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**Intergovernmental Group of Experts on Consumer Law and Policy  
(IGE Consumer)**

2nd SESSION  
3-4 July 2017  
Room XVII, Palais des Nations, Geneva

**Innovative Funding for Consumer Groups**

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## **Innovative Funding for Consumer Groups**

### **Background**

This note takes a look at the innovative ways of funding the consumer movement without burdening the exchequer as practiced in India and the USA. References to other countries are also mentioned but more research is required to fill in the blanks.

The purpose of this note is to make the consumer movement and governments aware so to adopt similar schemes and support the protection of consumers strongly.

### **Consumer Welfare Fund**

The enactment of Indian Consumer Protection Act in 1986 resulted in formation of a number of consumer organisations in the country. It was a turning point in the consumer movement. From about 35 consumer groups in 1987-88 in the country over 2000 consumer groups came into being, though not all are surviving today. However shortage or lack of funding was one of the main constraints in carrying out various activities to protect the interest of consumers, especially to carry out research, advocacy and awareness programmes in a vast country like India.

One of the major initiatives to support the consumer organisations financially, which resulted in the strengthening of the consumer movement in India, was the setting up of the Consumer Welfare Fund (CWF) in 1992 by the Central Government through credit of excess excise recoveries. For the same the Central Excise and Salt Act, 1944 was amended in the year 1991.

Interestingly, many manufacturers challenged levy of excise duties on their goods in courts,<sup>1</sup> on the ground of being violative of some provision of the Constitution. Once they win the case, the excess excise charged was to be refunded to them. But the apex court held that refunding the duty paid by a manufacturer in situations where he himself has not suffered any loss or prejudice is no economic justice; it is the very negation of economic justice.

Therefore the apex court ruled that by interpreting various provisions of the Constitution, it does demand that where a duty cannot be refunded to the real persons who have borne the burden, for one or the other reason, it is but appropriate that the said amounts are retained by the State for being used for public good. That is how the justification comes eventually for upholding the setting up of the Consumer Welfare Fund under the 1991 Amendment for

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<sup>1</sup> Mafatlal Industries Ltd and Others Vs. Union of India and Others, (1997) 5 SCC 536

depositing all un-refundable excise and customs duties for the welfare of consumers under the control of the State.

The money credited to the Fund is utilised by the Central Govt. (Department of Consumer Affairs) for the welfare of consumers in accordance with a set of prescribed Rules. The Fund has been set up by the Department of Revenue and is being operated by the Ministry of Consumer Affairs, Food & Public Distribution. It is a perpetual fund and untied to the Consolidated Fund of India, though governed by the Government Financial and Accounting Rules.

Furthermore, the Fund is also replenished by orders of the National Consumer Disputes Redressal Commission (NCDRC) in cases<sup>2</sup> where it is difficult to identify the victim consumers. For instance, in *J. K. Mittal vs. Kingfisher Airlines Ltd.*<sup>3</sup>, NCDRC directed Kingfisher Airlines Ltd. to deposit INR 2.5 Million as compensation in the CWF. Order of the Commission came upon a complaint filed by a person who booked air tickets for travelling from Delhi to Bhubaneswar and Bhubaneswar to Delhi on a premier airline and was forced to travel on a low cost airline as they do not operate on these routes. NCDRC while passing the order NCDRC opined that as it is not known how much amount airlines collected from the fliers in the aforesaid manner, it ought to repay a reasonable amount back to public.

The main objective of the Fund is to provide financial assistance for promoting and protecting the welfare of consumers<sup>4</sup>, generating consumer awareness and strengthening the consumer movement in the country particularly in the rural areas, with special emphasis on women's participation. Financial assistance is granted for innovative projects, setting up facilities for training and research, rural empowerment projects, consumer clubs, consumer guidance bureau, product testing laboratories, advocacy and class action suits and other related consumer programmes that address pressing social problems and maximise consumer welfare.

In the year 2003, the States/Union Territories (UTs) were encouraged to establish a State CWF, as a corpus fund, at the State level to support voluntary organisations undertaking advocacy work at the grass root level.

In the state of Gujarat, a similar attempt was made by forfeiting refunds of sales tax because of the argument that the traders have already recovered it from consumers and hence even if they are entitled to a refund why should it be passed onto them. Alas, the other states did not pick up this idea and create a similar fund. However, further research needs to be done to establish the factual situation.

### **Other Similar Funds in India**

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<sup>2</sup> D.K. Chopra Vs Snack Bar II (2014) CPJ 493 (NC) in Revision Petition No. 4090/2012; General Motors (India) Private Limited v. Ashok Ramnik Lal Tolat, II (2009) CPJ 63 (NC)

<sup>3</sup> 2015 SCC OnLine NCDRC 7

<sup>4</sup> Please see Annexure to this Note for few examples of grants made under the CWF

Other than the CWF, there are other funds that have been set up within the country with unclaimed consumers' money that aims to provide financial assistance to promote and protect the welfare of consumers in specific sectors and strengthen the consumer movement.

For example, the Depositor Education and Awareness Fund (DEAF)<sup>5</sup> is utilised for promotion of depositors' interests. The money lying in bank accounts that have been inoperative for at least 10 years is transferred by the Banks to the DEAF Scheme managed by the Reserve Bank of India, which is used to educate consumers of financial services.

The Telecommunication Consumers Education and Protection Fund<sup>6</sup> is used to undertake programmes to educate the consumers of the Telecommunication services. Service providers, who may have charged their subscribers excess amount for any services, which could not be refunded and is lying unclaimed with them, have to transfer the excess amount so collected to the credit of this Fund, rather than enrich themselves unjustly.

Likewise, the Consumer Education and Protection Fund<sup>7</sup> of Hallmarking is also used for creating better awareness about the gold jewellery hallmarking scheme and for consumer protection. The fund is constituted with the money recovered by way of penalties from Assaying and Hallmarking Centres.

The Investor Education and Protection Fund (IEPF)<sup>8</sup> under the Ministry of Corporate Affairs is used for promotion and protection of interest of investors'. The following amounts if they remain unpaid for a period of seven years from the date of declaration will be deposited into the IEPF:

- amounts in the unpaid dividend accounts of companies;
- the application moneys received by companies for allotment of any securities and due for refund;
- matured deposits with companies;
- matured debentures with companies; and
- the interest accrued on these amounts.

Likewise, the Investor Protection and Education Fund of Securities and Exchange Board of India (SEBI) is created for the purpose of protection of investors and promotion of investor education and awareness. SEBI contributed a sum of INR 100 Million towards the initial corpus of the IPEF from the SEBI General Fund that is credited by all grants, fees and charges received by the board, penalties realised under the Act and any other sources as decided by the government.

On road safety, many states in India have set aside a substantial percentage of violation fees collected from drivers or owners of vehicles to be used to advance road safety educational activities without depending on the treasury. Need more

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<sup>5</sup> [www.rbi.org.in/scripts/NotificationUser.aspx?Id=8780&Mode=0](http://www.rbi.org.in/scripts/NotificationUser.aspx?Id=8780&Mode=0)

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[www.trai.gov.in/sites/default/files/201209030250489400257regulation15jun07%5B1%5D.pdf](http://www.trai.gov.in/sites/default/files/201209030250489400257regulation15jun07%5B1%5D.pdf)

<sup>7</sup> [www.bis.org.in/qazwsx/fin/circular12\\_06082014.pdf](http://www.bis.org.in/qazwsx/fin/circular12_06082014.pdf)

<sup>8</sup> [www.iepf.gov.in/](http://www.iepf.gov.in/)

research to find out the exact situation of such initiatives by various states and union territories.

### **Other Country Initiatives**

There are few examples across the globe where consumer welfare funds are constituted to strengthen the consumer movement in the country. In terms of innovative approaches to consumer funding, there are few schemes which merit attention here.

For instance, the Vitamin Case Consumer Settlement Fund<sup>9</sup> in California was established using funds paid to settle the State of California's anti-trust lawsuit over price fixing by six vitamin manufacturers that controlled 80 percent of the world's vitamin market. The funds are distributed to non-profit organisations and/or public agencies for the purpose of improving the health and nutrition of citizens in California, advancement of nutrition, dietary or agricultural science and for furthering the purpose of the state's antitrust statute under which the case was brought.

California Consumer Protection Foundation<sup>10</sup> (CCPF), is one of the very few foundations providing grants to community-based advocacy organizations that promote policies and programs protecting and benefiting consumers throughout California. The fund was created by Lexington Law Group in San Francisco, as a result of a lawsuit brought against The Hain Celestial Group for false advertising, marketing, selling and labelling cosmetic and other products as organic.

The above two funds were created through a *cy pres*<sup>11</sup> (next best use) grant, which is a unique feature of the US judicial system. Under this system damages in antitrust suits are also awarded to a university or a body to promote education on competition law & policy. For example, the Institute for Consumer Antitrust of the Loyola University, Chicago, the George Washington University and the American Antitrust Institute, Washington DC have also received such grants for being used to promote education and awareness on competition related issues.

The US Postal Inspection Service (USPIS) Funds<sup>12</sup> is designated for specific purposes which include consumer fraud and prevention education. The Consumer Products Fund<sup>13</sup> in Oakland, US aids consumers in making the best possible choices in products for their health and the health of the environment by understanding the true nature of the ingredients in the products they choose. Likewise the Consumer Financial Education Fund<sup>14</sup> supports projects that relate to consumer financial education, and the Consumer Privacy Rights Fund<sup>15</sup> supports privacy protection and privacy education efforts.

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<sup>9</sup> <http://cypresfunds.net/settlement-funds-administered/vitamin-cases-settlement-fund/>

<sup>10</sup> <http://consumerfdn.org/>

<sup>11</sup> [https://en.wikipedia.org/wiki/Cy-pr%C3%A8s\\_doctrine](https://en.wikipedia.org/wiki/Cy-pr%C3%A8s_doctrine)

<sup>12</sup> [www.uspsoig.gov/sites/default/files/document-library-files/2015/SA-AR-06-006.pdf](http://www.uspsoig.gov/sites/default/files/document-library-files/2015/SA-AR-06-006.pdf)

<sup>13</sup> <https://rosefdn.org/consumer-products-fund>

<sup>14</sup> <https://rosefdn.org/consumer-financial-education-fund>

<sup>15</sup> <https://rosefdn.org/consumer-privacy-rights-fund>

In USA and UK the regulatory laws provide for a “consumer cess” on utility bills, which is put into a fund for consumer advocacy/engagement.

Similarly there are the Better Business Bureau Consumer Education Fund, Iowa Consumer Education Fund, Illinois Science and Energy Innovation Foundation (ISEIF) Fund, California Telecommunications Consumer Education Fund in the USA. Elsewhere, other examples include Sri Lanka Consumer Protection Fund, Chile Consumer Fund and Canadian province: Quebec Fonds d'aide aux actions collectives. All are constituted for the effective education, enforcement and protection of consumers.

## ANNEXURE

### India's Consumer Welfare Fund Schemes & Impact

Since the inception of the fund, a number of schemes including consumer awareness scheme, setting District Consumer Information Centres, setting up of consumer product testing laboratories, Consumer Clubs in Schools and Colleges, National Consumer Helpline, Consumer Care Centres been launched for spreading consumer awareness throughout the country.

A chair on Consumer Law and Practice was also setup at National Law School University of India (NLSUI), Bangalore with an objective to act as a "Think Tank" for research and policy related issues on Consumer Law and Practice. Likewise a chair was also sanctioned at the IIPA Centre for Consumer Studies, New Delhi; the National Law Institute University, (NLIU) Bhopal and the Tamil Nadu Dr. Ambedkar Law University, Chennai.

Various projects were also successfully implemented by Civil Society Organisations (CSOs) supported under CWF. For instance, the *Grassroots Reachout & Networking in India through Consumer Action in 12 districts of Rajasthan through Consumer Action (GRANICA)*<sup>16</sup> project; the *Indian Consumers in the New Age: A Forward Looking Agenda to Address the Concerns of the Common People' (ConsumersUp)*<sup>17</sup> project which published a report on the 'State of the Indian Consumer' in 2012. Following this, under the *State of the Consumer Safety in India*<sup>18</sup> project a research report was published on five major sectors Energy, Transport, Housing, Public Amusement and Health in 2017. All these were successfully implemented by CUTS.

Similarly, VOICE Society, New Delhi implements a *Comparative Testing of Products and Services project* to create informed consumers and to facilitate in developing and up gradation of National Standards based on scientific data and consumer preferences.

The Consumer Education and Research Centre (CERC), Ahmedabad implements a *Product Testing project* to test products used by common consumers in their day-to-day life.

The CWF fund has thus contributed significantly and has been largely positive as is visible in the increased consumer awareness across the country. With the aid of this fund many new schemes are being introduced to promote consumer awareness, education and their rights.

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<sup>16</sup> January 2010-December 2012

<sup>17</sup> from 2011-2012

<sup>18</sup> August 2015-August 2016