

A Proposed Paradigm Shift in the Consumer Protection Laws in India

written by Sindhuja Kashyap | January 28, 2019

Introduction

More than 30 years of law governing concerns of the customer is today facing various issues due to emergence of global trade and rapid development of

e-commerce market. While the law has survived long but a mere survival has raised various questions on the fulfilment of its objective and dire need of an

amendment or a replacement to fulfil the dynamic needs of the customer.

In furtherance to the same, in August 2015, a Consumer Protection Bill, 2015^[1] ("2015 Bill") was

presented before the Lok Sabha. This 2015 Bill was submitted to the Standing Committee on Food, Consumer Affairs, and Public Distribution ("Standing Committee") for their perusal, who in turn submitted their report

("Report")^[2] on April 26, 2016. On review

of the Standing Committee Report, Ministry of Consumer Affairs and Food Distribution on January 05, 2018 introduced the Consumer Protection Bill, 2018

("2018 Bill")^[3]

after withdrawal of the 2015 Bill. This 2018 Bill was passed by the Lok Sabha on December 12, 2018.

In this Article, Author has made an attempt to analyse the lacunas in the Consumer Protection Act, 1986 and the changes brought in by the 2018 Bill.

Need for the 2018 Bill

The Consumer Protection Act, 1986 ("Act") was

brought in with the intention to protect consumer's interest and bring shift from the then prevalent concept of *Caveat Emptor*^[4]

to *Caveat Venditor*^[5].

The Act regulated the Consumer market for both goods and services and issues arising thereunder. However this market has undergone profound transformation due to complexity of products and services dealt with, rise in the international trade and business models and rapid encroachment of e-commerce on the market. While these transformations are a welcome change for

the present world, same has greatly challenged the Act and its ambit.

Therefore, the Standing Committee felt a need to modernise the Act to address the myriad and constantly emerging vulnerabilities of the consumer in the market economy extant.^[6]

Key Highlights of the 2018

Bill

Important inclusions and deletions of the 2018 Bill has been discussed below:

E-commerce:

The 2018 Bill has widened the scope of the application of consumer law by modifying the definition of 'consumer' as per Clause 2(7) of the 2018 Bill.

Explanation to the Clause 2(7) states that the expressions 'buys any goods' and

'hires or avails any services' shall include offline transaction or online transaction by way of electronic means. Further, it shall also be extended to

buying any goods or hiring or availing any services by teleshopping or direct selling or multi-level marketing. 'Direct selling' for the purpose of this 2018 Bill has been defined under Clause 2(13),

which shall mean marketing, distribution and sale of goods or provision of services through a network of sellers, other than through a permanent retail location, which seems to clearly cover all giant e-commerce retailers.

Further,

e-commerce[7]

and electronic service providers[8]

have also been provided clear definitions to avoid ambiguity. While the Act faced various difficulties with its implementation on various teleshopping and

online transactions, the 2018 Bill has removed any muddle on its applicability

in similar circumstances.

Consumer Rights:

The 2018 Bill has provided a clear definition of 'consumer rights' under Clause

2(9) wherein 6 rights have been enumerated namely:

- the right to be protected against the marketing of goods, products or services which are hazardous to life and property
- the right to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services, as the case may be, so as to protect the consumer against unfair trade practices
- the right to be assured, wherever possible, access to a variety of goods, products or services at competitive prices
- the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate for a
- the right to seek redressal against unfair trade practice or restrictive trade practices or unscrupulous exploitation of consumers; and
- the right to consumer awareness

While the above stated rights were recognised

by the Act as well, there existed no clear definition to it. Therefore, the above rights have gained nature of a statutory right than that of being a deemed right.

Deficiency:

2018 Bill provides for a wider definition to the word 'deficiency' as per Clause 2(11) which shall include acts of negligence any act of negligence or omission or commission or deliberate withholding of relevant information leading

to loss or injury to the consumer.

Central Consumer Protection Authority: The Act failed to provide for any regulator acting on behalf of the

consumers, however the 2018 Bill provides for establishment of a regulator called as the Central Consumer Protection Authority ("CCPA"). CCPA shall be an executive agency required to protect, promote and enforce rights of the consumer as a class. CCPA has been provided with various powers under the 2018

Bill including but not limited to the following:

- To issue safety notices to alert consumers against dangerous or hazardous or unsafe goods or services
- To file complaint before the Consumer Dispute Redressal Commissions ("Commission") as the case may be;
- To inquire or cause an inquiry or investigation to be made into violations of consumer rights or unfair trade practices
- Pass orders to recall goods or withdraw services, discontinue unfair practices, reimburse purchase price paid by the consumer; and
- To impose penalties for false and misleading advertisement

Product Liability: The 2018 Bill has introduced the concept of product liability which

the Act was in dire need of. Product liability means the consumer can make the

manufacturer or the seller liable for defect in the product or deficiency in service provided. The 2018 Bill provides for distinctive liability of a product

manufacturer, product service provider and product seller. The product liability on a manufacturer can be considered to be of stricter in nature to that of service provider and seller as the manufacturer shall be liable even if

he proves that he was not negligent or fraudulent in making the express warranty of a product.

Unfair Trade Practices: The Act provides for unfair trade practices definition and the 2018

Bill only adds up three more of such practices in the definition. The 2018 Bill

states that practices such as not issuing of bill, refusing to withdraw defective product, refusing to refund and disclosing of personal information shall be considered as unfair trade practices.

Unfair Contracts:

There is no provision of unfair contract in the Act. 2018 Bill states that an unfair contract shall mean a contract between a manufacturer or trader or service provider and a consumer having such terms which leads to significant change in the rights of the consumer. The 2018 Bill provides for six types of unfair contracts and it is pertinent to note that any complaint against such kind of contract can be filed with the State or National Commission.

Penalties:

2018 Bill increases the penalty for non-compliance from the one that existed in

the Act. The Penalty under the Act ranged from INR two thousand to ten thousand, whereas under the 2018 Bill it has been increased to INR Twenty

five

thousand to One Lakh. This change has been brought in to increase the deterrence among the defaulters.

Alternate Dispute Redressal Mechanism: 2018 Bill has brought in a stark change by introducing mediation as a dispute redressal mechanism for settling of consumer disputes. 2018 Bill provides for setting up of a consumer mediation cell at the Commissions for speedy and amicable disposal of the matters.

Jurisdiction of Commissions: The Pecuniary Jurisdiction of the District Commission has been

increased from entertaining complaints where value of goods or services paid as

consideration did not exceed twenty lakhs to that of one crore rupees.

Further,

under the Act the State Commission was permitted to entertain complain for a value exceeding twenty lakhs but not exceeding one crore. However under the 2018 Bill the pecuniary jurisdiction has been advanced to complaints of value exceeding one crore but not exceeding ten crore. The National Commission jurisdiction has increased from complaint values of more than one crore to complaint values of more than ten crores.

Territorial Jurisdiction: The 2018 Bill has also modified the territorial jurisdiction of the

District and State Commission. As per the Act, in determining the local limits

of a Commission for filing of complaint the residence or carrying of business by the opposite parties or the place of cause of action. However, 2018 Bill has

included the place of residence of the complainant and place where the complainant personally works for gain for determining the territorial jurisdiction of the Commission, thereby making it a wider and an easier approach.

Misleading Advertisement: The 2018 Bill unlike the Act provides for a definition of misleading

advertisement and also provides for a penalty for any person indulging in such activity.

Endorsement and its implication: The Act did not extend its application and restrictions on

endorsement of any product and thereby to the endorser. However, recently India

witnessed various customers being provided defective product or deficient services as the customers purchased or availed the same under the influence of

the endorser. Therefore, 2018 Bill provides a clear definition for endorsement

which states for certain types of activities makes the consumer to believe that

it reflects the opinion, finding or experience of the person making such endorsement. Further an endorser of a misleading or false advertisement may be

subject to penalty as well under the 2018 Bill. Further, a prohibition or ban

on the endorser could also be imposed by the authorities from endorsing any product or service for a period which may range from one year to three year. However, endorser can escape its liability under the 2018 Bill if he/she had exercised due diligence to verify the veracity of the claims made in the advertisement or when such an advertisement was published not as an endorser but as an ordinary course of his/her business.

Violation

of Principle of Separation of Powers

Provision claiming to gain the most attention

in the 2018 Bill is the composition of the Commissions. The Act provided for a

person qualified to be a district judge, high court judge and Supreme Court judge to be eligible to head the District Commission, State Commission and National Commission respectively. However, the 2018 Bill states that the Commission shall be headed by a 'President' whose qualification shall be determined by the Central Government. In the absence of any minimal judicial qualification, it leaves the composition of the Commission to the mercy of the

Central Government who could also end up having non-judicial members on the Commission. It is pertinent to note that the Commissions have been provided with the powers akin to that of civil court. Therefore, while the power to determine the composition could have been provided to the Central Government, the legislative should have enumerated minimum judicial qualification to ensure

the functionality of the Commission is intact.

Conclusion The proposed 2018 Bill seems to be an earnest attempt in augmenting the scope of the existing law to achieve the objective of safeguarding the interest of the customers given the paradigm shift of the market from its indigenous practice towards e-commerce. Further, the 2018 Bill also spreads its claws on the celebrities acting as endorser thereby ensuring deemed responsibility on the celebrities to act diligently. The proposed 2018 Bill widens its wing with regard to its ambit and ability to resolve the present day aggrieved customers. However, it faces limitation with regard to the challenges faced with respect to the conflict of separation of power as analysed above. Therefore, the conclusion of failure or success of this 2018 Bill is a pre-mature question to answer and the legal fraternity awaits Rajya Sabha's views on the same.

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[1]

<http://www.prsindia.org/uploads/media/Consumer/Consumer%20Protection%20bill,%202015.pdf>

[2]

<http://www.prsindia.org/uploads/media/Consumer/SCR-%20Consumer%20Protection.pdf>

[3]

http://www.prsindia.org/sites/default/files/bill_files/Consumer%20Protection%20Bill%2C%202018.pdf

[4] *Caveat Emptor* is a legal

maxim which means 'Let the buyer take care'

[5] *Caveat Venditor* is

a legal maxim which means 'Let the seller beware'

[6] Para 1.5 of the

Standing Committee Report;

<http://www.prsindia.org/uploads/media/Consumer/SCR-%20Consumer%20Protection.pdf>

[7] Clause 2(16) of the

2018 Bill states that "e-commerce" means buying or selling of goods or services including digital products over digital or electronic network

[8] Clause 2(17) of the 2018 Bill states that "electronic service provider" means a person who provides technologies or processes to enable a product seller to engage in advertising or selling goods or services to a consumer and includes any online market place or online auction sites

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