

Why A Consumer Policy?

Introduction

Governments declare their policy in relation to what they will do in areas which concern governance unless it involves state secrets like defence matters. In pursuance, a policy statement is published for the benefit of people and guidance of the administration. For instance, there are several policy statements issued by the Ministry of Environment & Forests in India. There is one on forests, another on abatement of pollution and yet another on conservation of environment and development. There is a national road safety policy, a health policy, a housing policy, an education policy and so on. But in the context of consumer protection there is none.

More importantly, the chapters on Fundamental Rights and the Directive Principles of State Policy spelt out in the Constitution of India have several scattered provisions on consumer issues. This Briefing Paper examines the need for an integrated consumer policy and suggests the basic outline for one.

Consumer's Interest is National Interest

Ever since the marketplace evolved consumers have been shortchanged and the state has endeavoured for better legal protection. Laws to control, and punish businesses indulging in, adulteration and short weighing have existed in India since 400 B.C. Nearly all ancient civilisations: China, Mesopotamia etc have had similar laws to protect consumers.

Since the industrial revolution the growing market place evolved. New products and processes were discovered to meet an evergrowing demand. Today the market place is huge but shrinking as well - in terms of faster reach and proliferation of organised business. But, the perfect marketplace is a myth and an economist's dream. Said the noted diplomat and economist, John Kenneth Galbraith: "It is not the consumer who is the king, but it is the large corporation who is the king in the economy. Whatever happens is not because the consumer wants it that way, but simply because powerful large corporations prefer it that way."

It is this dour reality, that led to the announcement of rights of consumers for the first time in 1962, when another illustrious American, President John F Kennedy moved the consumers' bill of rights in the US Congress saying: "If a consumer is offered inferior products, if prices are exorbitant, if drugs are unsafe or worthless, if the consumer is unable

to choose on an informed basis, then his dollar is wasted, his health and safety may be threatened and national interest suffers."

Kennedy equated consumers' interest with national interest, therefore the rights included the Right to be Heard - to be assured that consumer interests will receive full and sympathetic consideration in the formulation of government policy, and fair and expeditious treatment in its administrative tribunals. His speech delivered on 15 March 1962 is the document which governs consumer policy in the USA, but it is not a consumer policy statement.

The UN Guidelines for Consumer Protection, 1985

There is a fairly well-defined and formatted consumer policy statement at the international level: the United Nations Guidelines for Consumer Protection adopted by the UN General Assembly on 9 April 1985. The guidelines call upon governments to develop, strengthen or maintain a strong consumer policy, and provide for enhanced protection of consumers by enunciating various steps and measures around seven themes: 1. Physical Safety, 2. Economic Interests, 3. Standards, 4. Essential Goods and Services, 5. Redress, 6. Education and Information, and 7. Health. Implicitly it spells out what governments need to do to buttress the eight rights of consumers.

PROVISIONS UNDER THE GUIDELINES

RIGHT TO SAFETY

- 1) Measures and standards to ensure safety and quality of goods and services.
- 2) Facilities for testing and certification of essential goods and services.
- 3) Policies to ensure that manufacturers compensate for defective or hazardous products.

RIGHT TO CHOICE

- 1) Control of abusive and restrictive business practices.
- 2) Goods that meet durability, utility, reliability and fit their purpose and availability of reliable after sales service and spare parts.
- 3) Protection of consumers from unfair contracts and regulation of promotional markets and sales.
- 4) Review of the legislation and enforcement on weights and measures.

RIGHT TO REDRESS

- 1) Governments to set up expeditious, fair, inexpensive and accessible avenues for redress.
- 2) Companies to resolve disputes in a fair, expeditious and informal manner and to set up voluntary mechanisms such as advisory services and informal complaint procedures for consumers.

RIGHT TO INFORMATION

- 1) Information for consumers on proper use and risks associated with consumer products.
- 2) Free flow of accurate information relating to consumer products.
- 3) Governments to develop consumer information programmes in mass media aimed at rural and illiterate consumers.

RIGHT TO CONSUMER EDUCATION

- 1) Introducing consumer education in the basic curricula of the education system.

- 2) Education programmes particularly for benefit of low income consumers in rural and urban areas.
- 3) Governments to organise training programmes for education, mass media professionals etc.
- 4) Business to undertake/participate in factual and relevant consumer education programmes.

RIGHT TO REPRESENTATION

- 1) Governments to facilitate development of independent consumer groups.
- 2) Opportunities for consumer groups to present views in decision making processes affecting them.

RIGHT TO BASIC NEEDS

- 1) Adopt food safety measures, including safety criteria, food standards and dietary requirements, effective monitoring, inspection and evaluation mechanisms.
- 2) Adopt food standards of FAO, WHO CODEX Alimentarius or generally accepted international food standards.
- 3) Improve the quality and appropriate use of pharmaceuticals through integrated national drug policies.
- 4) Develop national drug policies that could address procurement, distribution, production, licensing arrangements, registration systems and availability of reliable information on pharmaceuticals taking into consideration the work and recommendations of WHO in these areas.
- 5) Develop, maintain and strengthen national policies to improve the supply, distribution and quality of drinking water.

RIGHT TO A HEALTHY ENVIRONMENT

- 1) Adopting measures relating to use, production and storage of pesticides and chemicals.
- 2) Including health and environmental information in labelling of pesticides and chemicals.

The case for the Guidelines is that they set out and codify the main elements of consumer protection, and create an international framework within which national consumer protection policies can be worked out. They give consumer policy a clear set of objectives and provide a checklist against which governments can measure their own policies (Harland, 1988). Moreover, the guidelines cannot remain static. They need to change with the changing times, especially when national economies are being globalised, and the information revolution is shrinking the world every day.

The Past, Present and Future of the Guidelines

When the Guidelines were being debated in the ECOSOC during 1983-85, sections of the business community lobbied against the adoption by the UN of any Guidelines at all, as well as against specific provisions. Consequently, there were attempts by some governments to remove whole sections. The main argument put forward by business interests

against the Guidelines were that they favour an interventionist approach to economic management, were hostile to private enterprise, and that the UN has no role to play in what is essentially an area of national policy.

The US government expressed reservations about the concept of the Guidelines and some of its specific provisions. The then Soviet Bloc said that the consumer protection work of the UN was "...justified only if and when it promotes the protection of the interests of developing countries in the realm of international economic relations and also the protection of the broad working masses in the world against the dictates of transnational corporations." They were critical of the fact that specific references to TNCs were deleted from the final text (Harland 1987).

The final version of the Guidelines was adopted by consensus by the General Assembly on 9 April 1985. The text was, therefore, a compromise on all sides. While the Guidelines do not go far enough in protecting the interests of consumers, they nevertheless are a sound basis for the development

of consumer policy at both the national and international levels. The Guidelines are not binding in any formal sense on countries nor are they an international convention or treaty. But they have considerable moral and persuasive value.

The Guidelines were reviewed in 1995 as they had completed 10 eventful years. Many governments expressed continued support for the same. Some of the issues which needed further elaboration and expansion was espoused by the Consumers International (formerly IOCU). Not only globally but even for India, some of them merit stronger consideration. These are:

- Access to Basic Services
- Consumer Representation
- Appropriate Competition Policy
- Sustainable Consumption
- Financial Services
- Information
- Access to Justice
- Regional Integration

The review was placed before the UN's Economic & Social Council (ECOSOC) meeting in Geneva during June-July 1995. Following a recommendation by the UN Commission on Sustainable Development, the ECOSOC at this meeting, on 28th July 1995, adopted a resolution which called for "the UN Guidelines for Consumer Protection be expanded to contain guidelines for sustainable consumption patterns, and be examined for extension into other areas."

Today, they assume a larger significance and the crucial need to fill up the gaps. So far as the content of the Guidelines there are many areas where there are yawning gaps. For instance, housing and clothing which are basic needs of consumers do not find a fleeting mention also. While there is a mention of consumer representation in policy, it is not well defined and needs further substantial improvement.

Promoting a Strong Consumer Movement

The earliest reference to a consumer policy in India was in Point 17 of the 20-Point Programme announced by the late prime minister of India, Rajiv Gandhi, in 1984, wherein it was said: "Expand the public distribution system through more fair price shops and to promote a strong consumer protection movement."

This pious declaration is one of those which was put into action by the government quite well. As a result India has the one of the largest consumer movements in the world - because of the dynamic Consumer Protection Act, 1986 (COPRA). The Act also set another unique example for people's

participation in governance, by the establishment of the Central Consumer Protection Council (and similar councils at state levels).

The Council is the highest body for consumers' protection in India, wherein two third of the members are non-officials. It meets atleast once in a year, and more regularly through working groups on selected matters, and guides the government on issues affecting consumers. No parallel exists even in India, though there are namesake councils for other subjects. The Council, whose mandate is to protect and promote the rights of consumers, has only recently addressed itself to evolution of a policy statement.

Rights of Consumers in India

The consumer in the Act is defined as any person who buys any goods or hires/avails of any service for a consideration and includes any beneficiary, but does not include any commercial buyer. Further, the Act recognises only six consumer rights:

Right to Safety: The right to be protected against the marketing of goods and services which are hazardous to life and property.

Right to Information: The right to be informed about the quality, quantity, potency, purity, standard and price of goods or services as the case may be, so as to protect the consumer against unfair trade practices.

Right to Choice: The right to be assured, wherever possible, access to variety of goods and services at competitive prices.

Right to Representation: The right to be heard and to be assured that consumers' interest will receive due consideration at appropriate forums.

Right to Redressal: The right to seek redressal against unfair trade practice or restrictive trade practices or unscrupulous exploitation of consumers; and

Right to Consumer Education: The right to consumer education.

The other aspect of COPRA is to provide a simple, speedy and inexpensive disputes redressal system. A 3-tiered quasi-judicial structure entertains consumer complaints within a monetary and territorial jurisdiction and provides resolution of disputes in a time-bound manner. The lowest forum is the district forum situated in nearly all the 450 districts in India.

The redressal system is unique in the world. But it is only the haves that can really benefit from the same i.e. persons who have complaints against shoddy goods and bad services, and the patience and the know how to use the system for redress. Ofcourse there are spinoffs of this redressal system

which can have a ripple effect for the larger society viz complaints against a public utility like electricity which can benefit even the poorer sections of the society. In few cases the Act has also benefited the poor but it is basically a remedial law for the middle classes.

Consumer Policy Needs to Address the Poor Upfront

What the law does not do is to provide the protection of the Right to Basic Needs of consumers particularly for the have-nots. This according to the Consumers International (formerly IOCU) reads: "The right to satisfaction of basic needs: to have access to basic essential goods and services, adequate food, clothing, shelter, health care, education and sanitation." It draws its strength from Article 25 of the UN Declaration of Human Rights: "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services."

Corresponding to the abovementioned article, the Constitution of India provides for the right to life and liberty in Article 21, which has been expanded by the Supreme Court in several cases. In Francis Coralie vs Union Territory of Delhi [AIR 1981 SC 746], the apex court said: "the right to life includes the right to live with human dignity and all that goes with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter...".

Directive Principles of State Policy

The Constitution also provides for Directive Principles of State Policy. Although these are not enforceable by law like fundamental rights, Article 37 asserts that "the principles laid down therein are fundamental in the governance of the country and it is the duty of the State to apply these principles in making laws". Article 39 states: "The State is required, in particular, to direct its policy towards securing":

Life, health and environment

- that the citizens, men and women equally, have the right to an adequate means of livelihood [Art.39(a)];
- that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength [Art.39(e)];
- that the level of nutrition and the standard of living are raised, public health is improved and in particular, prohibition of consumption of intoxicating drinks and use of drugs which are

injurious to health, are prohibited [Art. 47].

- that provisions are made for protection and improvement of environment and safeguarding of forests and wild life [Art.48A].

Social, economic and political justice

- the State shall strive to promote the welfare of people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life [Art.38(1)]
- that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment [Art.39(c)]

Redressal

- that free legal aid is provided to the poor and that opportunity for securing justice are not denied to any citizen by reason of economic or other disabilities [Sec.39A].
- Article 350 provides for an entitlement of every person to submit a representation for redress of any grievance to any officer or authority of the Union or a State in any of the languages used in the country.

Who and What should the Policy Address

The UN Guidelines do urge governments to give special attention to the needs of disadvantaged consumers, in both rural and urban areas, including low-income consumers, and those with low or non-existent literacy levels. But in addressing the basic needs of consumers it covers only three areas: pharmaceuticals, food standards and drinking water. It also speaks about considering policies to ensure the distribution of essential goods and services, but it does not cover the whole gamut of basic needs which can ensure a dignified living to a consumer: food, clothing, shelter, education, health care and sanitation.

While the 20-point programme and current government policies stress on ensuring food security through an effective public distribution system, the system itself is in a no-win situation. It is so irrational, corrupt and dominated by vested interests that it cannot be rectified by the best resolve.

Secondly, there is very inappropriate policy or will to ensure that the poverty line does not expand beyond its existing levels. Data shows that the people living below the poverty line has hovered around 40 p.c. of the population since a long time. Of the rest, about 30 p.c. are on a little better than

subsistence level i.e. enjoying two square meals a day with a marginal surplus to acquire few comforts. 20-25 p.c. people are consumers by the western definition i.e. having disposable surpluses and exercising their choices in the marketplace. The balance are the rich with huge disposable incomes. So, clearly the consumer policy statement for India has to distinctly address two to three different classes of consumers simultaneously, and more clearly on the issue of unjustified price rises which affect the poor the worst.

The Experience of Japan and Sweden

There are a few consumer policy statements adopted by a government. Two advanced governments, Japan and Sweden, have adopted one, which has skillfully woven all consumer concerns, and both have enacted the policy statement into a legislation - rather than leave it as a pious resolution.

Japan enacted the Consumer Protection Fundamental Act in 1968 which sets out the basic framework of their consumer policy. Unlike other consumer protection laws this Act does not provide for regulation or penal provisions etc, but clarifies the direction of consumer administration. A 20-section legislation, and virtually a mini-Constitution, its Object Clause reads as: "This Act has as its aim the securing of the stability and improvement of consumer life for the people by defining the responsibility of the State, local government and business enterprises and the role to be played by the consumer concerning the protection and enhancement of his interests..."

A Consumer Protection Council is established under the chairmanship of the Prime Minister with the heads of 18 ministries/agencies who meet once a year to decide broad concrete policy measures to be implemented by the concerned ministry/agency.

Sweden enacted a legislation: "Active Consumer Policy" (1994/95:140) in June 1995. Its objectives are: "that households shall have good possibilities of utilising their and other resources in an effective fashion, that the consumers shall have a strong position on the market, that consumers' health and safety shall be protected, and the development of consumption and production patterns of a type which decrease the strain on the environment and contribute to long term sustainable development." Other than these declared objectives it has set out three other priority areas: a. households' base consumption, b. vulnerable consumers, and c. international cooperation i.e. within the European Union.

Further it has enunciated several measures: a. increased participation of the civil society in

policy matters and enhanced funding for this purpose, b. strengthening local authorities to voluntarily undertake consumer protection activities, c. increase young people's knowledge, d. strategy for consumer work within the European Union with a special fund, e. sustainable consumption, f. competition and demonopolisation, g. consumer policy research, and h. better coordination among different authorities.

Like Japan or India or for that matter most countries, Sweden also has a large number of legislations concerning consumer interest. But for all market regulatory laws, it has a central administrative body, the National Board for Consumer Policies, to govern them. Additionally, the director general of the Board also holds the office of the Consumer Ombudsman.

In both the policy statements of Japan and Sweden there is a recognition of the fact that there are disadvantaged and vulnerable consumers, but these are quite distinct than the kind of vulnerable consumers that India has.

Rationale for a Consumer Policy

Protecting consumers' economic interests is as important as regulation to ensure that the goods and services are available at a reasonable price and are safe. Many tend to think of consumer policy as only about regulation when an appropriate economic policy and an effective competition policy to ensure availability of quality goods or services at competitive prices is just as important.

Secondly, there is a consumer dimension to almost every policy, and therefore there is a need to take consumer interest into account in all policy decisions, through consultation and consumer impact assessment. Consumer policy is not only about legislation governing consumer interest nor restricted to redressal of consumer complaints. Because of the pervasive nature of consumer interest, it all the more becomes necessary that the government needs to have a consumer policy statement/legislation which will guide its different branches in maintaining the appropriate consumer dimension while taking any step or decision which will affect consumers.

In context, one anomaly in the Indian scenario is interesting to note here. While the UN Guidelines calls upon governments to adopt integrated national drug policies, the subject is being handled by the Ministry of Chemicals & Fertilisers. This ministry is concerned with the growth of the pharmaceutical industry and the latest drug policy announced in September 1995 is worse than the one of before. Apparently there was no consultation with either the Health Ministry or the Consumer Affairs Ministry, or even people.

Conclusion

India has a population of about 900 million people of which a large number, more than the population of several countries, are living below the poverty line, and about a little more who are illiterate as well. Less than a quarter have the wherewithal to acquire basic needs, and about the same number can exercise their right to choice i.e. have disposable surpluses to acquire the comforts of life.

Further, in a welfare state like India, many consumers are beneficiaries of services provided by the state like drinking water, sanitation, education and health care. Like several constitutions, the Constitution of India also provides for fundamental rights and directive principles for the protection and promotion of some of the consumers' rights.

Ever since its independence India has followed the path of a mixed economy which has failed to ameliorate the lot of the poor. In fact some studies show that their lot has become worse. This began

to change in 1991, when India joined the bandwagon of an economic liberalisation and structural adjustment programme to integrate itself into the world economy. The signing of the GATT 1994 has added new dimensions to this situation. It is thus feared that the marginalised sections of consumers will get worse off due to cuts in social sector expenditure and promotion of artificial consumption.

If the State is to adopt a market-oriented economic policy i.e. assuming that all people in the country are consumers with or without the purchasing power, then common sense dictates that it should also have an integrated consumer policy which will cover the interests of both the have-nots and haves.

There is sufficient political, economic, social and legal rationale for the government to adopt an integrated and holistic consumer policy statement which will guide all the agencies and ministries of the central and state governments towards real consumer welfare.

Recommendations

CUTS therefore recommends that the Government of India develop and legislate an active consumer policy which should *inter alia* include,

- The adoption of the holistic consumer policy by all government agencies in their own working
- A coordination body of all agencies and ministries dealing with affairs having a consumer interest to be headed by the Prime Minister at the Centre, and by the Chief Minister in the States
- Effective policy interventions for protection of the poor consumers
- Harmonisation of laws and policies governing consumer interest
- Mandatory consumer impact assessment by all agencies whenever taking any step which will affect consumers
- Establishment of independent price surveillance and public utility regulatory commissions
- Empowerment and resourcing of consumer organisations and ensuring their participation in all decision making arms of the government and the independent commissions
- Resourcing and encouraging research into consumer policy by universities, colleges and consumer organisations

CUTS is currently engaged in developing a consumer policy statement through analyses of the implementation of the UN Guidelines in India and beyond, which will act as a good model for any other country to adopt.

Comments on this draft were received from Mr S. Krishnan of Consumers Coordination Council, New Delhi, Mr Vasanth Parigi of Consumer Education Centre, Bangalore and Mr Sri Ram Panchu of Consumer Action Group, Madras. These have been duly incorporated and are gratefully acknowledged.

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