

The Consumer Protection Bill, 2015
General Comments from CUTS, Jaipur before the Departmentally related
Standing Committee on Food, Consumer Affairs and Public Distribution of Lok Sabha
Constituted on 1st September, 2015 and Chaired by Shri J C Divakar Reddy

The Bill at a Glance

Highlights	Lowlights
<ul style="list-style-type: none"> ▪ Consumers can file complaints in consumer courts that have jurisdiction over the place of residence of the complainant. ▪ Provision of Electronic filing of complaints. ▪ Establishment of Central Consumer Protection Authority (CCPA) that will protect and enforce the rights of consumers. ▪ The CCPA has the power to initiate class action suits against defaulting companies, which will provide the ease of fast track redressal. ▪ Consumer Mediation Cells to be established and attached to the redressal commissions at the district, state and national levels. ▪ Disputes to be settled by way of mediation under the supervision of consumer courts. 	<ul style="list-style-type: none"> ▪ CCPA and Consumer Protection Councils have been assigned overlapping functions. ▪ Heavy burden of proof on claimant in case of product liability. Claimant has to establish his case by a preponderance of evidence. ▪ The newly added definition of term "Unfair Contract" has been narrowly defined. ▪ No adequate representation of women in the dispute redressal agencies although number of member has been increased. ▪ The online market is still left untamed. ▪ Product liability Chapter doesn't talk about liability in case of service sector. ▪ Bill provides no regulations on the courier & logistics sector, which is still an unregulated area.

Introduction

There was a time, when there were no super markets or malls. People used to buy things from the street vendors, who used to deliver things at doorstep. But now the society, market, sellers have all undergone significant transformation with the gain in scientific knowledge. Now we have online sellers, where the buyer cannot see the seller but can buy things from them and we have markets where physical currency is not required.

Although all these developments in the markets has offered convenience to consumers as well as to the sellers, it has at the same time raised a number of new consumer issues like delivery of defective products, fraudulent financial products and service, misleading advertisements etc. This has henceforth given rise to a number of consumer disputes as well.

The 2015 amendment bill seeks to address the consumer disputes timely and effectively by providing better administrative structure such as introduction of Central Consumer Protection Authority and also provides for alternate dispute settlement channel through mediation cells.

New Definitions

The Bill has included few new definitions of important terms like 'advertisement', 'harm', 'unsafe goods, services, and practices' etc. All these new terms, which have been added are comprehensive and cover all aspects of the terms. Definition of 'unfair trade practice' has been made more comprehensive and now includes manufacture or selling of spurious goods, selling goods/rendering services without issuing bill and refusal to take back the goods/services. The Bill also defines 'unfair contract' but this definition is narrowly worded and covers only six specific cases of unfair contract and has excluded many important aspects of the term like, exclusion for death or personal injury, limitation of liabilities, time limit on claims, suppliers right to vary the terms etc.

Redressal Commissions

Now a complaint can be filed at the place where the complainant resides, which is the clear signal of move from *caveat emptor to caveat venditor*. Besides, a consumer now has an option for electronic filing of complaints & no physical appearance of the complainant is necessary in case complaint is filed electronically. Complaints can be disposed of only on the basis of affidavit and documentary evidence, hearing is necessary only in certain cases.

Now the appointment of President and Members of the District Commission are by the State Government through the State Public Service Commission and have scrapped the selection committee, which is a good move as it will save the time consumed by the committee for the appointment of the members.

As per the provisions of the Bill, President or Member when cease to hold office are not permitted to appear/act/plead before the Commission, or Commission subordinate to that, where they were holding the office. Likewise, the minimum number of members in State Commission increased from two to four and minimum age for recruitment is also increased from thirty five years to forty years. Earlier there was a rider that not more than fifty percent of members shall be from amongst persons having judicial background, which has been erased in the new Bill. Similarly minimum number of members in National Commission increased from four to fifteen and minimum age is also increased from thirty five years to forty five years. Although the number of the member has been increased almost four times but the number of minimum women members is still one which could have been at least three or four.

Pecuniary jurisdiction of Redressal Commissions has been raised at all the three levels. District and State Commission have also been given power of review where there is an error apparent on the face of the order.

The new Bill also states that State Commission and National Commission can establish circuit benches and perform its functions from thereto impart speedy disposal of complaints.

Central Consumer Protection Authority

The Government is emphasizing on reforming Indian market into a strong potential market in the global strata. However there has been a growing feeling that consumers do not get quick redressal and framework available within the country is far lagging behind. Hence to align the existing framework in line with global best practices the Bill has provision to create an agency similar to the US Federal Trade Commission, known as the CCPA. As per the provisions of the Bill, the basic objectives of the formulation of such a body are i) to protect and enforce the rights of consumers against the marketing of goods / products and services which are unsafe or hazardous to life and property, ii) ensure the rights to be informed about the quality, quantity, potency, purity, standard and price of goods or services, iii) to prevent

unfair trade practices as defined under the Bill , iv) to ensure that no advertisement is made of any goods or services which is misleading or deceiving or contravenes the provisions of this Bill and the rules and regulations may be made under it and v) to ensure that no person engages himself in unfair trade practices or takes part in the publication of any advertisement which is false or misleading.

This authority will serve as a regulator like other authorities viz. Telecom Regulatory Authority of India (TRAI), Food Safety and Standards Authority of India (*FSSAI*) etc. The authority will operate at the centre, region and district level with the power to act *suomoto* or on complaints based or upon the direction from the government into the violation of consumer rights. The Central Authority also has the power to investigate and pass appropriate orders based on such investigations including imposition of fine. One of the other functions of the authority is to promote research and awareness about consumer rights.

Overall the establishment of the CCPA is an important step towards strengthening the consumers. With the setting up of this authority, there will be a body responsible for performing the task of government as ‘complainant’ as with a proper power, network and resources at all the three levels.

However, this proposal for creating an authority has already created a fear and confusion among the existing bodies. The President of the National Consumer Disputes Redressal Commission has expressed concern about creating a parallel jurisdiction by creating CCPA with judicial powers. Hence the bill or the subsequent rules that would later be drafted should be very clear about their respective roles.

Consumer Protection Councils

Role of these councils is to promote and protect consumer rights. But how that will be ensured has not been enumerated even now under these amendments. Besides, the Central Consumer Authority has also been conferred identical functions, hence there is overlap in the functioning of these two authorities. Apart from these responsibilities, the Council's only function is to hold meetings. The Bill thus needs to bring more clarity in the roles and responsibility of Councils. It would also be ideal if Consumer Protection Council is replaced by the Central Consumer Protection Authority, thus omitting chapter II of the Bill.

Consumer Mediation

The Bill introduces mediation as an alternative dispute resolution mechanism. One full chapter is devoted to mediation, appointment of mediators and the system of mediation to settle disputes. Once the complaint is admitted and if it appears to the court that there exist an element of settlement, which may be acceptable to the parties, the court shall direct the parties for mediation as provided under the Bill, except in the cases in which the issues of grave of threats to life and grave physical or mental injury are involved.

For the same, Consumer Mediation Cells will be established and attached to the redressal commissions at the district, state and national levels. The whole procedure of mediation would be guided by principles of natural justice, having regard to the rights and obligations of the parties, usages of trade, if any, and the circumstances of the dispute. The procedures shall not be bound by The Code of Civil Procedure, 1908 and The Indian Evidence Act, 1872.

It is noteworthy that the proposed amendments also include the process of mediation by facilitating discussion between parties directly or by communicating with each other through the mediator, and by assisting parties in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, generating options in an attempt to solve

the dispute; and emphasizing that it is the parties' own responsibility for making decisions which affect them.

Though it's a welcome move, it needs to be remembered that the concept of mediation has not always been successful. Most of the time the big producers and service providers who are the charged with fraudulent practices are reluctant to sit across and discuss the issues. Primarily because of the stronger position they hold when compared to an ordinary consumer, besides other factors like, the possibility of setting up a bad precedent, following legal advice of experts, impact on brand name and many more.

In developed countries, the costs and consequences of litigations are very significant and that's the primary reason why mediation works there. For them the consequences of not settling through mediation are often disastrous. But in India, with moderate penalties for most consumer wrongdoings till date, it is highly unlikely that any defaulting company will prefer to solve a dispute through a mediation panel.

Administrative Control

Additional power has been conferred on the National Commission to investigate allegation against President and Members of State Commission. But there is no clarity on constitution of the Monitoring Cell that would be constituted by the President of the National Commission to oversee the functioning of the State Commissions from the administrative point of view. Besides the final authority on administrative control has been given to Central Government as it has power to formulate performance standards and to supervise the functions of commissions. Apart from this, all the three levels Commissions would be bound by the directions of Central Government. Thus the National Commission has been given role only of a monitor. For the efficient functioning, it would be prudent enough if the central government formulates performance standards and supervision in consultation with the National commission.

Enforcement

The 2015 amendment provides stringent penalties than the existing law. Earlier there was no separate penalty for non-compliance of orders except attachment but the new Bill contains penalty provisions. Clause 60 (2) states, "*Where an order made by the district Commission, State Commission or National Commission, as the case may be is not complied with, such person not complying with the order shall be required to pay not less than five hundred rupees or one half percent of the value of the amount awarded, whichever is higher, for each day of delay*" Similarly, clause 79 (1) provides, "*Where a trader or a person against whom a complaint is made or the complainant fails or omits to comply with any order made by the District Commission, the State Commission or the National Commission, as the case may be, such trader or person or complainant shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees, or with both.*"

According to the first proviso, the penalty for not complying with an order is not less than five hundred rupees or one half percent of the value of the amount awarded, while according to the second proviso the penalty for non-compliance is imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees, or with both. This seems to be situation of confusion as there are two different penalty provisions for same

wrong. So out of these two which provision is to be applied in which case is not clarified. The bill needs to address this before considering for passing.

Some noteworthy provisions are that the bill has increased fine for frivolous or vexatious complaints from ten thousand to fifty thousand. Similarly the District Commission is now entrusted with the power to enforce de-advertising by the party if the commission is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services or any unfair trade practices are proved.

Product Liability: From *caveat emptor* to Strict Liability

In the existing Act, there is no direct reference to the term 'product liability'. A new Chapter has been added in the new Bill which defines 'product liability' as "*the responsibility of a manufacturer or vendor of goods or service provider to compensate for injury or damage caused to a consumer by defective products sold to a consumer or deficiency in services*".

Interestingly, although the definition part of product liability covers the services but the chapter on 'product Liability' nowhere talks about liability in case of deficiency in services. To make manufacturer liable, the burden is on the claimant to prove by a preponderance of the evidence that manufacturer had knowledge of such harm as caused to claimant, which has put complainant under a very heavy burden. This burden could be allotted to the BIS or Central Authority.

Apart from this, the Chapter on Product Liability contains two important provisions. First, a proviso, which assigns liability to the seller, in case manufacturer is not identified. Second, the provision that makes seller liable when the manufacturer is outside the jurisdiction of the State. But no liability has been assigned for latent defects taking account of misuse or alteration or modification or characteristics of the products.

Regulation of e-Commerce

E-commerce is ruling the market and has gained huge support from the busy urban consumers in India. However huge complications arise when the buyer and seller interact virtually during a purchase. First, the consumer cannot select the good or service he buys through inspection and second, often such goods or services delivered often turn out to be far from the expectation of the consumer. Besides, while defining the term unfair trade practices, it also includes the practice of refusing to take back or withdraw the goods after selling or discontinue the supply. The power to terminate the contract at will whether the consumer purchased through online or other means is a welcome change.

Similar is the provision on product liability which is famous in developed countries like America and Europe. A manufacturer and a seller both are made responsible on given conditions for the injuries the products cause to a consumer.

Conclusion

The consumers in India are largely poor, illiterate and are generally not aware of their rights, though their awareness is gradually increasing. The government has played an important role for the protection of consumers and has enacted various legislations for protection of consumers. The new Bill for the first time will give consumers the clear right to repair, replace or terminate a contract. The law till now is unclear regarding e-commerce thus having failed to keep up with the changing market scenario. Hence the present Bill stands to be much stronger and appreciated. But one should remember that only quick disposal of consumer disputes and effective and timely implementation of the law forms the bedrock principle of an

effective consumer protection. The government should ensure strict enforcement of these provisions once the Bill becomes a law.

Action Points

- Need for establishment of district wise customer care centre by online sellers as it is very difficult for a consumer to track down these online market players.
 - Approaching Consumer Forum can be made more consumer-friendly and rapid redressal by restricting the role of Advocates in Consumer Forums.
 - Selection of members of district, state and national commission can be made effective by way of a process like written examination and interviews etc. to be conducted by authorities like UPSC.
 - Chapter on 'product Liability' needs to specifically mention about liability in case of deficiency in services.
 - There are two different penalty provisions [clause 60(2) & 79(1)] for not complying with an order made by the District Commission, the State Commission or the National Commission. Bill needs to strike one out to avoid confusion.
 - Consumer Protection Council could be replaced by the Central Consumer Protection Authority as both conferred with identical functions.
 - Definition of the term 'unfair contract' should be made broader rather than the current narrow definition.
 - Though the minimum no. of members in National Redressal Commission is increased from 4 to 15, yet the no. of women representation still remains one. Adequate representation, minimum 4 women members is a must.
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