

THE PRS BLOG » EXAMINING THE CONSUMER PROTECTION BILL, 2018

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The Consumer Protection Bill, 2018 was introduced in Lok Sabha in January 2018. The Bill replaces the Consumer Protection Act, 1986. Previously in 2015, a Bill had been introduced to replace the 1986 Act. The 2015 Bill acknowledged that the rapid change in consumer markets, introduction of practices such as misleading advertisements, and new modes of transactions (online, teleshopping, etc.) had necessitated the need for a new law. The Bill was subsequently referred to a Standing Committee, which recommended several changes to it. The Bill was withdrawn and replaced with the Consumer Protection Bill, 2018. The Bill is listed for passage in the ongoing Monsoon Session. In this post, we analyse the Bill in its current form.

How is the 2018 Bill different from the 1986 Act?

The Bill adds various provisions for consumer protection that were absent in the 1986 Act. Key among them are the provisions on product liability and unfair contracts. Under product liability, when a consumer suffers an injury, property damage or death due to a defect in a product or service, he can file a claim for compensation under product liability. The Bill outlines cases in which the product manufacturer, service provider and seller will be held guilty under product liability. Under the proposed law, to claim product liability, an aggrieved consumer has to prove any one of the conditions mentioned in the Bill with regard to a manufacturer, service provider and seller, as the case may be.

An unfair contract has been defined as a contract between a consumer and manufacturer/service provider if it causes significant change in consumer rights. Unfair contracts cover six terms, such as payment of excessive security deposits in an arrangement, disproportionate penalty for a breach, and unilateral termination without cause. The consumer courts being set up under the Bill will determine contract terms to be unfair and declare them null and void.

What are the different bodies being set up under the Bill?

The Bill sets up Consumer Protection Councils as advisory bodies, who will advise on protection and promotion of consumer rights. However, it does not make it clear who these Councils will render advice to. Under the 1986 Act, the Consumer Protection Councils have the responsibility to protect and promote consumer rights.

To promote, protect, and enforce consumer rights, the Bill is setting up a regulatory body, known as the Central Consumer Protection Authority. This Authority can also pass orders to prevent unfair and restrictive trade practices, such as selling goods not complying with standards, and impose penalties for false and misleading advertisements.

The Bill also sets up the Consumer Disputes Redressal Commissions (known as consumer courts) at the district, state and national levels. These Commissions will adjudicate a broad range of complaints, including complaints on defective goods and deficient services of varying values. These Commissions are also present under the 1986 Act. However, their pecuniary jurisdiction (amount up to which they can hear complaints) has been revised under the Bill. The Bill also adds a provision for alternate dispute redressal mechanism. As part of this, mediation

cells will be attached with the Consumer Disputes Redressal Commissions.

What are the penal provisions under the Bill?

The Bill increases penalties for different offences specified in it. It also adds penalties for offences such as issuing misleading advertisements, and manufacturing and selling adulterated or spurious goods. For example, in case of false and misleading advertisements, the Central Consumer Protection Authority can impose a penalty of up to Rs 10 lakh on a manufacturer or an endorser. For a subsequent offence, the fine may extend to Rs 50 lakh. The manufacturer can also be punished with imprisonment of up to two years, which may extend to five years for every subsequent offence. The Authority can also prohibit the endorser of a misleading advertisement from endorsing any particular product or service for a period of up to one year. For every subsequent offence, the period of prohibition may extend to three years. There are certain exceptions when an endorser will not be held liable for such a penalty.

Are there any issues to think about in the Bill?

The 2018 Bill is a marked improvement over the 2015 Bill and addresses several issues in the 2015 Bill. However, two major issues with regard to the Consumer Disputes Redressal Commissions remain. We discuss them below.

First issue is with regard to the composition of these Commissions. The Bill specifies that the Commissions will be headed by a 'President' and will comprise other members. However, the Bill delegates the power of deciding the qualifications of the President and members to the central government. It also does not specify that the President or members should have minimum judicial qualifications. This is in contrast with the existing Consumer Protection Act, 1986, which states that the Commissions at various levels will be headed by a person qualified to be a judge. The 1986 Act also specifies the minimum qualification of members.

Under the current Bill, if the Commissions were to have only non-judicial members, it may violate the principle of separation of powers between the executive and the judiciary. Since these Commissions are adjudicating bodies and will look at consumer dispute cases, it is unclear how a Commission that may comprise only non-judicial members will undertake this function.

Second issue is with regard to the method of appointment of members of the Commissions. The Bill permits the central government to notify the method of appointment of members of the Commissions. It does not require that the selection involve members from the higher judiciary. It may be argued that allowing the executive to determine the appointment of the members of Commissions could affect the independent functioning of the Commissions. This provision is also at variance with the 1986 Act. Under the Act, appointment of members to these Commissions is done through a selection committee. These selection committees comprise a judicial member.

As mentioned previously, the Commissions are intended to be quasi-judicial bodies, while the government is part of the executive. There may be instances where the government is a party to a dispute relating to deficiency in service provided by a government enterprise, for e.g., the Railways. In such a case, there would be a conflict of interest as the government would be a party to the dispute before the Commissions and will also have the power to appoint members to the Commission.

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