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Address

• Vikram Nagar, Boudhi Chouk, Latur.
• Tq. Latur, Dis. Latur 413512 (MS.)
• (+91) 9922455749, (+91) 8999250451

Email

• aiirjpramod@gmail.com
• aayushijournal@gmail.com

Website

• www.aiirjournal.com

CHIEF EDITOR – PRAMOD PRAKASHRAO TANDALE

Legal Remedies to Mutual Fund Investors in Consonance with Consumer Protection Act**Dr. Rupali Sharma**

Associate Professor

College of Law

IPS Academy, Indore (M.P.)

Abstract

Mutual Funds provide a platform for a common investor to participate in the Indian capital market with professional fund management irrespective of the amount invested. The Indian mutual fund industry is growing rapidly and this is reflected in the increase in Assets under management of various fund houses. Mutual fund investor is covered and is termed as a consumer under Consumer Protection Act 1986. It is necessary to safeguard the interest and rights of a common mutual fund investor. This study will help to ascertain what all remedies are available to any aggrieved mutual fund investor under the Consumer Protection Act and how the aggrieved investor can take shelter of the consumer court for claiming his rights which may be hindered and violated by the intermediaries and AMC.

The findings of this study will help the investor by making them aware of their rights pertaining to mutual fund investment under Consumer Protection Act. Also, it will be beneficial to the legal practitioners which in turn can help the aggrieved investors, if approached for legal resource. This study also attempts to bring to light the legal provisions and help the AMCs and all the intermediaries involved in the transaction with the mutual fund investor.

Key Words: Mutual Fund, Consumer, Investors, AMC, SEBI

Objectives

1. To study the grievance redressal mechanism for Mutual Fund Investors.
2. To study the current remedies available to Mutual Fund Investors protection under Consumer Protection Act 1986.
3. To ascertain the need, if any for amendment in the prevailing grievance redressal system to protect the interest of Mutual Fund Investors

Introduction**Mutual funds**

In recent individuals look for investment options that are safe, regulated and offer them diversity even if they have a small amount to invest, the option which comes to them is a mutual fund, it is a trust that pools the savings of a number of individuals sharing a common financial goal.

The collected money is invested and managed by the fund managers in instruments such as shares, debentures and other securities etc. as per the philosophy of the fund and fund houses. The gain through such investments and also the capital appreciation is shared with the investors known as unit holders in the proportion to the number of units held by them in a given fund. Thus, for a common man mutual fund is the most suitable investment option which offers at a relatively low cost. Investor's main objective is to earn higher returns keeping in mind the risk and liquidity factor. With this objective in mind, an investor is looking out for various investment avenues. Mutual funds offer comparatively better returns and have less risk as compared to direct investment in stock market.

The concept of mutual funds has been on the financial landscape for long in a primitive form. The story of mutual fund industry in India started in 1963 with the formation of Unit Trust of India at the initiative of the Government of India and Reserve Bank. The launching of innovative schemes in India

has been rather slow due to prevailing investment psychology and infrastructural inadequacies. Risk adverse investors are interested in schemes with tolerable capital risk and return over bank deposit, which has restricted the launching of more risky products in the Indian Capital market. But this objective of the Mutual fund industry has changed over the decades. For many years funds were more of a service than a product, the service being professional money management. In the last 15 years mutual funds have evolved to be a product. A competent fund manager should analyse investor behavior and understand their needs and expectations, to gear up the performance to meet investor requirements. It is the time for mutual fund companies to understand the fund selection/switching behavior of the investors and to design the fund schemes according to the changing needs of consumer, otherwise survival of funds will be difficult in future.

Investments in securities are spread across a wide cross-section of industries and sectors. Diversification reduces the risk because all stocks may not move in the same direction in the same proportion at the same time. Mutual fund issues units to the investors in accordance with quantum of money invested by them. The mutual funds normally come out with a number of schemes with different investment objectives which are launched from time to time. A mutual fund is required to be registered with Securities and Exchange Board of India (SEBI) which regulates securities markets before in can collect funds from the public.

Mutual funds can be invested in many different kinds of securities. The most common are Cash, stock and bonds, but there are hundreds of sub-categories. Stock funds invest primarily in the shares of a particular industry, such as technology or consumer durables etc. these are known as sector funds. Bond funds can vary according to risk (e.g., high-yield or junk bonds, investment-grade corporate bonds). Most mutual funds investment portfolios are continually adjusted under the supervision of a professional manager, who forecasts the future performance of investments appropriate for the fund and chooses those which he or she believes will most closely match the funds stated investment. A mutual fund is administered through a parent management company, which may hire or fire fund managers. Mutual funds are liable to a special set of regulatory, accounting, and tax rules. Unlike most other types of business entities, they are not taxed on their income as long as they distribute substantially all of it to their shareholders. Also, the type of income they earn is often unchanged as it passes through to the shareholders, fund is constituted as a trust in accordance with the provisions of the Indian Trusts Act, 1882 by the sponsor. Trustee is usually a company (corporate body) of a board of trusted (body of individuals). The main responsibility of the trustee is to safeguard the interest of the unit holders and also ensure that AMC functions in the interest of investors and in accordance with the Securities and Exchange Board of India (Mutual Fund) Regulations 1996 the provisions of the Trust deed and the offer documents of the respective schemes. The AMC is appointed by the Trustees as the investment manager of the mutual fund. The AMC is required to be approved by SEBI to act as an asset management company of the mutual fund. The AMC if so authorized by the Trust deed appoints the Registrar and Transfer agent to agent the mutual fund. The registrar processes the application from, redemption requests and dispatches account statements to the unit holders. The Registrar and Transfer agent also handles communications with investors and updates investor records.

The ethically questionable practice of a salesperson misrepresenting or misleading an investor about the characteristics of a product or service. In an effort to make a sale to a potential customer, a financial products salesperson could leave out certain information or describe a financial product as something the investor urgently needs, even though sound financial judgment would come to the opposite conclusion.

There will be occasions when you have a complaint against a listed company/intermediary registered with SEBI. In the event of such complaint you should first approach the concerned

company\intermediary against whom you have a complaint. However, you may not be satisfied with their response. Therefore, you should know whom you should turn to, to get your complaints redressed.

SEBI takes up complaints related to issue and transfer of securities and non-payment of dividends with listed companies. In addition, SEBI also takes up complaints against the various intermediaries registered with it and related issues. SCORES facilities you to lodge your complaint online with SEBI and subsequently view its status.

The Association of Mutual Funds in India (AMFI) is dedicated to developing the Indian Mutual Fund Industry on professional, healthy and ethical lines and to enhance and maintain standards in all areas with a view to protection and promoting the interests of mutual funds and their unit holders.

AMFI, the association of SEBI registered mutual funds in India of all the registered Asset Management Companies, was incorporated on August 22, 1995, as a not-profit organization, as of now, all the 42 Asset Management Companies that are registered with SEBI, are its members.

Consumer Protection Act

Section 2 of the Consumer Protection Act 1986 defines a consumer as:

“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 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 purpose] in other words, consumer is an individual who buys products or services for personal for personal use and not for manufacture or resale.**

Besides, basic necessities, we need a variety of things in our daily lives such as cell phones, digital cameras, soaps, perfumes, cosmetics and many more things such as financial products and services such as Mutual Funds, Insurance, FDs etc. thus, all of us are consumers in the literal sense of the term. When we buy things from the market as a consumer, we expect value for money, i.e., right quality, right quantity, right price, information about the mode of use, or a Financial Advice, a Financial Service etc. but there may be instances where a consumer is cheated.

In such a case, most of us don't know to whom we should approach to seek redressed against our companies. Many of us also don't know our “rights” as a consumer and often hesitate to complaint or even stand up to unfair practices. We also don't have recourse to costly litigation to seek justice and we continue to bear such injustice. It is here that consumer forums exist which can help you seek justice against unfair practices without incurring exorbitant litigation costs. The article provides basic information of what in Consumer Protection Act, 1986, its advantages for consumers, basic rights of the consumers and consumer redresal forums among other things. In the early years when welfare legislatures like the consumer protection act did not exist, the maximum Caveat Emptor (let the buyer beware) governed the market deals.

In the history of Indian legislation, enactment of Consumer Protection Act (CPA) 1986 clearly reveals the recognition and growth of consumer jurisprudence. The Consumer Protection Act is a compassionate social legislation that provides for protection of rights of the consumers and redressal of consumer disputes. CPA has provided for three tier quasi judicial consumer dispute redressal mechanism at district, state and national level.

The Act applies to all goods and services, excluding goods for resale or for commercial purpose, services rendered free of charge and under a contract for personal service.

Consumer protection means safeguarding the rights and interests of consumers. It includes all the measures aimed at protecting the rights and interests of consumers. Consumers need protection due to the following reasons:

1. **Illiteracy and ignorance**: consumers in India are mostly illiterate and ignorant. They do not understand their rights. A system is required to protect them from unscrupulous businessmen.
2. **Unorganized Consumers**: in India consumers are widely dispersed and are not united. They are at the mercy of businessmen. On the other hand, producers and traders are organized and powerful.
3. **Spurious Goods**: there is increasing supply of duplicate products. It is very difficult for an ordinary consumer to distinguish between a genuine product and its imitation. It is necessary to protect consumers from such exploitation by ensuring compliance with prescribed norms of quality and safety.
4. **Deceptive Advertising**: Some businesses give misleading information about quality, safety and utility of products. Consumers are misled by false advertisement and do not know the real quality of advertised goods. A mechanism is needed to prevent misleading advertisements.
5. **Malpractice of Businesses**: Fraudulent, unethical and monopolistic trade practices on the part of businesses lead to exploitation of consumers. Consumers often get defective, inferior and substandard goods and poor service. Certain measures are required to protect the consumers against such malpractices.
6. **Freedom of Enterprise**: Businesses must ensure satisfaction of consumer. In the long run, survival and growth of business is not possible without the support and goodwill of consumers. If business does not protect consumer's interests, Government intervention and regulatory measures will grow to curb unfair trade practices.
7. **Legitimacy for Existence**: Business exists to satisfy the needs and desires of consumers. Goods are produced with the purpose of selling them. Goods will, in the long run, sell only when they meet the needs of consumers. Especially Financial products must be sold with clarity of future uncertainties as it involves the consumer's hard earned money.

These areas have been translated into the following eight consumer rights by the Consumers' International:

1. Right to Basic Needs;
2. Right to Safety;
3. Right to Choices;
4. Right to Information;
5. Right to Consumer Education;
6. Right to Redressal;
7. Right to Representation; and
8. Right to Healthy Environment

The rights of consumers needs to be protected since they avail services given by the service providers based on trust and faith and thus it's a necessity to keep a check on the service providers for the sake of service recipient.

Research Methodology

This study will be based on exploratory research which helps in gaining insight in the subject matter. With the help of this research type, this study will focus on understanding the current remedies and also gaining further insights into what can be possible remedies to be included under consumer protection act to safeguard interest of individual investors.

All the data required for this study will be obtained mainly from primary sources as well as secondary sources will also be considered. The data collection method used to obtain the desired information from primary sources will be through direct interview of AMC managers in Indore. Secondary data will be taken from related research work, published books, journals and reports of SEBI, AMFI, RBI and other authorized sources of data.

Conclusion:

There have been number of studies conducted in the area of consumer protection, investors' redressal and mutual funds. But extensive review of literature shows there have been very limited or no study conducted that shows the remedies available to the mutual fund investor under consumer protection act. This study will be conducted to gauge and ascertain the legal remedies available to a mutual funds investors who by any means is aggrieved by any act or deed off any of the channel partner or person involved in the transaction with the aggrieved investor which starts from the sales employee of the AMC, agent of the distributor, fund manager and even the regulator. As discussed above, mutual fund investor is covered and is termed as a consumer under Consumer Protection Act 1986. This study will help to ascertain what all remedies are available to any aggrieved mutual fund investor under the Consumer Protection Act and how the aggrieved investor can take shelter of the consumer court for claiming his rights which may be hindered and violated by the said intermediaries and AMC.

This study will be beneficial for the investor and make them aware of their rights pertaining to mutual fund investments. Also, will be beneficial to the legal practitioners which in turn can help the aggrieved investors, if approached for legal recourse. To the AMC and other intermediaries, this study will help to understand the legal aspects and thereby working in accordance with the law to prevent future legal hassles of litigations and work in an ethical and legal manner. This can in turn reduce the number of grievances. This study can open the way for amendment in the Consumer Protection Act, if at all necessary.

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