



# The Consumer Protection Bill, 2018

## Why in News?

- The Consumer Protection Bill, 2018 has been passed in the winter session of the Parliament on December 20, 2018.

## Salient Features

- The Bill replaces the Consumer Protection Act, 1986.
- The Bill enforces consumer rights and provides a mechanism for redressal of complaints regarding the defects in goods and deficiency in services.
- Consumer Disputes Redressal Commissions will be set up at the District, State and National levels for adjudicating consumer complaints with pecuniary jurisdiction up to Rs 1 crore, Rs 1 crore to Rs 10 crore, and above Rs 10 crore, respectively.
- Such complaints can be filed electronically and from where the complainant resides or works.
- Appeals from the District and State Commissions will be heard at the next level and from the National Commission by the Supreme Court.
- These Commissions can declare unfair terms of contracts to be null and void.
- The Bill defines contracts as 'unfair' if they significantly affect the rights of consumers. It also defines unfair and restrictive trade practices.
- The Commissions will attempt to dispose of a complaint within three months if the complaint does not require analysis or testing of commodities. If analysis and testing are required, the complaint will be disposed within a period of five months.
- The Bill sets up the **Central Consumer Protection Authority (CCPA)** to promote, protect, and enforce the rights of consumers as a class. It can issue safety notices for goods and services, order refunds, recall goods and rule against misleading advertisements.
- The Bill establishes **Consumer Protection Councils** at the district, state, and national levels to render advice on consumer protection.

## Note

- December 24 is observed as National Consumer Day as the Consumer Protection Act, 1986 received the assent of the President on this day.

## Amendments to the 1986 Act

- **E-commerce** now defines direct selling, e-commerce and electronic service provider.
  - The central government may prescribe rules for preventing unfair trade practices in e-commerce and direct selling, this will go a long way in protecting online consumers. This provision was not present in the 1986 Act.
- **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.

- An unfair contract has been defined as a contract between a consumer and manufacturer/ service provider if it causes a significant change in consumer rights.
- Unfair contracts cover six terms, such as payment of excessive security deposits in an arrangement, the 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.
- Establishes the **Central Consumer Protection Authority (CCPA)**, to promote, to protect, and to enforce the rights of consumers as a class. Such a regulator was missing in 1986 Act.
- **Increased Pecuniary jurisdiction of Commission at District level** from 20 lakh to now 1 crore, at the state level from 20 lakh-1 crores, to between 1 - 10 crores now and at a central level from above 1 crore to above 10 crores now.
- **Alternate dispute redressal mechanism:** Now Mediation cells will be attached to the District, State, and National Commissions which were absent in the 1986 Act.

## Concerns

### The principle of separation of powers:

- The Bill does not specify that the Commissions will comprise a judicial member. If the Commissions were to have members only from the executive, then the principle of separation of powers may be violated. 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.

### Independence of these quasi-judicial bodies:

- The Bill empowers the central government to appoint, remove and prescribe conditions of service for members of the District, State, and National Consumer Disputes Redressal Commissions. The Bill leaves the composition of the Commissions to the central government. This could affect the independence of these quasi-judicial bodies.

### Qualification:

- The Bill delegates the power of deciding the qualifications of the Commission's President and members to the central government. It is in contrast to the 1986 Act which specifies the minimum qualification of the members.

### Advisory function:

- Consumer Protection Councils will be set up at the district, state, and national level, as advisory bodies. The State and National Councils are headed by Ministers in-charge of Consumer Affairs. The Bill does not specify whom the Councils will advise. If the Councils advise the government, it is unclear in what capacity such advice will be given. Within the Consumers Protection Act, there is a need for expansion of persons allowed to petition consumer courts. Due to the rigidity of the act, only a "consumer"—that is, someone who purchases goods and services, could approach the court to complain about harmful practices.

### Unfair trade by rivals and penalizing misleading celebrity endorsement:

- It **does not include unfair trade practices by rival companies**, which may negatively affect the sale of products.
- The Act also hints at imposing penalties upon any celebrities who endorse misleading products and the extent of liability of advertisers or endorsers and celebrity rights and protection. The Act falls short on the extent of liability on stakeholders in such cases.

### Standing Committee recommendations not addressed:

- The right to terminate a contract on the grounds of quality of goods or services received.

- In order to facilitate early disposal of cases, the involvement of advocates in complaints involving compensation value of up to Rs 20 lakh should be prohibited. It attributed the inordinate delay in disposal of cases to the deployment of advocates.
- The Standing Committee noted that Consumer Commissions do not admit complaints in relation to services to which a special law applies. It recommended that a provision may be inserted to clarify that the proposed Bill will apply to any matter covered under a special law unless the special law excludes the application of the proposed Bill.
- The advertising code presently being followed by the Advertising Standards Council of India (ASCI) should be given legal backing.

### **Suggestion for Improvement**

- Countries within the European Union provide consumers with a “distance contract,” wherein parties that conduct business (ONLINE, E-commerce) without being in each other’s presence can cancel the contract (sale) within 15 days from the date of purchase. Such a clause, that provides a “cooling off period” post-purchase, within which time a consumer can return an item and ask for a refund, will not only protect the consumer but also improve the quality of services offered.

### **Conclusion**

- With the changing economic times, there is a requirement for a realistic act to cater to the needs of the consumers, which is a welcome step. However, some of the recommendations which are not included in the present Bill should be incorporated to make it inclusive and effective in the present context.

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