



## CONSUMER PROTECTION BILL, 2018: AN ANALYSIS

**Dr. Radhika Dev Varma Arora**

Associate Professor, Department of Law, Rayat-Bahra University, Mohali.

### Introduction

Consumer protection laws are a form of government regulation that aim to protect the rights of consumers. For example, a government may require businesses to disclose detailed information about products; particularly in areas where safety or public health is an issue, such as food, medicines etc. Consumer protection is linked to the idea of consumer rights and to the formation of consumer organisations that help consumers make better choices in the marketplace and get help with consumer complaints.

The Consumer Protection Act (CPA) enacted in 1986 intended to provide effective and efficient safeguards to the consumers against various types of exploitations and unfair practices. The sole purpose of the 1986 Act was to protect the interest of the consumers. It was a shift from *caveat emptor* to *caveat venditor*. It was neither punitive nor preventive in nature, but compensatory. With the growing increase in trade, globalisation of economy, e-commerce or digitization etc., a need was felt to re-examine issues related to consumers. Accordingly, the Consumer Protection Bill, 2018 that was originally drafted in 2015 was placed before the Lok Sabha in 2016. The Bill was sent to the Standing Committee on Food and Consumer Affairs for their examination and suggestions. This Bill is important because the new Bill aims at the complete overhaul of the current laws.<sup>1</sup> The Consumer Protection Bill 2018 was passed by the Lok Sabha on 20 December 2018 and is awaiting assent of the Rajya Sabha. The Bill seeks to replace the existing Consumer Protection Act 1986 and has focused on enforcing the consumer rights along with timely and effective administration of consumer disputes.

Consumer rights and consumer protection laws provide a way for individuals to fight back against abusive business practices. These laws are designed to hold sellers of goods and services accountable when they seek to profit by taking advantage of a consumer's lack of information or bargaining power. Consumer rights laws also protect the public from false or misleading advertising.

### Product liability

Product liability as defined under the Bill means the responsibility of the product manufacturer or product seller, of any product or service, to compensate for any harm caused to a consumer by such defective product manufactured or sold or by deficiency in services relating thereto. A product liability action may be brought by a complainant against a product manufacturer or a product service provider or a product seller, as the case may be, for any harm caused to him on account of a defective product.

- (a) **Liability of the product manufacturer-** The product manufacturer shall be liable in a product liability action if the product contains a manufacturing defect, is defective in design, deviates from the manufacturing specifications or express warranty, or does not contain adequate instructions for usage. A product manufacturer shall be liable in a product liability action even if he proves that he was not negligent or fraudulent in making the express warranty of a product.
- (b) **Liability of the product service provider-** A product service provider shall be liable in a product liability action, if the service provided by him was faulty or imperfect or deficient or inadequate in quality, nature or manner of performance; or there was an act of omission or commission or negligence or conscious withholding any information which caused harm; or the service provider did not issue adequate instructions or warnings to prevent any harm; or the service did not conform to express warranty or the terms and conditions of the contract. This is also applicable to the health sector.
- (c) **Liability of the product seller-** In addition to the above, the Bill also provides for the liability of a product seller who is not a product manufacturer in certain circumstances, where:

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<sup>1</sup> The Consumer Protection Act, 1986.



1. The seller has exercised substantial control over the designing, testing, manufacturing, packaging or labelling of a product that caused harm; or
2. The seller has altered or modified the product and such alteration or modification was the substantial factor in causing the harm; or
3. The seller has made an express warranty of a product independent of any express warranty made by a manufacturer and such product failed to conform to the express warranty made by the product seller which caused the harm; or
4. The product has been sold by him and the identity of product manufacturer of such product is not known, or if known, the service of notice or process or warrant cannot be effected on him or he is not subject to the law which is in force in India or the order, if any, passed or to be passed cannot be enforced against him; or
5. The seller failed to exercise reasonable care in assembling, inspecting or maintaining such product or he did not pass on the warnings or instructions of the product manufacturer regarding the dangers involved or proper usage of the product while selling such product and such failure was the proximate cause of the harm.

**Unfair Contracts** - There is no provision for unfair contracts under the present framework. The Consumer Protection Bill 2018 defines "unfair contract" to mean a contract between a manufacturer or trader or service provider on one hand, and a consumer on the other, having such terms which cause significant change in the rights of such consumer.<sup>2</sup> The Bill identifies six types of unfair contracts, including contracts: requiring manifestly excessive security deposits; or imposing any disproportionate penalty on the consumer, for the breach of contract; or refusing to accept early repayment of debts on payment of applicable penalty; or entitling a party to the contract to terminate such contract unilaterally, without reasonable cause; or permitting or has the effect of permitting one party to assign the contract to the detriment of the other party who is a consumer, without his consent; or imposing on the consumer any unreasonable charge, obligation or condition which puts such consumer to disadvantage.

Any complaint against unfair contracts can be filed with the State Commission or the National Commission.

**Unfair Trade Practices & Restrictive Trade Practices** - Section 2(47) defines an "unfair trade practice" as "a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice and includes: (i) making a false statement regarding the quality or standard of a good or service; (ii) selling of goods not complying with standards; (iii) manufacture of spurious goods; (iv) non-issuance of a receipt for a good or service sold....." Further, Section 2(41) defines a "restrictive trade practice" to mean "a trade practice which tends to bring about manipulation of price or its conditions of delivery or to affect flow of supplies in the market relating to goods or services in such a manner as to impose on the consumers' unjustified costs or restrictions and shall include....." In addition to the unfair trade practices already laid down under the present framework, there are three more types of practices which are added to the existing list to expand the scope of unfair trade practices. These practices are as follows:

- (a) not issuing bill or cash memo or receipt for the goods sold or services rendered in such manner as may be prescribed;
- (b) refusing, after selling goods or rendering services, to take back or withdraw defective goods or to withdraw or discontinue deficient services and to refund the consideration thereof, if paid, within the period stipulated in the bill or cash memo or receipt or in the absence of such stipulation, within a period of thirty days; and
- (c) disclosing to other person any personal information given in confidence by the consumer unless such disclosure is made in accordance with the provisions of any law for the time being in force.

### **Misleading Advertisements**

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<sup>2</sup>Section 2 (46) of Consumer Protection Bill, 2018.



The bill has further provided the definition of misleading advertisements and defined it as an advertisement which falsely describes a product or service or gives false guarantees that mislead consumers or convey representations which may constitute unfair trade practices or deliberately conceals important information. This is expected to positively compel both the endorsers and advertisers to employ stricter standards while advertising and to a great extent curb the consumers from being misled. The Bill also makes the endorser and publishers of such misleading advertisements liable and provides a penalty of up to INR 50 Lakh and ban up to 3 years on a subsequent offence.

**E- Commerce-** Under the present framework there is no provision with regard to transaction done through e-commerce. However, the new bill covers within its ambit buying or selling of goods or services including digital products over digital or electronic network. The explanation attached to the definition of "consumer" has been worded in a way to include the consumers who buys goods or avails services through online platforms such as Amazon, Flipkart etc. The Bill empowers the government to make rules for preventing unfair trade practices in e-commerce, direct selling and to protect the interest and rights of the consumers. This will result in effective resolution of issues arising out of online transactions and emerging e-commerce market.

### **Consumer Redressal System**

One of the most striking features of the Bill is that it provides for a structured system of bodies possessing host of powers to address grievances of a potential aggrieved. The structure of the system includes forming:

**Central Consumer Protection Authority (CCPA)** -This is a Regulatory body to be constituted at the Centre for enforcement of consumer rights. It specifically addresses issues concerning unfair trade practices including misleading advertisements by persons and facilitating the protection of Consumer rights. Following this, a complaint may be filed for issues that violate the interests of 'Consumers as a class' thereby introducing the concept of 'class action suits', that implies persons having common grievances against the same party and seeking similar reliefs against such defaulting party may do so together, thus giving consumers an edge compared to the old Act. In addition to regulatory functions, the Authority is vested with *suo motu* powers to enquire into any violations of consumer rights.

Complaints relating to these issues may be forwarded either in writing or in electronic mode, to the CCPA. After investigations, in case the CCPA finds that there is an evidence to show violation of consumer rights or unfair trade practice by a seller/person, it may pass such order as may be necessary, to state: (a) recalling of goods or withdrawal of services which are dangerous, hazardous or unsafe; (b) reimbursement of the prices of goods or services so recalled to purchasers of such goods or services; and (c) discontinuation of practices which are unfair and prejudicial to consumers' interest. In addition, CCPA is empowered to issue directions and penalties against false or misleading advertisements.

**Consumer Protection Councils-** The Bill establishes Consumer Protection Councils (CPCs) in the nature of quasi-judicial bodies at the district, state and national levels, as advisory bodies. They may exercise all powers which have been vested upon a principal civil court of ordinary jurisdiction, under the Civil Procedure Code, 1908.<sup>3</sup> Authority has been delegated upon the Central Government to appoint their members. The Councils at all the three levels are to be headed by a President. The District Council shall consist of 2 members; whereas there shall be 4 members each at the upper levels. The Councils will advise on promotion and protection of consumer rights. Under the Bill, the Central Council and the State Council will be headed by the Minister-in-charge of Consumer Affairs at the central and state level, respectively. The District Council will be headed by the District Collector.

### **Penal Provisions**

Any manufacturer who indulges in sale or storage or distribution or import of any spurious goods will get strict punishment and fine if it causes injury or death to a consumer, says the new law. The punishment will vary as per the degree of the offense. Here are details on the punishment for misleading ads and selling adulterated goods.

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<sup>3</sup>Section 38, Section 41 and Section 52 of the Consumer Protection Bill, 2018.



- Any manufacturer or service provider, who causes a false or misleading advertisement\* which is prejudicial to the interest of consumers, shall be punished with at least two years jail and fine that may extend to INR 10 lakh.<sup>4</sup>
- For any subsequent offence, the person may be punished for jail term up to five years and up to 50 lakh fine.
- Whoever, by himself or by any other person on his behalf, manufactures for sale any product containing an adulterant shall be punished even if such act does not result in any injury to the consumer. The accused may get jail term up to six months and fine of Rs 1 lakh. In case of injury, but not amounting to 'grievous hurt' to the consumer, the accused may invite a jail term of one year and INR 3 lakh fine.
- In case of injury resulting in 'grievous hurt' to the consumer, the accused may get jail up to 7 years and fine up to Rs 5 lakh. If the consumer dies due to the product containing adulterant, the accused may get jail terms up to seven years, which may extend to imprisonment for life, and fine up to Rs 10 lakh. These offenses are cognizable and non-bailable.
- The court may, in case of first conviction, suspend any licence issued to the person or manufacturer for two years, and in case of second or subsequent conviction, cancel the licence altogether.
- There is a special provision for liability of endorsers. Endorsement is defined in Section 2(18) as any message, verbal statement, demonstration, depiction of name, signature or any other identifiable characteristic of an individual or depiction of name or seal of any institution which makes the consumer believe that it reflects the opinion, finding or experience of the person making such endorsement is fraudulent shall be liable. However, no liability will be attracted by the endorser if it has exercised due diligence and verified the claims made in the advertisements.
- The Bill also proposes to crack down on fake complaints by individuals against companies. A fine of Rs 10,000 to Rs 50,000 will be applicable if any consumer files a fake complaint with the authority.

**Dispute Redressal Commissions-** It has been also proposed that Consumer Dispute Redressal Commissions will be set up at the District, State and National levels for adjudicating consumer complaints.<sup>5</sup> Appeals from District and State Commissions will be heard at the next level and from the national Commissions by the Supreme Court.<sup>6</sup> These Commissions are quasi-judicial bodies with the National Commission being on par with High Courts.

**Mediation Centres at Central and State level-** The Bill provides exclusive provisions for reference of a dispute to mediation as an Alternative Dispute Redressal Mechanism and provides for settling up of a Consumer Mediation Cell. If there is any element of a settlement between the parties, the District, State or the National commission may direct the parties to give a written consent to have their dispute settled by mediation. For achieving this objective the Central and State governments may establish mediation centres which shall be attached to the Consumer forums.<sup>7</sup>

**Enhancement of the Pecuniary Jurisdiction** – Considering the current market trends, the Bill proposes to enhance the pecuniary jurisdiction of the Consumer Disputes Redressal Agencies as under:

- (a) The District Commission shall have jurisdiction to entertain complaints where the value of the goods or services paid as consideration does not exceed one crore rupees.
- (b) The State Commission shall have jurisdiction to entertain complaints where the value of the goods or services paid as consideration, exceeds rupees one crore, but does not exceed rupees ten crore.
- (c) The pecuniary jurisdiction of the National Commission will be for value of goods and services exceeding ten crore rupees.

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<sup>4</sup>Section 2(28).

<sup>5</sup>Section 28, Section 42 and Section 53 of the Consumer Protection Bill, 2018.

<sup>6</sup>Section 67.

<sup>7</sup>Section 74 (1) & (2).



**Territorial jurisdiction** – The Bill has proposed to expand the territorial jurisdiction of the consumer forum to include 'place where aggrieved consumer resides or works for gain' thereby increasing access of the consumer to the forum in case of dispute and greater efficiency in filing of complaints against the provider of products or services.

### **Critical Analysis**

The Bill mandates harsh penalty and even imprisonment for misleading ads and food adulteration. It is expected that these provisions will put an end to the misleading and false claims by manufacturers and service providers. While, some provisions in the Bill that recommend product liability action if it harms the consumer due to its quality or flawed services, have sparked a debate amongst the legal, advertising and talent management fraternity, others have questioned the real intent of the Bill.

In case of misleading advertisements where even the endorsers may be held liable, the Bill has provided merely one straitjacketed punishment for different classes of endorsers where they may vary in terms of remunerations as well as social reach.

Section 99 of the Bill directs the CCPA to act according to the directions of the central government thereby restricting its autonomy.

In case of Consumer Protection Councils that are to be setup at the District, State and National levels which will be headed by the Ministers as advisory bodies, it is not clear whom the minister will advise and in what capacity.

The Bill has proposed to empower the Central Government to appoint, remove and prescribe conditions of service for members of District, State and National Consumer Disputes Redressal Commissions, however it has not specified the composition of the board and whether a judicial member will be onboard or not. Also, no qualification has been specified for the appointment of members to the Commission. Composition has been left completely to the discretion of the Central Government; thereby raising doubts about their independence. Further, if the Commissions were to have only non-judicial members, it may violate the principle of separation of powers, which is against the basic structure of the Constitution of India.

Definition of deficiency has changed that can invite more cases against doctors for pre or post-surgery implications on the point that doctor did not inform about the complications, precautions or risks to the patients or his relatives.<sup>8</sup>

Similarly, the term “illegally” has implications in that it would be difficult to establish whether doctors have practiced as per the books and standard operative procedures or not. If he has, then he cannot be said to have acted illegally while deciding whether injury has been caused to the complainant or not under Section 2(23) of Bill, 2018.<sup>9</sup>

Notwithstanding the above, the Bill seeks to improve the condition by providing that endeavour shall be made to dispose of a dispute within three months, however, the same may be extended to five months if the dispute requires any kind of analysis, investigation, testing of product etc.

### **Conclusion**

The Consumer Protection Bill 2018 is revolutionary from the point of view that it establishes a watchdog to expose unfair trade practices and oversees violation of consumers' rights. The Bill helps to enhance enforcement of consumer protection law through the Central Authority, bringing about a significant improvement to the current regime dealing with consumer protection in India.

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<sup>8</sup>“deficiency” means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service and includes— (i) any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and (ii) deliberate withholding of relevant information by such person to the consumer

<sup>9</sup>“injury” means any harm whatever illegally caused to any person, in body, mind or property



The bill aims to pave way for a new form of class action suit, where liability of manufacturers or service providers will not be limited to just one group of customers. Rather, it will take into account all customers who have been affected by a particular product of a company. If any product causes injury, death or any kind of physical damage to a consumer, all parties involved (manufacturer, producer and seller) will be held accountable for the same. Action will be taken if there are defects in manufacturing or improper product labelling among other issues.

The emergence of the internet driven era and the rise in trade and commerce through online platforms has not only provided better options and opportunities for the consumers but has also paved the way for new forms of unfair trade practices and unethical business practices. Liability for e-commerce firms is thus set to increase as they will now have to share more information with the user. All e-commerce firms will be forced to disclose details on how these firms treat consumer data. Besides, the bill also labels e-commerce firms as service providers, thereby increasing liability in case of an error. It is therefore essential that the central legislation dealing with consumer grievances take into account all possible modes through which a consumer may be wronged. The Consumer Protection Bill, 2018 is therefore, slated to protect the interest of the consumers and to keep the legislative framework of consumer protection laws in pace with the changing dynamics of the consumer market and emerging market trends.