller is aptly incorrect.

As a consumer you have a further right to choose from the variety of products available in the market as to quality, quantity, price and suitability, hence the consumer's choice thereby leading to a well informed and researched choice.

4. Duty as to awareness of safety of goods and service – Since a consumer enjoys the right to safety, he/she needs to beware of buying goods and services from the right places and sources. Knowingly purchasing or availing sub standards goods and services respectively and then later on crying foul play works well within the maxim 'commodum ex injuria sua non habet debet' meaning 'no person ought to take advantage from his own wrong'.
5. Duty as to act with due diligence – Since a consumer enjoys the right to information which is wholly available in the market; the right to safety, thereby buying goods and services from the right places; the right to choose, thereby exploring the variety of goods and services available in the market and then making the right choice as per one's own wants and needs; and more specifically the right to consumer education, thereby being well aware of your rights and responsibilities, in a whole acting with due diligence.
6. Duty as to act as a responsible and ethical consumer – Acting responsibly would definitely mean acting like a prudent consumer and with due diligence. Since a consumer enjoys the right to be heard which is also an equally important right available to the company/organization as this right is one of the principles of natural justice well known as 'audi alteram partem' the right to be heard. The consumer also enjoys the right to redressal provided he has been fair and is himself/herself not involved in any malpractices.

#### ***Caveat Emptor***

The latin term 'caveat emptor' means 'let the buyer beware'. But the said latin term is a part of a longer maxim 'caveat emptor, quia ignorare non debuit quod jus alienum emit' which means 'let a purchaser beware, for he ought not to be ignorant of the nature of the property which he is buying from another party'. The consumer must take the responsibility of thoroughly researching and inspecting the product before purchasing the product. A consumer not only enjoys rights but is also subject to certain responsibilities. A consumer who purchases a product and later discovers a defect is basically stuck with a defective product. Had he inspected the product sparingly before purchasing the same, he may have discovered the defect in time and taken another piece instead or may have not purchased the same at all and would have brought the manufacturing defect to the notice of the seller. A consumer needs to be a prudent consumer and exercise due diligence.

#### ***Caveat Venditor***

Caveat emptor does not however give vendors the green light to actively engage in fraudulent transactions. Therefore, in modern times, the modern rule in the US which assumes and casts a huge responsibility for the integrity of their goods and services on the sellers/vendors is 'caveat venditor' which means 'let the vendor/seller beware'. Through caveat venditor

the goods and services are covered by the implied warranty of merchantability. Therefore, if a consumer purchases a coffee grinder which is defective therefore, lacks the power to grind coffee beans, may return the product for a full refund or replacement under an implied warranty of merchantability.

This principle is now gaining a recognition in India. The RBI is in the process of framing guidelines to counter the Caveat Emptor principle for banks on the basis of the report of the Nachiket Mor Panel on 'Comprehensive financial services for small businesses and low income households' which states that the Caveat Emptor principle has led to defects in the protection of consumers and has caused welfare losses for consumers. The Caveat Venditor principle is a counter to the Caveat Emptor principle which holds the seller responsible by pointing out the shortcomings in the products and the deficiency of services and the entire burden of proving the viability of the product and services is that of the seller.

#### ***Excerpts of Legal Cases against Giant Companies/Organizations That Did Not Comply With Consumer Protection Laws***

The Nestle Maggi instant noodles case by Food Safety and Standards Authority of India (FSSAI). Somewhere in January 2015, a food inspector for random checking and inspection sent a Nestle Maggi instant noodles packet from a retail outlet to the State Food Laboratory for analysis of its contents and safety level for consumption, to Gorakhpur. On analysis of the product in the laboratory, the test results showed that there was monosodium glutamate present in the product whereas the labelling on the packet claimed that there was 'No added MSG'. Analysis of the contents of the second Maggi instant noodles packet in the government laboratory at Kolkata revealed that the lead content present was higher than the permissible limit. FSSAI had ordered to halt all commercial activities related with the product. Nestle Maggi instant noodles was ordered to recall a batch of its noodles from Uttar Pradesh as the same were considered 'unsafe and hazardous'. Instead Nestle Maggi decides to recall all of its 9 variants of Maggi noodles till the situation was cleared out that was almost 27,420 tons from 3.5 million outlets. Nestle Maggi to regain trust amongst its consumers through its tarnished reputation due to this fiasco created a Maggi information hub on its website for the benefit of its consumers. The consumers can view all the certified lab reports for tests done on Maggi. Nestle further publicized its recall efforts and invited journalists to tour its quality assurance center in Moga. Nestle also launched a FAQ page on their official website.

The Cadbury Dairy Milk Chocolate cases before the various Consumer Dispute Redressal Forums. The Company was directed to pay compensation for the sale of worm infested Dairy Milk chocolates. In a nutshell, the complainant had purchased 4 packets of Dairy Milk chocolates from a bakery. On opening the wrapper the complainant noticed that the chocolates were swarming with worms and were hid with thin faecal matter. A legal notice was sent to the company but in vain. Therefore the complainant moved this forum and contended that there was utter negligence involved in manufacturing of the product and the same was not fit for human consumption. A sample of the chocolates were sent to the Government Regional Analytical Laboratory in Kochi. The

results stated that the sample contained uric acid of a level higher than the permissible limit and that the excreta of the insects adulterated the chocolate, therefore, declared unfit for human consumption. Cadbury has had several cases of worm infestation against it and they were also directed to pay compensation accordingly. One such case wherein they had to pay compensation the contention raised was that an iron pin was found inside the Cadbury chocolate bar.

The Johnson and Johnson Baby Talc Powder case in Los Angeles where the jury ordered Johnson and Johnson to pay a compensation to the tune of USD 417 million to a hospitalized woman who contended that the baby powder causes ovarian cancer over a period of regular usage for feminine hygiene. Further allegations/contentions raised against Johnson and Johnson is, that the company failed to adequately warn consumers about the talcum powder's potential cancer risks. The complainant used the baby powder on a daily basis since 1950 to 2016 and was diagnosed with ovarian cancer in 2007. The evidence adduced before the court included internal documents showcasing that since numerous decades Johnson and Johnson were aware about the risks of talc and ovarian cancer but failed to give even a warning or a caution note to the women buying and using their products. This case somehow resembles the Pacific Gas and Electric Company case of California in 1993. Johnson and Johnson till date been ordered to pay compensation to at least four women for their talcum based products. There are around more than 4,000 cases pending till date against Johnson and Johnson for their Baby Talcum Powder.

## CONCLUSION

As stated in the abstract the same continues in the conclusion 'Consumer is King'. The Laws protecting consumers can be very well seen from the excerpts of legal cases against giant companies/organizations that did not comply with consumer protection laws. Unfair trade practice or a restrictive trade practice; defective goods; deficiency in services; goods and services hazardous to life and safety are no more welcome and acceptable even though consumers pay the prices along with all the taxes levied diligently and honestly, in spite of the bargaining power but yet withholding it and paying the fair price labelled arbitrarily by companies/organizations. If consumers are paying their fair share then why should companies/organizations gamble with their safety and health? Companies/organizations tend to ignore the fact that they survive and profit because of consumers, because there is a demand and supply chain created through consumers and more so, since the fair prices are being paid, though arbitrarily, their only goal and objective being is to make profits is ideally achieved, so why not stay fair and honest at their end.

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