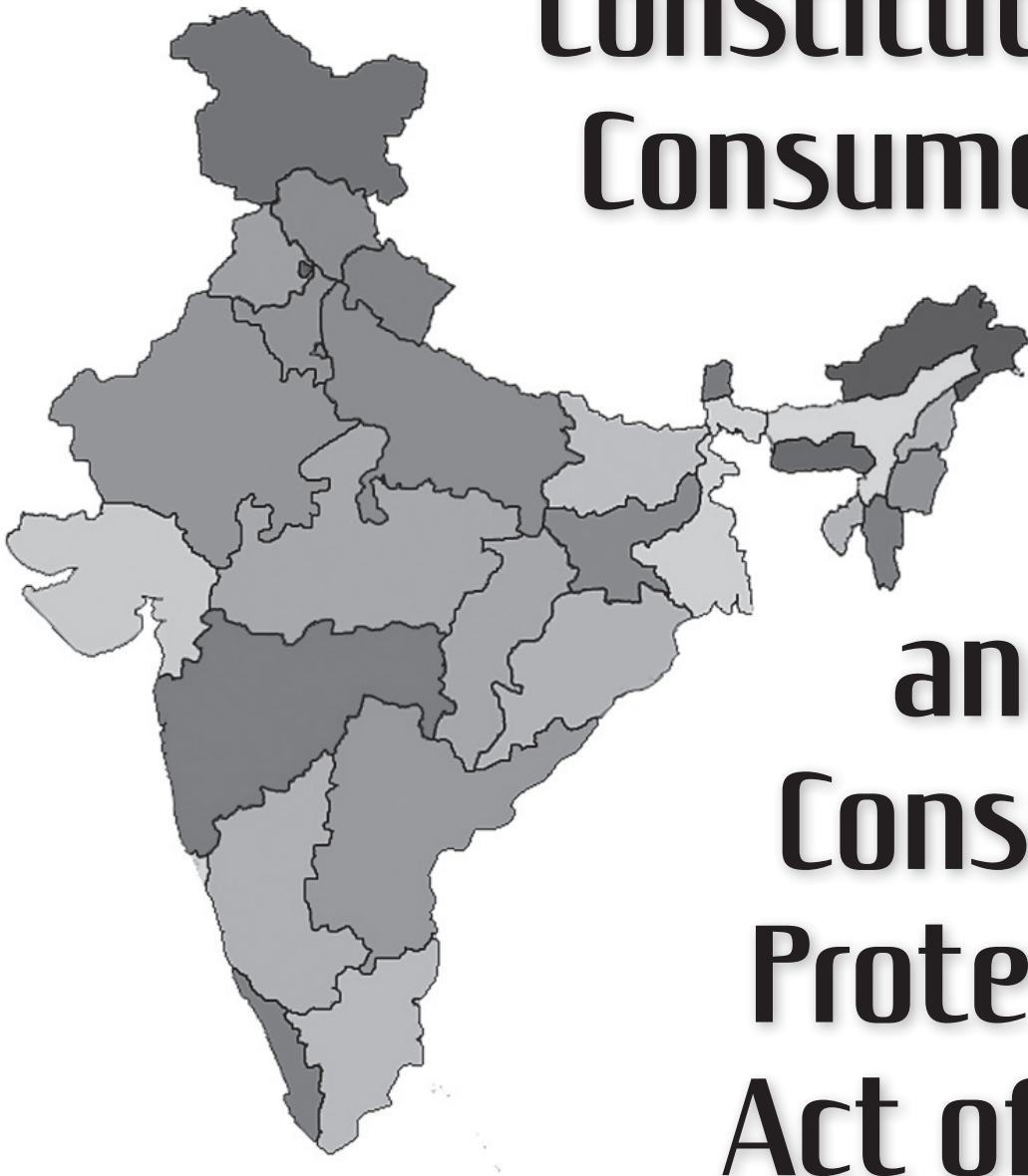


Interface Between India's Constitutional Consumerism



and the Consumer Protection Act of 1986

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1. Introduction

The law of consumer protection jurisprudence in the Indian context is inclined to be brought, by and large, under the ambit of the law of contracts. Thus, a consumer under the Consumer Protection Act, 1986 (hereinafter referred as COPRA) has to advance consideration for the goods and services he/she seeks to acquire.¹ However, the COPRA fails to recognize the constitutional contract between the state and its citizens.

A constitutional contract is not an unfamiliar concept in the Constitution. For example, articles 17 and 23 of the Constitution recognize the concept of constitutional crime. The Constitution binds the state to provide goods and services to a certain class of citizens by way of its own schemes and legislation in order to uphold the constitutional values of the preamble and make fundamental rights available to all. This concept of consumerism under the authority of the state can be termed as constitutional consumerism. It recognizes a class of citizens towards whom the State owes a duty to provide goods and services, entitling every citizen to a minimal life of dignity, and ensuring social, economic and political order.²

Therefore, it is for such goods and services that the Constitution does not require any form of consideration from the person receiving them. The Consumer Protection Act fails to recognize these consumers resulting in a lack of accountability from the State towards these consumers. This article discusses the damages consequently caused, and questions whether the Act needs to be changed to be in harmony with the constitutional values embedded in the Constitution.

2. Constitutional Consumerism

The question arises as to who these consumers are? Is the constitution bound to provide them goods and services? They are mainly all citizens who fall in the constitutional category of “undeserved want.”³ The Constitution further defines them as citizens forced by economic necessity to work in fields unsuited to their age or strength;⁴ for example, young children who are liable to abuse.⁵ There also is a special category of citizens to whom the State is bound to provide goods and services for their educational and economic interests— “weaker sections,” especially “scheduled castes”⁶ and the “scheduled tribes.” The state is bound by the Constitution to provide these citizens with minimal goods and services as they cannot enjoy their fundamental rights if such goods and services are not ensured to them. This constitutional duty of the State to ensure such basic goods and services to such citizens, who otherwise cannot afford it themselves, has been upheld to be a fundamental right by the Supreme Court in *Francis Coralie Mullin v. Administrator, U.T. Delhi*.⁷

The Union and State Governments have, to this effect, either launched a multitude of schemes through executive orders such as *Beti Bachao, Beti Padhao*, *Sukarna Samridhi Accounts* for the minor girls, *Integrated Child Development Scheme*, or enacted specific legislations such as the *National Food Security Act* or the *Mahatma Gandhi National Rural Employment Act*. Owing to the fact that these schemes provide goods and services to a specified class of citizens and claim a paramount share of the public funds expenditure that is approved by the Parliament, all such specified citizens are consumers of the goods and services provided by the State.⁸

3. Consumer Protection Act and the Constitution

Unlike the Constitution, the Consumer Protection Act fails to recognize such citizens. As noted above, the Consumer Protection Act generally adopts the parlance of the law of contracts. In other words, citizens are not recognized if they are not covered by the words “contract” and “consideration” under Section 2(d) of the Act – the definition of consumer. The Act, thereby, fails to consider the following possibilities:

- (a) There is an implied contract between the Government and such specified categories of persons; and
- (b) A contract of this order does not require consideration from its citizens.

The COPRA is in contrast to the constitutional value of human dignity, which is the foundation for the specified categories of persons receiving goods and services. Thus, it is quintessential for the COPRA to embrace the supreme constitutional value of human dignity – the very foundation of the right to goods and services.

This leads to the question of under which rubric a contract would be classified. The Fundamental Rights Chapter of the Constitution derives its meaning from the values enshrined in the Preamble and enunciated in the Directive Principles of State Policy. If executive orders or legislation are not based upon the Preamble and the Directive Principles, the Fundamental Rights Chapter loses its meaning.⁹ Therefore, there is a need to recognize a special species of contracts called the constitutional contracts (as discussed above) between the state and its specified citizens who have the right to receive such goods and services. This is the only method to hold the state and its executive or its agencies and officials accountable for the goods and services supplied by them to constitutional categories of citizens as part of their constitutional duty.¹⁰

4. Consequences

The Consumer Protection Act, by failing to recognize consumers, as well as Parliament’s failure to apply the Directive Principles while legislating the Act and its mandatory duty to do so under u/ Art 37,¹¹ has caused a lack of accountability from the executive to these categories of citizens. The mismanagement and corruption in the use of the public funds approved by Parliament for these constitutionally designated citizens, under executive schemes¹² or specific legislation is well documented by several agencies and the Comptroller & Auditor General of India, a constitutional position under Article 148 of the Constitution.¹³

The absence of constitutionally designated contracts ensuring goods and services to constitutional categories of citizens, results in their inability to receive the benefit of the provisions relating to unfair trade practices¹⁴ and the false supply of goods and services¹⁵ under the COPRA. Its undisputable significance can be evidenced through the plethora of media reports on the child victims under the *Mid-Day Meal Scheme* and the kind of primary education being provided under the umbrella of the fundamental right to primary education. The absence of a judicially managed legal aid throughout the country under the *National Legal Services Act*,¹⁶ extinguishes the constitutional values of justice and equality for such consumers.

A consumer under the Consumer Protection Act can have access to the nearest District Forum and can easily file a complaint in the manner mentioned under Section 12 of the Act, thereby avoiding the complex and expensive procedure of a writ petition or a civil suit. This is important because most of these

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constitutionally designated categories of citizens – who are in dire poverty – may not be in a position to exhaust remedies offered by the ordinary courts as opposed to the Consumer Forums (or, District Forums in specific). This is particularly relevant considering the failure of successive Governments to effectively implement the directive of principles. The principle became the Fundamental Right to free and compulsory primary education under Article 21-A. It ensures minimal receipt of any of the benefits of the Supreme Court's judgment permitting letters or post cards to be addressed to it for the violation of Fundamental Rights. A World Bank study¹⁷ shows that Public Interest or Social Action Litigation has not benefited the poor and the oppressed constitutional classes of citizens. On an average 0.4% or 260 out of sixty thousand cases are Public Interest Litigation (PIL), which are generally not initiated by letters or handwritten petitions sent to the Supreme Court, and indicates that inclusion of such constitutional contracts and such constitutionally designated citizens becomes all the more pertinent. It is essential to recognize such beneficiaries as constitutional consumers under the Consumer Protection Act, because denying the access to consumer forums to such consumers defeats the *ubi jus ibi remedium* maxim of law – the right to a remedy for a wrong.

This situation can be legally corrected by either amending the COPRA to recognize such a constitutional contract, or by enacting a separate consumer law for constitutional consumers.

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Mathew J. in *Sukhdev Singh v. Bhagat Ram Sardar Singh Raghuvanshi* (1975) 1 SCC 421 at 448 Para 78.

⁹ Articles 73 & 162, THE CONSTITUTION OF INDIA, 1950

¹⁰ *M.C. Mehta v. Union of India*, 1998 (9) SCC 589, Fundamental duties must be read as creating rights in citizens under Article 21.

¹¹ Article 37 states inter alia that 'it shall be the duty of the State to apply the Directive Principles in making laws'.

¹² Articles 73 & 162, THE CONSTITUTION OF INDIA, 1950

¹³ Report No. 22 of 2012-13, UNION GOVT., MINISTRY OF WOMEN & CHILD DEVELOPMENT; PERFORMANCE AUDIT OF INTEGRATED CHILD DEVELOPMENT SERVICES SCHEME; Report No. 6 of 2013, UNION GOVT. MINISTRY OF RURAL DEVELOPMENT; PERFORMANCE AUDIT OF MAHATMA GANDHI NATIONAL RURAL EMPLOYMENT GUARANTEE SCHEME.

¹⁴ Section 2(r), CONSUMER PROTECTION ACT, 1986.

¹⁵ Section 2(oo), CONSUMER PROTECTION ACT, 1986.

¹⁶ Article 39-A, THE CONSTITUTION OF INDIA, 1950.

¹⁷ Gaurin Varun, *Public Interest Litigation in India: Overreaching or Underachieving?* WORLD BANK, POLICY RESEARCH WORKING PAPERS 5109, 8 (November 2009), available at <http://elibrary.worldbank.org/doi/pdf/10.1596/1813-9450-5109>, last accessed 25th January 2015.

¹ Section 2(d), of the Consumer Protection Act, 1986, "Consumer' means any person who—

(i) 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

(ii) 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 and 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."

² Article 37, THE CONSTITUTION OF INDIA, 1950.

³ Article 41, THE CONSTITUTION OF INDIA, 1950.

⁴ Article 39(e), The Constitution of India, 1950.

⁵ *Id.*

⁶ This is now subject to the creamy layer being excluded in terms of the Supreme Court judgment in *Indra Sawhney v. Union of India*, AIR 2000 SC 498.

⁷ AIR 1981 SC 746.

⁸ On the expanding role of the welfare state, see *R.D. Shetty v. International Airport Authority*, (1979) 3 SCC 489 Para 11 &