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**STANDING COMMITTEE ON FOOD, CONSUMER AFFAIRS
AND PUBLIC DISTRIBUTION (2015-16)**

SIXTEENTH LOK SABHA

**MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION
(DEPARTMENT OF CONSUMER AFFAIRS)**

THE CONSUMER PROTECTION BILL, 2015

NINTH REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

APRIL, 2016/ VAISAKHA, 1938(Saka)

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Presented to Lok Sabha on 26.04.2016

Laid in Rajya Sabha on 26.04.2016



**LOK SABHA SECRETARIAT
NEW DELHI**

APRIL, 2016/ VAISAKHA, 1938 (Saka)

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Standing Committee on Food, Consumer Affairs and Public Distribution (2015-16)

Shri J.C. Divakar Reddy, Chairperson

Lok Sabha

2. Shri Anto Antony
3. Shri Babu Lal Choudhary
4. Shri Sanjay Jadhav (Bandu) Haribhau
5. Shri Dinesh Kashyap
6. Shri Dharmendra Kumar
7. Shri Ravinder Kushawaha
8. Smt. Sakuntala Laguri
9. Dr. Swami Sakshi Maharaj
10. Shri R. K. Bharathi Mohan
11. Shri Sunil Kumar Mondal
12. Shri Kamlesh Paswan
13. Shri Ram Chander Paswan
14. Shri C.S. Putta Raju
15. Smt. Priyanka Singh Rawat
16. Shri P.V. Midhun Reddy
17. Shri Bhola Singh
18. Shri Brij Bhusan Sharan Singh
19. Shri Shibu Soren
20. Shri Prabhubhai Nagarbhai Vasava
21. Shri Nandi Yellaiah

Rajya Sabha

22. Shri Shadi Lal Batra
23. Shri Mithun Chakraborty
24. Dr. Bhushan Lal Jangde
25. Dr. Prabhakar Kore
26. Ms. Rekha
27. Dr. K. Keshava Rao
28. Shri K.K. Ragesh
29. Shri Dhiraj Prasad Sahu
30. Shri Veer Singh
31. Vacant *

LOK SABHA SECRETARIAT

- | | | |
|----------------------------------|---|----------------------------|
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| 2. Shri Lovekesh Kumar Sharma | - | Director |
| 3. Shri Khakhai Zou | - | Additional Director |
| 4. Smt. Darshana Gulati Khanduja | - | Senior Executive Assistant |

* Vice Shri Pankaj Bora, M.P. Rajya Sabha ceased to be a member of the Committee consequent upon his retirement from Rajya Sabha w.e.f. 02.04.2016.

INTRODUCTION

I, the Chairperson of the Standing Committee on Food, Consumer Affairs and Public Distribution (2015-16) having been authorized by the Committee to present the Report on their behalf present this Ninth Report (16th Lok Sabha) on 'The Consumer Protection Bill, 2015'.

2. The Consumer Protection Bill, 2015 as introduced in Lok Sabha on 10th August, 2015 was referred by the Hon'ble Speaker, Lok Sabha under Rule 331 (E) (1) (b) of the Rules of Procedure and Conduct of Business in Lok Sabha on 25th August, 2015 to the Standing Committee on Food, Consumer Affairs and Public Distribution for examination and Report within three months.

3. Considering the wide ramifications of the Bill, the Committee at their sitting held on 22nd September, 2015, *inter alia*, decided to invite views/suggestions of the general public and also to take evidence of selected Voluntary Consumer Organizations/Individuals/ Non-official Experts/Industry Associations etc. besides the nodal Ministry i.e. the Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs) on the various provisions of the Bill through a Press Release issued on 07 November, 2015 inviting the views/suggestions from the General Public/Organizations/Institutions/Experts etc.. The Committee also received a large number of letters/memoranda containing the views/suggestions of Individuals/Organizations/ Institutions/Non-official Experts etc. Based on the response from various stakeholders, the Committee took evidence of the selected Organizations/Individuals/Non-Official Experts/Industry Associations etc. including the Nodal Department i.e. the Department of Consumer Affairs, as indicated in Appendix-II.

4. In view of the fact that the Bill seeks to replace the existing Consumer Protection Act, 1986, the Committee desired to examine the various provisions of the Bill thoroughly. Accordingly, on their request, Hon'ble Speaker granted extension of time to the Committee to present their report on the Bill till end of the Budget Session, 2016.

5. The Committee at their sittings held on 11th April, 2016 considered and adopted the Draft Report.

6. The Committee wish to express their thanks to the representatives of the Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs) and Ministry of Law and Justice (Legislative Department) who tendered their evidence before them and gave their considered views. The Committee also wish to express their thanks to the representatives of Voluntary Consumer Organizations/Individuals/Industry Associations/Non-official Experts who furnished written information/views as well as those who appeared before the Committee and made available necessary information for consideration of the Committee, which was of great help to the Committee in arriving at conclusions.

7. For the facility of reference and convenience, the observations/ recommendations of the Committee have been printed in bold in the body of the Report.

New Delhi
25 April, 2016
5 Vaisakha, 1938 (Saka)

J C DIVAKAR REDDY,
Chairperson
Standing Committee on Food,
Consumer Affairs and Public Distribution

REPORT

CHAPTER – I

INTRODUCTORY

A. BACKGROUND

India has been a pioneer in consumer advocacy with the Consumer Protection Act, 1986, a path breaking legislation, enacted in 1986 and a separate Department dedicated to Consumer Affairs was established in 1997. The existing Act provides the legislative framework to promote and protect the rights of consumers and a three-tier quasi-judicial consumer disputes redressal machinery at the District, State and National levels, popularly known as Consumer Courts. The consumer courts adjudicate complaints relating to defects in goods and deficiencies in services and are meant to provide simple, inexpensive and speedy redressal of consumers' grievances. The existing Act also provides for establishment of Consumer Protection Councils at the Central, State and District levels to function as Advisory Bodies on consumer advocacy.

1.2 Based on the experience gained from implementation on the ground, the Act has been amended thrice in the years 1991, 1993 and 2002. However, on the recommendations of the Central Consumer Protection Council, a Working Group was set up in January, 2004, to consider comprehensive amendments to the Act for better protection of consumers. The Working Group submitted its report in February, 2006.

B. JUSTIFICATION FOR INTRODUCTION OF THE CONSUMER PROTECTION BILL, 2015

1.3 The 26th Report of the Departmental related Parliamentary Standing Committee on Food, Consumer Affairs and Public Distribution envisioned a progressive instrument and urged the Department to strengthen the Act to enable effective interventions for consumer protection. The recurring theme in consumer protection has been the need to deploy effective measures to prevent unfair trade practices.

1.4 Consumer markets for goods and services have undergone profound transformation since the enactment of the Consumer Protection Act in 1986. The modern market place contains a plethora of increasingly complex products and services. The emergence of global supply chains, rise in international trade and the rapid development of e-commerce have led to new delivery systems for goods and services and have provided new opportunities for consumers. Equally, this has rendered the consumer vulnerable to new forms of unfair trade and unethical business practices.

1.5 Misleading advertisements, tele-marketing, multi-level marketing, direct selling and e-tailing pose new challenges to consumer protection and will require appropriate and swift executive interventions to prevent consumer detriment. There is a need for an executive institution, to make interventions when necessary, including through class action, to counter unfair trade practices. Simply put, there is need to modernise the Act to address the myriad and constantly emerging vulnerabilities of the consumer in the market economy extant.

1.6 The Consumer Protection Bill, 2015 has been drafted incorporating the amendments proposed earlier, the recommendations of the Parliamentary Standing Committee, and the suggestions received from citizens, Consumer Voluntary Organisations and industry alike.

C. OBJECTIVE OF THE BILL

1.7 The objective of the 'Consumer Protection Bill, 2015' is to widen the ambit and amplify the scope of the Act to:

- (a) Modernise the legislation on consumer protection to keep pace with the changes in markets;
- (b) ensure fair, equitable and consistent outcomes for consumers; and

- (c) enable swift executive intervention in the nature of class action both to prevent consumer detriment and to provide redress to consumers

D. SALIENT FEATURES OF THE BILL

1.8 The salient features of the proposed Bill include:

(a) the establishment of an executive agency to be known as the Central Consumer Protection Authority (CCPA) to promote, protect and enforce the rights of consumers. This fills an institutional void in the regulatory regime extant. Currently, the task of prevention or acting against unfair trade practices is not vested in any authority. The CCPA will be the executive agency that will make interventions when necessary to prevent consumer detriment arising from unfair trade practices and to initiate class action including enforcing recall, refund and return of products.

(b) The roles of Food Safety Standards Authority of India (FSSAI), Telecom Regulatory Authority of India (TRAI), Central Electricity Regulatory Commission (CERC) and such other sector regulators as envisaged are different from the role envisaged for the CCPA. While the sector regulators essentially serve as standard setting bodies and seek to ensure an even playing field between Government and other stakeholders, the CCPA will play the role of an executive agency that is consumer centric and will make class action intervention when necessary to prevent unfair trade practices or consumer detriment at all the three stages of consumers' engagement with the market, i.e., prior to, during and after the purchase of a product or procurement of a service, for which there is no designated authority in the current regulatory framework.

(c) It has also been ensured that the role envisaged for the CCPA complements that of the sector regulators. Care has been taken in delineating the functions and powers of the CCPA to prevent duplication, overlap or potential conflict. On unfair trade practices relating to sectors having a Sector regulator, a specific provision has been made in Section 16(2) to ensure harmonization and coordinated functioning.

(d) A new chapter with provisions for "Product Liability" action for or on account of personal injury, death, or property damage caused by or resulting from any product has

been added. The new chapter provides the bases for product liability action and the liability of a manufacturer to a claimant.

(e) A new chapter providing for "Mediation" as an Alternate Dispute Resolution (ADR) mechanism has been added. This is aimed at giving legislative basis to resolution of consumer disputes through mediation thus making the process less cumbersome, simple and quicker. This will be done under the aegis of the consumer courts.

(f) A new provision on 'unfair contract' has been included to protect the consumers who are placed in an unequal bargaining capacity. The definition of the term "Unfair trade practices" is being widened to make it an inclusive clause to cover various types of unfair trade practices.

(g) Several provisions aimed at simplifying the consumer dispute adjudication process in the consumer fora are envisaged. These include, among others, enhancing the pecuniary jurisdiction of the Consumer Grievance Redressal Agencies, increasing minimum number of Members in the consumer courts to facilitate quick disposal of complaints, power to review their own orders by the State and District Commission, constitution of 'Circuit Bench' to facilitate quicker disposal of complaints, reforming the process for the appointment of the President and Members of the District Fora, enabling provisions for consumers to file complaints electronically and file complaints in consumer courts that have jurisdiction over the place of residence of the complainant, and deemed admissibility of complaints if the question of admissibility is not decided within the specified period of 21 days.

E. PROCESS OF CONSULTATION HELD BY GOVERNMENT OF INDIA BEFORE INTRODUCTION OF THE BILL

1.9 Following extensive consultations with all stake holders on the amendments proposed by the Working Group in their report submitted in February 2006, a draft Amendment Bill was drafted in consultation with the Ministry of Law and Justice. The draft bill was approved by the Cabinet on 30.8.2011 and the Consumer Protection (Amendment) Bill, 2011 was introduced in the Lok Sabha on 16.12.2011. The Bill was

referred to the Department related Parliamentary Standing Committee on Food, Consumer Affairs and Public Distribution. The Committee submitted its Report on 19.12.2012. The Bill, however, lapsed since the 15th Lok Sabha had been dissolved.

1.10 Thereafter, the question of amendment to Consumer Protection Act, 1986 was reconsidered and a Committee was constituted to have a thorough review and to suggest further amendments to the Act. Draft of the Bill was prepared and uploaded on the Department's website inviting comments. Comments of State Governments and Voluntary Consumer Organizations were invited. Stakeholders' consultation was also held on the proposed amendments to the Consumer Protection Act. The draft Consumer Protection Bill, 2015 was finalized in consultation with the Department of Legal Affairs and the Legislative Department.

1.11 A Note for the Cabinet was sent on 11.3.2015 to the Cabinet Secretariat to seek approval of the Cabinet to the introduction of the Consumer Protection Bill, 2015 and repeal of the Consumer Protection Act, 1986.

1.12 Subsequently, an informal Group of Ministers headed by Hon'ble Minister of Finance and comprising Minister of Commerce, Minister of Power, Minister of Information Technology, Minister of Road Transport and Highways, Minister of Health and Family Welfare and Minister of Consumer Affairs, Food and Public Distribution, met on 20th May, 2015 and suggested the following modifications in the Bill:

- Product liability to cover raw materials and extended cycle of a product
- Providing for consumer or his authorized agent or pleader to represent his case before the Commission at all levels.
- Summary disposal of cases on the basis of affidavit and evidence placed on record.
- Allowing appeals against decree of original court on the basis of facts and law and second appeal only on a substantive question of law.
- Providing for the Consumer Protection Authority to send the recommendation to the Sector regulator for action.

A revised Amendment Bill incorporating these suggestions were again considered by the GoM in its next meeting on 28th May, 2015 and approved. The revised Bill was got vetted by the Legislative Department.

1.13 A fresh Note for the Cabinet was sent on 15.7.2015. However, certain editorial and drafting changes were made in the Bill and a Supplementary Note for the Cabinet along with the revised Bill was sent on 27.7.2015 to the Cabinet Secretariat for obtaining the approval of the Union Cabinet. The Union Cabinet approved the proposal for introduction of the Consumer Protection Bill, 2015 in Parliament. The Bill was introduced in Lok Sabha on 10th August, 2015.

F. PROCESS OF CONSULTATION HELD BY THE COMMITTEE WHILE EXAMINING THE BILL

1.14 The Consumer Protection Bill, 2015 (Appendix –I) was introduced in Lok Sabha on 10 August, 2015 and was referred to the Standing Committee on Food, Consumer Affairs and Public Distribution on 25 August, 2015 by Hon'ble Speaker for examination and report to Parliament as per Rule 331 (E) (1) (b) of the 'Rules of Procedure and Conduct of Business in Lok Sabha'. The Committee accordingly, obtained written information on various issues provided in the Bill from the Nodal Ministry i.e. Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs). The preliminary meeting of the Committee was held on 22 September, 2015 to decide the course of action in connection with the examination of the Bill. The Committee at the aforesaid sitting decided to invite the views of experts, organizations, individuals and other stakeholders through print and electronic media including the Lok Sabha TV. In response thereto, a large number of memoranda were received which were scrutinized by the Committee Secretariat. The Committee also received response/suggestions from the representatives of various Voluntary Consumer Organizations, Industry Associations, Institutions, Individuals and Non-official Experts. Accordingly, apart from the Central Ministries concerned, selected experts/representatives of Voluntary Consumer Organizations, Industry Associations/individuals deposed before the

Committee as per details given in Annexure II. The aforesaid experts and stakeholders raised serious reservations on some of the provisions of the Bill and suggested some modifications/amendments.

1.15 Since the Consumer Protection Bill, 2015 seeks to replace the existing Consumer Protection Act, 1986 with a view to widen the ambit and amplify the scope of the said Act., the Committee decided to obtain views of the State Governments/UTs in the form of replies to a List of Points on the aforesaid Bill.

1.16 The Committee also heard the views of representatives of Consumer Guidance Society of India, Mumbai, Consumer Online Foundation, New Delhi, Voluntary Organization in Interest of Consumer Education (VOICE), New Delhi, Consumer Education and Research Centre, Ahmedabad, Federation of Indian Chambers of Commerce and Industry (FICCI), New Delhi, ASSOCHAM, New Delhi, PHD Chamber of Commerce and Industry, New Delhi, Mumbai Grahak Panchayat, Mumbai, PRS Legislative Research Institute for Policy Research Studies, New Delhi, Toxics Watch Alliance (TWA), Patna, Internet and Mobile Association of India (IAMAI), New Delhi, Advertisement Standards Council of India (ASCI), Mumbai and NASSCOM, New Delhi. Besides, the Committee also shared the views of National Media Centre, Nathpura, Gurgaon, National Law School of India University, Bengaluru, Karnataka and, Consumer Advisory and Outreach, Chennai. The details of the sittings held by the Committee for the aforesaid deliberations are given at Annexure III.

1.17 The Committee were briefed by the representatives of the Nodal Ministry i.e. the Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs) at their sittings held on 22 September, 2015.

1.18 Subsequently, the Committee undertook Clause by Clause consideration of the Bill at their sittings held on 02 and 08 February, 2016.

1.19 The Committee note that India has been a pioneer in consumer advocacy with the enactment of a path breaking legislation i.e. The Consumer Protection Act, 1986 and establishment of a separate Department dedicated to consumer affairs in 1997. The Act provided for a three tier quasi-judicial Consumer Dispute Redressal Machinery at the District, State and National levels popularly known as Consumer Courts. The Act was amended thrice in the years, 1991, 1993 and 2002 on the basis of experience gained from implementation on the ground. The Committee are, however, constrained to observe that the Consumer Movement in the country and the redressal machinery of consumer grievances are far from satisfactory and a lot needs to be done in this direction.

1.20 The Committee further note that the Consumer Protection Bill, 2015 has been introduced after following extensive consultation with all the stakeholders and also incorporating the amendments proposed earlier, the recommendations of Parliamentary Standing Committee and the suggestions received from citizens, consumer organizations and industries alike. Considering the fact that the Consumer Protection Bill, 2015 seeks to replace the earlier Consumer Protection Act, 1986 with a view to widen the ambit and amplify the scope of the Act. The Committee decided to consult the widest possible sections of the society/organizations/institutions/experts etc. Accordingly, the Committee issued Press Communiqué in the print as well as electronic media inviting suggestions from the general public/institutions/individuals/VCOs/Industry Associations etc. The Committee also obtained views of State Governments/UT Administrations inviting their response/suggestions on various provisions of the Bill. In response,

the Committee received a large number of memoranda containing the views/suggestions on various provisions of the Bill from individuals/ VCOs/ Industry Associations etc. The Committee also held interactions with the representatives of the Central Ministries/ VCOs/Industry Associations / Non-official experts etc. in a series of sittings.

1.21 Based on the information/views gathered by the Committee during all the aforesaid interactions/sittings and written memoranda, the Committee observed that not a single objection was raised on the Consumer Protection Bill, 2015 per se. However, there are certain issues such as definitions, misleading advertisements, adulteration of products for human consumption, jurisdiction of Central Consumer Protection Authority, etc. on which different views were expressed by different sections of the stakeholders which the Committee will deal in the succeeding chapters of the Report. Nevertheless, the Committee urge the Department of Consumer Affairs to closely scrutinize again the definitions to see that necessary changes by way of addition, modification or deletion be carried out so as to make the Bill more cohesive and meaningful. The Committee, therefore, recommend the passing of the Consumer Protection Bill, 2015 subject to incorporation of their observations/ recommendations contained in the succeeding Chapters of the Report.

CHAPTER – II

A. MISLEADING ADVERTISEMENTS

Clause 2 of the Consumer Protection Bill, 2015 states as under:-

Clause 2. In this Act, unless the context otherwise requires-

(1) "advertisement" means any audio or visual publicity, representation or pronouncement made by means of any light, sound, smoke, gas, print, electronic media, internet or website and includes any notice, circular, label, wrapper, invoice or other documents".

2.2 Summary of views/suggestions placed before the Committee

ASSOCHAM - (i) Advertisers and the advertising / media industry have also not been included in the regulation mechanism at any level. Not only will this setup pose challenges for the regulation to stay up to date with the fast-paced developments in this industry, it will also greatly increase the cost of regulation and enforcement to the exchequer.

(ii) The vesting of executive and judicial powers in the same authority such as the CCPA is against the principle of separation of powers.

(iii) There is no statutory redressal or appeal process specified against the actions or orders of the CCPA.

It is therefore recommended that the proposal to include regulation of misleading advertisements be excluded from the scope of the CCPA's powers, and a separate exercise be conducted for determining the best possible way to regulate advertisements in order to balance both consumer protection and; unfettered exercise of the freedom granted to commercial speech under Article 19(1)(a) of the Constitution.

FICCI - The industry supports the investigative powers of the CCPA in relation to misleading advertisements and the power granted to the CCPA that it can initiate or launch complaints with respect to any misleading advertisement. However, the industry does not support that Section 16 (a) (xiii) which empowers the CCPA to pass orders for withdrawal of advertisements or that Section 17 of the Bill empowers the CCPA to pass order for discontinuance or modification of advertisement.

Chairman, District Consumer Protection Committee, Ferozabad, Uttar Pradesh - Strict action to be taken against producers, sellers, companies, businessman and industrialists who allures the consumers by giving misleading advertisements in newspapers and TV channels.

Ex-Indian Defence Accounts Service & crusader of Consumer Interest -(i) In advertisements sponsorship or endorsement by certain public eminent persons or celebrities is extensively used. This is called appointment of “Brand Ambassadors”. The definitions provided under Section 2 (41) (A) (d), (e) are not adequate to cover these aspects. A separate sub-section is needed to be provided to define the concept of “Brand Ambassador”. Further eminent personalities who were awarded state awards of honour are being drafted as “Brand Ambassador” to benefit from the image they got with these honourable awards. Therefore the misuse of the status gained by the state awards like “Padma Sri”, “Padmabhushan”, “padmavibhushan” and “Bharat Ratna”, should be prohibited, to avoid irrelevant influence on the targeted public and to avoid unethical use of the honour for monetary gain. Personages awarded these kinds of awards should be prohibited from being drafted as Brand Ambassadors, irrespective of the award held is mentioned or not in the advertisement.

National Law School of India University, Bangalore - (i) Inclusion of Celebrity endorsement liability: It should be understood in light of issue of Maggi Noodles (presence of monosodium glutamate). Misrepresentation of product especially food product should be taken seriously considering the influence of the celebrities and corporate junks.

NASSCOM, New Delhi - Exclude “invoice” from the definition of “advertisement”.

President, Internet and Mobile Association of India, Delhi, Mumbai and Bangalore - Section 2 (16) This definition needs to be in sync with intermediary definition provided in section 2[w] of the IT Act especially in view of section 81 (overriding effect) of the IT ACT, 2000 as amended. The Consumer Protection Act creates a layer of liability for electronic intermediaries or for online service providers completely disregarding the safe harbor protection provided to them under Sec 79 of the IT Act. This is a matter of concern and the effort should be to have the Consumer Protection Bill reconciled with the IT Act.

Consumer Education and Research Centre, Ahmedabad - CERC proposes to develop a National Code for Advertising Standards that will prohibit publication/broadcast/telecast of offending/violative advertisements and order issuance of corrective advertisements. The current advertising code is developed by the Advertising Standards Council of India (ASCI), an industry self regulatory body. ASCI does not have any statutory recognition or powers and many of its orders are not complied with by advertisers and media. Moreover, the ASCI code is heavily oriented to protect industry. At present, the Cable Television Networks (Regulation) Act, 1995 has adopted the ASCI code. This needs to be replaced with the National Code for Advertising Standards. The Press Council of India should also be made to adopt this code so that print media ads also come under the ambit of monitoring and regulation.

Severe penalty

Corrective advertising is one of the most severe penalties that can be imposed on an advertiser that knowingly fabricates false or misleading selling points to misrepresent a product's qualities to the public. It requires that the company invest a specified amount of its ad budget to publish ads or air commercials that admit to potentially misleading messages and provide accurate, "corrective" information.

Corrective ads are intended to correct two possible injuries resulting from false or misleading claims – (i) injuries to consumers and (ii) injuries to competitors.

2.3 While deposing before the Committee on the issue of misleading advertisement, the representatives of the various Industry Associations/Voluntary Consumer Organizations etc. stated, inter-alia, as below:-

(i) FICCI

"On the issue of misleading advertisements, for the last 30 years there is a body called Advertisement Standards Council of India. This is an expert body which is made up of industry representatives, advertisers, NGOs, professors and it fully represents both the sections. This is a representative body and for the last 30 years they have been looking into all advertisements whether they are vulgar, whether they are wrong and whether they need to be changed. This body has done very good work. The point is, we have no quarrel if the authority decides to accept or modify an advertisement. We have no quarrel if they take suo motu action. यह एडवर्टीजमेंट सॉग है, नहीं होनी चाहिए। If they take action on their own, we have no issue with it.

The action that they have taken is communicated to the advertiser. The advertiser has neglected to take action. So there are no teeth for the Council. Can you give enough powers to the Advertisement Standards Council like the I & B Ministry has done in the case of Cable Television Network Act? If they flout the norms, they will have to be punished under this Act. The point is that the authority can have the power to accept or modify or take suo motu action and decide even penalty. But what is vulgar advertisement, what is unsafe, harmful or misleading, we must leave it to the experts. They are meeting four times a week. Will our Government have that much time? Lakhs of complaints come these days.

Regarding Celebrities who are giving advertisement on television and in newspapers, the representatives of FICCI stated as under :

"I believe if you are a celebrity, you have certain responsibility.

Sir, I am talking about 1979-80. As you know, we make tobacco products. Tobacco as you know is a controversial product. I remember, we have gone to a particular cricketer – in those days advertising was legal – but that man said, 'no, I am a sportsman and I cannot associate with tobacco which is considered to be no so good for health.' I am saying that it is also the responsibility of the persons

who is taking part in the advertisement whether it is Amitabh or whether it is Sachin Tendulkar. But we cannot stop them from taking tobacco because that will be against his right to livelihood. If we will do that, he will definitely challenge. But we must have, at least, some mechanism by which some restriction can be put on the kind of words that he speaks."

(ii) ASSOCHAM

"While I completely appreciate that misleading advertisements is a concern with the Government, I want to segregate them into two classes. The first is misleading where tall claims are made in the realm of magic remedy where you eat something and gain height. While there is a law that exists, the issue there has been of enforcement. The other part which we are very concerned about is advertisements which could not be really misleading. They may be advertisements where if I am making a claim I have enough substantiation to back that. Many times, Government may think it is not enough in which case I am duty bound to bring about rigour to substantiate it so that there is some science or logic that I can offer. It should not be treated as misleading."

(iii) Consumer Education and Research Centre (CERC) Ahmedabad:-

"But India needs a national advertising code because the code that ASCI, Advertising Standards Council of India, has is self-regulatory and as the name suggests it is a self-regulation. It is the industries whose representatives are Members of this body. So, most of it is something that protects the industry. There are a lot of gaps in this code which we have been talking to ASCI for 10 years now. Other countries around the world have updated their codes. UK code is one of the best advertising codes that is there in the world. They have both for the print media and for the broadcast media. I would suggest that India needs to have that code because when do you call an advertisement false? When do you call it misleading? When do you call it objectionable? What are the offences? What are the penalties under this? All this needs to be worked out. Otherwise day in day out we are bombarded.

They further stated that Celebrities should also be held responsible for the advertisements and for the endorsements."

2.4 Further, in their written submission they have suggested, inter-alia, as given below:-

Corrective advertisement

The phrase 'corrective advertisement' needs to be defined comprehensively to be really useful to consumers. Corrective advertisement should specifically state what was the false or misleading statement in the main

advertisement. The advertiser should specifically say that they are withdrawing that part of the advertisement.

(i) The corrective advertisement should run in the same media in which original advertisement ran.

(ii) It should be in the same time-slot. For example, if the original advertisement was shown in prime-time, the corrective advertisement should also run in the prime-time.

(iii) The corrective advertisement should be shown as many times as the original advertisement was shown.

Apart from corrective advertisement provisions, the consumers must be awarded compensation, refund of money or replacement of goods due to loss or injury suffered by them due to misleading advertisements or claims made therein.

Punitive Damages: There must be a provision to grant Punitive damages to the erring advertisers. The formula for the same should be decided by the Ministry or the "Central Consumer Protection Authority".

2.5 The Department of Consumer Affairs proposed that definition of advertisement may be modified to make it more comprehensive. They stated that the definition of advertisement be modified as under:-

2(1) "advertisement" means any **oral or written** audio or visual publicity, representation or pronouncement made by means of any light, sound, smoke, gas, print, electronic media, internet or website and includes any notice, circular, label, wrapper, invoice or other documents"__

2.6 During briefing, the Secretary, Department of Consumer Affairs informed that celebrities/VIPs supporting and advertising the products without knowing anything about it has been taken care to a certain extent. In the unfair trade practices, we have included this concept. Misleading advertisement is also an unfair trade practice. Therefore, it gets covered it. Namely, first, the definition of unfair trade practice clearly sets out what constitute unfair trade practice, including misleading advertisement.

2.7 The Secretary further stated that when Mr. Amitabh Bachchan endorses a product or Ms. Hema Malini says 'buy Kent RO', the rural people will feel that that RO must be very good because Ms. Hema Malini is endorsing it. It is because the film stars

or sportspersons nowadays have a certain level of credibility. So, the point is well taken that we will certainly see whether in the Act we can put it and then how much the celebrity is responsible or how much is the manufacturer responsible. We can certainly think intensely on this point and we can come up with some solution, which addresses this issue. We would certainly like to address the issue, and it needs to be addressed.

2.8 Clause 2 (16) "electronic intermediary" means any person who provides technologies or process to enable manufacturer, trader and other persons to engage in advertising or selling various goods or services to consumers and includes online marketplaces and online auction sites";

2.9 Summary of views/suggestions placed before the Committee

Tamil Nadu NugarvorPadukkappuKuzhu- (16)"electronic intermediary" means any person who provides technologies or process to enable manufacturer, trader and other persons to engage in advertising or selling various goods or services to consumers and includes online marketplaces and online auction sites; **even if the disclaimer is advertised.**

Internet and Mobile Association of India, Delhi, Mumbai and Bangalore - Electronic intermediaries are "marketplace platforms" which are nothing more than an ITes platforms governed by the provisions of the Information Technology Act, 2000. The electronic intermediary should therefore not be equated to mean a manufacturer, wholesaler, retailer or a seller but should be treated only as facilitators of the transaction between seller and buyer in an electronic environment.

National Law School of India University, Bengaluru - Clause 2 (16) 'Electronic Intermediary' may have the same meaning as assigned to it under clause (w) of sub-section (1) of Section 2 of the Information Technology Act, 2008.

2.10 When enquired as to their suggestion on Clause 2 (16), the Department stated that the definition of 'electronic intermediary' be modified along the lines of Information Technology Act, 2000 and may be defined as under:-

"(16) "electronic intermediary" shall have the same meaning as defined in Section 2(i)(w) of The Information Technology Act, 2000;

() "Endorsement" means any advertising message (including verbal statement, demonstrations, or depictions of the name, signature, likeness or other identifying personal characteristics of an individual or the name or seal of an organization) that consumers are likely to believe reflects the

opinions, findings or experiences of a party other than the sponsoring advertiser, even if the views expressed by that party are identical to those of the sponsoring advertiser.

Explanation: The party whose opinions , beliefs, findings, or experience the message appears to reflect will be called the endorser and may be an individual, group or institution."

2.11 During briefing, the Secretary stated as under:-

"The Central Consumer Protection Authority is now going to be established after this Bill becomes an Act. Once the Authority gets established, it will enquire and investigate into violations of consumer rights, unfair trade practices and misleading advertisements. This will be fully taken care of. But, as advised by the hon. Chairman, if any further detailing is required, we would certainly do it either in the Act, if it is required to be done in the Act itself, or in the rules that we frame for this Central Consumer Protection Authority. When we frame the rules we will put further detailing in those rules. But already this gets covered under the powers of the authority to enquire and investigate into all three things where misleading advertisements we have tried to take care of. Second, the Central Consumer Protection Authority has been given adequate power to deal with misleading advertisement."

2.12 The Committee note that several eminent public personalities or celebrities who are honoured with National Awards such as Padma Shri, Padma Bhushan and Bharat Ratna etc. for excelling in various walks of life are often engaged as Brand Ambassadors for promoting various products. Such personalities are deployed to make advertisements which are often misleading by making unrealistic claims. The consumers tend to believe such advertisements promoted by eminent personalities or celebrities blindly. However, when the unfair trade practices are exposed the celebrities are quick to disassociate themselves with the products/companies they were hitherto representing. The Committee strongly feel that misrepresentation of a product especially a food product should be taken very seriously considering the influence of celebrities and high networth individuals or companies. The existing laws are not deterrent enough to discourage manufacturers or publishers from using such personalities for misleading advertisements. The Committee, therefore, recommend that stringent provisions may be made in the Bill to tackle misleading advertisement, as well as to fix liability on endorsers/celebrities. The Committee recommend that for first time offence, the offender may be penalized with either of a fine of Rs. 10 lakhs and imprisonment upto two years or both, for second time offence, a fine of Rs. 50 lakhs and imprisonment for five years and for subsequent offences, the penalties may be increased proportionately based on the value of sales volumes of such products or services.

Further, the Committee are of the firm opinion that the Department of Consumer Affairs need to look into suitably incorporating in the Bill the suggestion of CERC, Ahmedabad that the advertising code being followed by

ASCI gets some legal teeth so as to compel the misleading advertiser to either issue corrective advertisement which itself is an expensive proposition or some punitive measures need to be incorporated in the advertising code to cater to consumer interests also. They further feel that this would go a long way to correct the injury to consumers and competitor firms from the damages caused by way of misleading advertisements.

The Committee furthermore desire that the definitions relating to misleading, false and objectionable advertisements under the provision 2 (41) (f) needs to be clearly defined so as to avoid any ambiguity by evolving suitable code in this regard to be followed by the advertisers before releasing the advertisement in the print and electronic media.

The Committee concur with the proposal of the Department that the words 'electronic intermediary' shall have the same meaning as defined in Section 2 (i) (w) of The Information Technology Act, 2000. The Committee, however, find that the words "Endorsement" has not been included in the body of the Bill. In order to make the provisions of the Bill more inclusive, the Committee suggest that the Department should insert a clause to incorporate the word "Endorsement" in the definition of the Bill at the appropriate place. The word 'Endorsement' should also be clearly and comprehensively defined so as to leave no room for any misinterpretation/ambiguity.

B. ADULTERATION OF PRODUCTS FOR HUMAN CONSUMPTION

Clause 18.(1) No person shall manufacture for sale or store or sell or distribute or import any article of goods, product or service food for human consumption containing extraneous matter.

(2) The Central Authority shall have power to impose penalty which may extend to one lakh rupees on any person, whether by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any article of goods, product or service food for human consumption containing extraneous matter"

2.13 On the question of provision for preventing adulteration of products for human consumption, the Department of Consumer Affairs, in a written note, stated as under:-

"Moreover, the Food Safety and Standards Act, 2006 comprehensively covers all aspects of food adulteration and detailed provisions for penalty and punishment for adulteration of food items and misleading advertisements on food items have been provided in the FSSAI. The relevant provisions are given below:-

48. General provisions relating to offences.

(1) A person may render any article of food injurious to health by means of one or more of the following operations, namely:-

- (a) adding any article or substance to the food;
- (b) using any article or substance as an ingredient in the preparation of the food;
- (c) abstracting any constituents from the food; or
- (d) subjecting the food to any other process or treatment, with the knowledge that it may be sold or offered for sale or distributed for human consumption.

(2) In determining whether any food is unsafe or injurious to health, regard shall be had to –

(a) (i) the normal conditions of use of the food by the consumer and its handling at each stage of production, processing and distribution;

(ii) the information provided to the consumer, including information on the label, or other information generally available to the consumer concerning the avoidance of specific adverse health effects from a particular food or category of foods not only to the probable, immediate or short-term or long-term effects of that food on the health of a person consuming it, but also on subsequent generations;

(iii) to the probable cumulative toxic effects;

(iv) to the particular health sensitivities of a specific category of consumers where the food is intended for that category of consumers;

(v) also to the probable cumulative effect of food of substantially the same composition on the health of a person consuming it in ordinary quantities;

(b) the fact where the quality or purity of the article, being primary food, has fallen below the specified standard or its constituents are present in quantities not within the specified limits of variability, in either case, solely due to natural causes and beyond the control of human agency, then such article shall not be deemed to be unsafe or sub-standard or food containing extraneous matter.

50. Penalty for selling food not of the nature or substance or quality demanded.

Any person who sells to the purchaser's prejudice any food which is not in compliance with the provisions of this Act or the regulations made thereunder, or of the nature or substance or quality demanded by the purchaser, shall be liable to a penalty not exceeding five lakh rupees. Provided that the persons covered under sub-section (2) of section 31, shall for such non-compliance be liable to a penalty not exceeding twenty five thousand rupees.

51. Penalty for sub-standard food.

Any person who whether by himself or by any other person on his behalf manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is sub-standard, shall be liable to a penalty which may extend to five lakh rupees.

52. Penalty for misbranded food.

(1) Any person who whether by himself or by any other person on his behalf manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is misbranded, shall be liable to a penalty which may extend to three lakh rupees. (2) The Adjudicating Officer may issue a direction to the person found guilty of an offence under this section, for taking corrective action to rectify the mistake or such article of food shall be destroyed."

2.14 At the time of deposing before the Committee, the representatives of following two Voluntary Consumer Organizations stated as under:-

(i) Consumer Online Foundation

"Similarly, in food products. Adulteration can only stop when you first define what is that standard. You must have the liability put on the manufacturers. Today, what is happening is, manufacturers are getting away

giving all kinds of excuses. Labs are not properly functioning; labs are not upgraded. My contention is, if there is any duplicate product in the market, it is not the responsibility of only the police people, or law enforcement people. It has to be the responsibility of the manufacturer to see that duplicates of their products are not sold in the market because we, as consumers, have shown faith in that product, we believed that the product is good, we started using that product, that brand became popular and then tomorrow when the brand became popular, then if a substandard product is being pushed into the market by the same nomenclature, my contention is that we cannot allow that and that is why I am again emphasising this point here.

We also feel that in order to check adulteration, there should be a strong tracing and tracking mechanism. If I do not have a strong tracing and tracking mechanism, I will never be able to catch the culprit. And today, you all are only promoting Digital India. If you are promoting Digital India, we have to bring in technology."

(ii) VOICE:

"Adulteration will continue as long as people can make money out of it. Let us be very clear.

Sir, with respect, I would like to say that in my language there is a saying : "भय बिन प्रीत न होय" If there is no fear, there will be no emotion. So, the fear has to come. How will it come in food? With respect, the learned Members of Parliament of 2006 who passed the Food, Standards and Safety Act made a major blunder. Today, if you are caught adulterating food, the Food Safety Officer of the District will get the sample tested and then will file a case and that case proceeding is called adjudication. At best, he will be fined Rs. 1,000, Rs. 2,000 or Rs. 5,000. So, the saying is that you make crores by adulteration, pay a few thousand and go free. So, there is an incentive to break the law today. This is how the law works. Under the PFA Act of 1956, which this law of 2006 has replaced, there was mandatory jail for six months for any offence. So, people were scared. Today, they are not scared of the food adulteration law. But this is the business of the Ministry of Health. You may not be able to bring this subject before you. So, may be, you need to speak to some one else because this is the Ministry of Health's domain."

They further stated as under:

"Sir, the hon. Supreme Court has already given a verdict in terms of milk adulteration in which we were a party to that case in which they have said that basically life imprisonment for any milk adulteration. This is yet to be notified by the Food Safety and Standards Authority of India. The Supreme Court said that milk is mainly for children, mothers and elderly people."

2.15 During evidence, Secretary, Department of Consumer Affairs stated-

"Adulteration of food products for human consumption; fair enough. These are two areas which the Committee felt were very important and which we need to adequately address in the Bill that would go before Parliament. So, we have tried to keep in mind the observations of the Committee. We went through it. We tried to make certain formulations. We also sent it to the Departments of Legal Affairs and Legislative Affairs to give their comments.

He further stated -

"The Committee specifically mentioned about misleading advertisements and food adulteration. I will later change it to adulteration of products for human consumption. That is what the hon. Chairperson now very clearly stated, adulteration of products not only food but any other products also."

2.16 When the Committee pointed out that they are interested only in agricultural products and products which are meant for human consumption and that the Committee wanted punishment be imposed on defaulters. To this, Secretary, Department of Consumer Affairs stated-

"We will reframe it once your recommendations come. We have got the sense of the Committee that it is the products for human consumption that they are primarily concerned about and their primary focus is on products, not only food but also medicines, agriculture, raw materials, etc. But it is the products which are for human consumption is what the Committee is primarily focussing on."

2.17 The Committee seriously note that adulteration of food products is a major issue in the country and to tackle the issue effectively, quality checks of products at various levels is a must. Though Food Safety and Standards Act provides for prevention of adulteration in Food, however, there is also urgent need for stringent provisions to prevent adulteration in other products like drugs, medicines, fertilizers, pesticides, seeds which are used as inputs by farmers for production of foodgrains etc. as well. The Committee are of the considered view that setting up well equipped laboratories with highly qualified/experienced staff in all parts of the country for testing ingredients of all edible products would go a long way in addressing the issue of adulteration of products. The Committee accordingly desire that sufficient well equipped laboratories with qualified technicians for checking the quality of products shall be provided right from Central Government level to district level of the respective State Government. The Committee, therefore, strongly recommend that severe penalties be imposed on offenders such as rigorous imprisonment of two years with a fine of Rs. 10 lakhs and suspension of license for a period of two years, rigorous imprisonment of five years with a fine of Rs. 50 lakhs and cancellation of license for second time offence and for subsequent offences, the penalties may be increased proportionately based on the value of sales volumes of such products or services. The Committee further desire that the Government may, in consultation with all concerned, consider inserting suitable provisions in the Bill to make it mandatory for the Law Enforcement Agency to take immediate action in cases where a consumer makes complaint of adulteration of products for human consumption by registering First Information Report (FIR) etc. and arrest the accused person(s). If for any reason, the FIR is not registered by the Law Enforcement Agency, it should be deemed to have been registered after a lapse of 21 days from the date of complaint.

CHAPTER – III

CLAUSE-WISE ANALYSIS

A. Definitions

Clause 2 (14) "District Commission" means a District Consumer Grievance Redressal Commission established under clause (a) of section 26;

3.1 The Committee recommend that the word 'Grievance' be substituted with the word 'Dispute' in Clause 2 (14) of the Bill.

Clause 2 (28) "person" includes—

- (i) a firm whether registered or not;
- (ii) a Hindu Undivided Family;
- (iii) a co-operative society;
- (iv) an association of persons whether registered under the Societies Registration Act, 1860 or not;
- (v) any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity including any government entity or unincorporated association of persons;

3.2 The Committee observe that definition of person in the Bill includes companies etc. but has left out local authorities. Since the Bill provides for Product liability which includes service liability also, the Committee are of the view that inclusion of local authorities is necessary to protect consumer rights. The Committee, therefore, recommend that Local Authority may be included in the appropriate place of the Bill.

Clause 2(31) "product liability" means the responsibility of a manufacturer or vendor of goods or service provider to compensate for injury or damage caused to a consumer by defective product sold to a consumer or deficiency in services.

3.3 The Committee note that Bill defines 'Product Liability' as the responsibility of the manufacturer to provide compensation for any injury caused by defective products or deficiency in service. Thus, the definition of product

liability covers a consumer right to seek compensation for injury caused by deficiency in services too. The Committee feel that there is an ambiguity regarding inclusion of services under product liability in the Bill. The Bill lays down conditions for establishing a defect in a product in order to claim product liability. However, it does not specify conditions for establishing deficiency in service in order to claim product liability. In the absence of specified condition, it is not clear if the consumer can claim product liability for deficiency in service under the Bill. The Committee, therefore, strongly recommend that the Bill should specify conditions for establishing deficiency in services too, in order to claim product liability.

Unfair Trade Practice

Clause 2 (41)(A) "unfair trade practice" means 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 including any of the following practices, namely

3.4 The Committee feel that the words 'through any mode' be inserted after the words 'deceptive practice' in the last line of Clause 2 (41) (A) above.

Clause 2 (41) (C) (b) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest;

(c) withholding from the participants of any scheme offering gifts, prizes or other items free of charge on its closure the information about final results of the scheme.

Explanation.— For the purpose of sub-clause (C), the participants of a scheme shall be deemed to have been informed of the final results of the scheme where such results are within a reasonable time published, prominently in the same newspaper in which the scheme was originally advertised;

3.5 Summary of views/suggestions placed before the Committee

Internet and Mobile Association of India, Delhi, Mumbai and Bangalore - The focus of the provision should be to make clear that the service provider provides for terms and conditions/guidelines for conducting the contest including objective criteria for judging.

3.6 The Committee note that this sub-clause classifies the conduct of contests for the purpose of promoting directly or indirectly the sale, use or supply of any product or any business interest, as an 'unfair trade practice'. It would be unreasonable to classify all contests for the promotion of a product/service as an unfair trade practice. The Committee desire that the focus of the provision should be made very clear by the service providers by defining the terms and conditions/guidelines for conducting the contest including the criteria for judging the competition.

Clause 2 (42) "unfair contract" means a contract between a manufacturer or trader or service provider and a consumer which contains anyone or more of the following terms, namely:—

- (i) requires manifestly excessive security deposits to be given by a party to the contract for the performance of contractual obligations; or
- (ii) impose any penalty on a party to the contract for the breach thereof which is wholly disproportionate to the loss occurred due to such breach to the other party to the contract; or
- (iii) refuses to accept early repayment of debts on payment of applicable penalty;
- (iv) entitles a party to the contract to terminate without reasonable cause the contract unilaterally;
- (v) prohibiting contract relating to terms permitting or having the effect of permitting one party to assign the contract to the detriment of the other party without that other party's consent;
- (vi) imposes on the consumer any unreasonable charge, obligation or conditions which puts the consumer at disadvantages.

3.7 The Committee note that under Clause 2 (42), the Bill states that Unfair Contracts are contracts between a consumer and a manufacturer which contains a list of six terms which may be held as unfair. The Committee find that the Bill

does not lay down principles to determine whether a contract is unfair but it provides an exhaustive list for its determination. The Committee feel that it would be advantageous to have an exhaustive list in the Bill which would eliminate uncertainty but the risk is that the list may not include new terms in contract. The Committee, therefore, recommend the Department to insert a proviso in the Bill laying down principles or conditionalities which would determine whether a contract is fair or unfair.

Act not in derogation of any other law

Clause 3 - The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

3.8 The Committee observe that Consumer Fora refuse to admit complaints regarding services for which special laws are in force. The Committee feel that this is against the spirit of Clause 3 as well as the present Consumer Protection Act. The Committee, therefore, recommend that a sentence may be added further in Clause 3 of the Bill which should read as under:-

"The provisions of this Act shall apply notwithstanding existence of any special law unless such special law specifically bars application of the Consumer Protection Act."

B. CENTRAL CONSUMER PROTECTION AUTHORITY

Clause 11 (1) The Central Government shall, by notification, establish with effect from such date as it may specify in the notification, a Central Authority to be known as the Central Consumer Protection Authority to promote, protect and enforce the rights of consumers.

Clause 15. The objects of the Central Authority shall be—

(i) to protect and enforce the rights of consumers including the right to be protected against the marketing of goods or products and services which are unsafe or hazardous to life and property, the right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be;

(ii) to prevent unfair trade practices;

(iii) to ensure that no advertisement is made of any goods or services which is misleading or deceiving or contravenes the provisions of this Act and rules and regulations made under it; and

(iv) 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.

Clause 16. (1) The Central Authority shall exercise powers and functions assigned to it under the Act and, in particular,—

(ix) to conduct investigations, either *suo motu* or on a complaint or on a reference made by any Consumer Disputes Redressal Agency under Chapter IV, into violations of consumers' rights, conduct search and seizure of documents or records or articles and other forms of evidence, summon delinquent manufacturers, advertisers and service providers and to record oral evidence and direct production of documents and records as may be prescribed by the Central Government;

(xii) to issue safety notices and alert consumers against unsafe goods or services held to be unsafe;

(xiii) to order withdrawal of advertisements found to be false or misleading and direct issuance of corrective advertisements, wherever necessary;

(xv) to impose fine which may extend to fifty thousand rupees and while imposing fine, the following factors shall be taken into account by the Central Authority in determining the amount of fine:

(A) the impact of the violation with respect to population and area affected;

- (B) the frequency and duration of the violation;
- (C) the vulnerability of the class of persons likely to be adversely affected by the violation; and
- (D) the gross revenue from sales effected by the conduct.

3.9 Summary of views/suggestions placed before the Committee

ASSOCHAM - The industry welcomes that the CCPA shall have the power to inquire suo motu or on a complaint from the Government [Section 16(1)(i)], intervene in any proceeding before the Consumer Disputes Redressal Agencies [Section 16(1)(ii)], can conduct investigations [Section 16(1)(ix)] and discharge various other functions to facilitate consumer interest provided under Section 16. However, judicial powers have been vested with the CCPA although the CCPA itself is the investigative authority and to that extent the provisions, by empowering the CCPA to pass orders, fail the test of the fundamental constitutional tenet of separation of powers of the executive and the judiciary.

It is, therefore, submitted that the authority of the CCPA be restricted to investigative measures and supportive of the judicial powers of the Consumer Commissions. All the above powers are judicial/ quasi-judicial or legislative in nature and the CCPA, being an executive authority, should not discharge judicial functions or exercise judicial powers. The vesting of executive and judicial powers in the same authority is against the principle of separation of powers.

FICCI - The vesting of the above powers under Section 16 and Section 17 of the Bill, with the CCPA, are unconstitutional for the following reasons:

- i) All the above powers are judicial/ quasi-judicial or legislative in nature and the CCPA, being an executive authority, should not discharge judicial functions or exercise judicial powers.
- ii) The exercise of the powers by the CCPA as granted inevitably shall result in violation of the fundamental principles of natural justice, even if a hearing is provided.
- iii) The vesting of legislative powers with the very same executive authority which is empowered to interpret and apply the same regulations and also enforce those orders, is unconstitutional. The vesting of legislative powers with the CCPA also suffers from the vice of excessive delegation without any canalisation.
- iv) The vesting of the judicial powers with the CCPA also creates a parallel judicial machinery along with the Consumer Dispute Redressal Agencies i.e the Consumer Commissions set up under the 1986 Act and continued under the Bill.
- v) the CCPA should not conduct its own investigation and on the basis of the same, be empowered to also pass orders.

NASSCOM, New Delhi - Section 16 of the proposed bill provides sweeping powers, both judicial as well police to the same authority.

The power to declare the terms and conditions void, is very sweeping, and it violates the intermediary guideline, which requires all websites to state their terms and conditions for user of each such website. This power to make the terms and conditions void, and without hearing anything from the website owner i.e. declare any terms and conditions as a Restrictive Trade Practice (RTP) or a Unfair Trade Practice (UTP), even without being the court. This is also against the principals of Chapter II of the Contract Act, 1872 (which states what terms may be void or voidable).

Internet and Mobile Association of India, Delhi, Mumbai and Bangalore - Clause 16 of the proposed bill provides sweeping powers, both judicial as well police to the same authority[Central Consumer Protection Authority]. Principles of natural justice have been completely ignored.

Mumbai Grahak Panchayat - The concept of setting up of the Central Consumer Protection Authority (CCPA) is welcome. However, the jurisdiction & powers conferred on CCPA are overlapping and duplicated. For example: Consumer Disputes Redressal Commissions at District, State and National level are empowered to adjudicate complaint from consumers as regards **Unfair Trade Practices and false & misleading ads**. Same powers are also vested in the CCPA. This will lead to multi-level litigations about the same UTP or same Ad in different parts of country by different consumers. This will lead to chaotic situation. Hence it is suggested that the proposed Act should avoid this duplication of powers in Consumer Courts and CCPA. Any one of the two authorities should be vested with these powers and not both. As such this entire Chapter on CCPA need a totally fresh re-look.

Consumer Online Foundation, New Delhi - It must be noted that the Central Consumer Protection Authority ("CCPA") is a distinct authority from the Central, State and District Councils. ("Councils"). The Authority's primary role is in consumer advocacy, market research and review of broader unfair trade practices. However, the Councils' primary function is dispute resolution and grievance redressal. The CCPA is, therefore, primarily involved in the enforcement of the Act and the Central Authority will be enough to play the role of a regulator to ensure the provisions of the laws on consumer protection are enforced effectively and efficiently throughout the country. Due to lack of resources, we must have a lean mechanism to manage the regulatory mechanism in the country. So we should do away with the Regional and District Offices of the CCPA and instead empower the State and District Councils to work on behalf of the CCPA.

Citizen Consumer and Civic Action Group, Chennai - (i) Setting up of Central Consumer Protection Authority is much appreciable. However, Will not the functions and powers of the Consumer Protection Councils (Sec.6) read with Central Consumer Protection Authority set out in Section 16 (1) overlap with that of Competition Commission? How is the distinction of jurisdiction to be demarcated?

(ii) Also, there is no coordination between the Councils and the Authority as such. They appear to be two separate entities. It is necessary that the Authority is represented in the Councils in order to strengthen the functioning of both agencies.

3.10 While deposing before the Committee, the representatives of ASSOCHAM stated as under:-

"Creation of a central authority as the nodal agency will bring the focus back sharply on the consumer issues. So, we welcome some of the steps that are proposed as part of the Bill. Having said that, there are some concerns which we think we must voice before your good selves. One of them is about the powers and functions of the Central Consumer Protection Authority. While it is a very good development to have Central Consumer Protection Authority as the nodal agency to oversee the interest of consumers, at the same time the Bill, the way it has been drafted, is giving investigative powers, executive powers and judicial powers to the Central Consumer Protection Authority which in a manner of speaking is not something which the Constitution envisages. This in a manner of speaking is not something that is consistent. Any authority which is actually investigating the matter cannot be passing orders. There are umpteen examples of government bodies which have large public interface and are structured differently."

3.11 When asked to furnish comments/views on the above views of VCOs etc. with regard to Central Consumer Protection Authority (CCPA), the Department proposed the following modifications:-

- (i) It may be specifically stated that CCPA will deal with cases of consumers as a class.
- (ii) Appeals from Chief Commissioner to lie to NCDRC.
- (iii) CCPA to have powers to order return and refund, apart from recall of products.
- (iv) Selection Committee be modified with Cabinet Secretary chairing the committee.
- (v) Power to recommend action against electronic intermediaries who are habitual offenders.
- (vi) Provisions conferring powers under CPC and CRPC enabling summoning witnesses, search and seizure."

The Ministry has further stated that the Bill already contains in Clause 16(1) (ix), (xii), (xiii) and (xv), provisions such as safety notice, withdrawal of misleading advertisements, fines to take cognizance of misleading advertisements as stated above.

3.12 The Committee appreciate the setting up of the Central Consumer Protection Authority (CCPA) which will have the powers to enquire suo-motto or on a complaint or on a reference made by any Consumer Redressal Agency so as to protect and enforce the rights of the consumers. Even though they feel that the CCPA should be given the necessary executive powers to impose penalties of fine as well as imprisonment or both to any person or entity for violation of any rules or regulations under the Consumer Protection Act, they are, however, constrained to observe that in view of the strong views expressed by Industry Associations or VCOs, the CCPA should not be vested with judicial powers. This is also necessary to ensure that the CCPA functions as an effective authority for protection and enforcement of the consumer rights in the country. They urge the Government to accordingly re-visit the clauses relating to powers and functions of the CCPA and carry out modifications as may be necessary to avoid any sort of overlapping of functions, powers and jurisdiction of the CCPA with other adjudicating agencies contemplated in the Bill.

Clause 11 (2) - The Central Authority shall be headed by a Commissioner who shall be an officer of the level of Secretary to the Government of India and five Deputy Commissioners to assist him in the functioning of the Central Authority.

3.13 While deposing before the Committee, the representatives of VOICE Society stated as under:-

"The move for putting a new chapter for setting up the Central Consumer Protection Authority is welcome. Today, when a consumer is not getting benefited by a legal action, he does not go to consumer court. He says: 'what will I get; why should I go?' The result is that nobody challenges unfair method of business, unfair trade practices, deceptive practices and misleading advertisements. Why? It is because nobody is going to benefit from it. So, who is going to protect the public interest there? There has to be some body which will step into the shoe and represent the consumer interests and say that it is going to take action against this. That is where this body comes in and the way its

formation has been designed, I see it more in the trend of the scenario of regulatory bodies, which have been set up in the last 20 years – to name a few, Insurance Regulatory Development Authority (IRDA), Stock Exchange Board of India (SEBI) for capital market, Telecom Regulatory Authority of India (TRAI), etc. All these bodies are sectoral bodies which look after consumer interests of these sectors. But there are many sectors where nobody looks after the interests of consumers and they are being exploited, they are being short-changed and consumer detriment is being caused. I do believe that if this body is set up and there are full time officers charged with the responsibility, they will be able to have an impact in an area where there is no activity today. That is why we welcome it."

3.14 The existing provision provides that the Central Authority shall comprise of a Commissioner and five Deputy Commissioners. The Committee feel that it will be appropriate if the Central Authority may comprise a Chief Commissioner and five Commissioners. Therefore, the Committee recommend that the words 'a Commissioner' and 'Deputy Commissioner' may be substituted with the words 'Chief Commissioner' and 'Commissioners' respectively wherever it appears in the text of the Bill.

3.15 The Committee further opine that the CCPA will be handicapped if it does not have an Investigation wing on the lines of DG investigation of erstwhile MRTPC and the present Competition Commission of India, as the CCPA is filling the regulatory gap on Unfair Trade Practices. The Committee, therefore, recommend that a new sub-clause 11 (5A) may be inserted in this regard.

Selection Committee

Clause 12. (1) The Commissioner and the five Deputy Commissioners shall be appointed by the Central Government on the recommendation of a Selection Committee and shall hold office for a period of five years or up to the age of sixty-five years, whichever is earlier.

3.16 Summary of views/suggestions placed before the Committee

State Government of Assam - Upper age limit for post of members may perhaps be raised to 67 years instead of proposed 65 years. Raising upper age limit will give opportunity to persons appointed as members after the age of 60 years, particularly for persons who are retired Government Servant appointed as members to remain in office for a full term of 5 years.

3.17 The existing provision provides that the Commissioner and Deputy Commissioner shall hold office for a period of five years or upto the age of sixty-five years, whichever is earlier. In order to retain the expertise and experience of persons particularly retired Government Servants, it is suggested that the term of office of the rechristened Chief Commissioner and the Commissioners shall be modified to a period of five years or upto the age of seventy years, whichever is earlier.

Clause 12 (2) The Selection Committee shall consist of the following members, namely:—

- (a) Secretary of the Department of Consumer Affairs in the Government of India— *ex officio*;
- (b) Secretary, Ministry of Law and Justice, Department of Legal Affairs in the Government of India — *ex officio*;
- (c) Secretary, Ministry of Home Affairs, Government of India — *ex officio*.

3.18 Considering their status, the Committee feel that the Chief Commissioner and Commissioners should be selected by a Committee which shall comprise the Union Cabinet Secretary as the Chairperson and the Secretary, Consumer Affairs, Secretary, Legal Affairs and Secretary, Home Affairs as members.

Unfair Contract

Clause 16. (1) The Central Authority shall exercise powers and functions assigned to it under the Act and, in particular,—

(x) to pass orders, on the basis of such investigations for recall of goods found to be unsafe or withdrawal of services found to be unsafe or hazardous and direct, on the basis of its investigations, for discontinuation of practices found to be unfair and prejudicial to consumer interest and order reimbursement of the price of the goods (or services) so recalled, to purchasers of such goods or services;

3.19 The Committee recommend that the power to return products and refund of money may be added among the powers of CCPA in the above mentioned clause of the Bill. This clause may accordingly be re-phrased to include the above.

Clause 16. (1) The Central Authority shall exercise powers and functions assigned to it under the Act and, in particular,—

(xiv) to declare as null and void, terms of contracts found to be unfair to the consumer;"

3.20 Summary of views/suggestions placed before the Committee

Toxics Watch Alliance (WTA), Patna - The right to a buyer to terminate a contract if the supplied goods do not meet the description, are not of merchantable quality or are not fit for the agreed purpose. The Bill does not mention the rights of a consumer.

3.21 The Committee note that the above clause of the Bill does not mention the rights of a consumer. Under the Sale of Goods Act. 1930, the buyer has certain rights to terminate the contract. The Committee, therefore, recommend that the Bill should give consumer a right to terminate the contract on the grounds of quality of goods or services received.

Regional Offices

Clause 19 (4) At district level the powers of the Central Authority shall be exercised by the District Collector concerned who can *suo motu* or otherwise investigate into a matter for protection as well as enforcement of the rights of the consumers and each District Collector shall submit a monthly report of action taken to the Deputy Commissioner of the region concerned.

3.22 On the issue of entrusting the District Collector with the task of enforcement of the rights of the consumers, the representative of PRS Legislative Research Institute for Policy Research Studies, while deposing before the Committee stated as under:-

"The District Commission is to be headed by a person qualified to be a District Judge. And then it says 'or an officer not below the rank of a District Magistrate'. So, the Commission is a judicial body but it may be headed by an executive officer. This again may violate this principle of separation of powers."

3.23 The Committee are of the considered opinion that District Collector is already burdened with many responsibilities. Also, there are 664 districts in the country and if many of them start exercising full powers of the central authority within their respective jurisdictions, it will be impossible to maintain uniform standards and may also lead to increase in litigations, which will eventually dilute the objectives behind setting up the Agency. The Committee, therefore, recommend that the District Collector may be empowered only to the extent of conducting inquiries and investigate and refer the matter to the Authority for final decision.

C. Consumer Disputes Redressal Agencies

Officers and other employees of District Commission

Clause 30 (1) - The State Government shall provide the District Commission such officers and other employees required to assist the District Commission in the discharge of its functions.

3.24 On the question of qualification of officers and other employees of District Commission, the representative PRS Legislative Research Institute for Policy Research Studies, while deposing before the Committee stated as under:-

"Sir, if I have a heart attack and there is no heart surgeon, I cannot go to an eye surgeon. You need to have expertise. These are specific expertise. That is how I would look at it. Also, this might be challenged in the courts."

3.25 The Committee are of the view that consultation with the President of the District Commission is necessary before appointing officers and staff of the Forum as the President would be aware of the necessary expertise and knowledge required for the effective functioning of the District Commission. The Committee, therefore, recommend that the words "in consultation with the President of the District Commission" may be inserted after the words "State Government" in Clause 30 (1) of the Bill.

Jurisdiction of District Commission

Clause 31. (1) Subject to the other provisions of this Act, the District Commission shall have jurisdiction to entertain complaints where the billed value of the goods or services claimed does not exceed rupees fifty lakhs, or up to thrice the limits of such value as may be prescribed.

3.26 On the question of jurisdiction of the District Commission, the Special Secretary stated as under -

"Initially, the Government was of the view, based on the recommendations of the Parliamentary Standing Committee, that lawyers or advocates should be barred from appearing in consumer disputes and that this might help to speed up the process of disposal. However, when we examined this question and during the consultation process, lot of the consumer activists and consumer activist organizations opposed this saying that manufacturer or a seller will have considerably strong legal departments and without appearance of a lawyer also, they can defend cases very strongly but an ordinary consumer at the District Forum level or at the State Commission level would require legal help if he has to face the might of a manufacturer or a large company. Therefore, a via media was recommended by the informal Group of Ministers which considered this Bill. They said that you go by the Civil Procedure Code where the complainant or his recognized agent or a pleader, anybody can appear on his behalf. That has been proposed."

3.27 The Committee note that the jurisdiction of the State Commission has been provided to complaints where the value of goods or services does not exceed Rs. 10 crores or thrice the limit of the said value. In view of this, the Committee are of the considered opinion that the jurisdiction of the District Commission should be raised from the proposed Rs. 50 lakhs to Rs. 1 crore or upto three times the limit of such value. This will obviate the poor consumers from travelling to the State capitals to depose before the State Commission in cases involving the value of Rs. 1 crore or less.

It is also observed that generally there has been inordinate delay in disposal of cases which is attributable to the deployment of advocates. While the Committee appreciate that the need for legal counsel is important and it cannot be totally done away with, they are, however, constrained to note that in order to facilitate early disposal of cases, appearance of advocates in complaints involving compensation value of upto Rs. 20 lakhs be prohibited. Accordingly, the Department may consider inserting a suitable provision to this effect in the appropriate place of the Bill.

3.28 Manner in which complaint shall be made

Clause 32. (1) A complaint, in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed, with a District Commission by—

- (a) the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided or in respect of which unfair trade practice is alleged;
- (b) any recognised consumer association whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided or in respect of which an unfair trade practice is alleged, is a member of such association or not;
- (c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Commission, on behalf of, or for the benefit of, all consumers so interested; or
- (d) the Central Government or the State Government, as the case may be, either in its individual capacity or as a representative of interests of the consumers in general:

Provided that the complaint under this sub-section may be filed electronically in such manner as may be prescribed.

3.29 Summary of views/suggestions placed before the Committee

Consumer Guidance Society, Mumbai - Video conferencing should find a place in Clause 32 of the Bill.

3.30 While tendering their views/suggestions before the Committee, the representatives of Consumer Guidance Society stated as under:

"Specifically, I am talking of State Commission in Mumbai. Maharashtra is a big State and some of the places are 800 kilometres away from the city. Today, if the Supreme Courts and even other criminal courts are allowing Skype and other methods, कि आप वीडियो कान्फ्रेंसिंग करो, तो मैं चाहता हूँ कि उन्हें वीडियो कान्फ्रेंसिंग के थ्रू आर्ग्यूमेंट का मौका दिया जाए। If a person can be cross-examined on Skype or video-conferencing तो क्यों एक आर्ग्यूमेंट करने के लिए आदमी नागपुर से मुंबई आएगा।"

3.31 The Committee are of the view that in today's age of computers, online submission/video conferencing should be introduced in consumer courts for the

purpose of filing complaints or hearing of consumer dispute cases respectively as it will save time and money of the aggrieved consumers. Accordingly, the Department may insert suitable provision of the Bill with regard either to initial hearing of the admissibility of the complaint or subsequent disposal thereof in Clause 32 or other related clauses of the Bill.

Finding of District Commission

Clause 35. (1) If, after the proceeding conducted under section 32, the District 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, it shall issue an order to the opposite party directing him to do one or more of the following things, namely:—

(a) to remove the defect pointed out by the appropriate laboratory from the goods in question;

3.32 Summary of views/suggestions placed before the Committee

PHD Chamber of Commerce and Industry, New Delhi - Specific laboratories may be established for specific industries and products to prevent adulteration.

3.33 The Committee note that there is shortage of laboratories to point out the defect/adulteration of products. The Committee is of the opinion that specific laboratories should be set up for specific industries and products preferably district-wise to eliminate adulteration and safeguard the interest of the consumers so that they get the right product.

Clause 35 (3) Every order made by the District Commission under sub-section (1) shall be signed by its President and the member or members who conducted the proceeding:

Provided that where the proceeding is conducted by the President and one member and they differ on any point or points, they shall state the point or points on which they differ and refer the same to the other member for hearing on such point or points and the opinion of the majority shall be the order of the District Commission:

Provided further that the other Member shall give his opinion on such point or points referred to him within a period of two months from the date of such reference.

3.34 The Committee note that in Clause 35 (3) in the District Commission, if the President and a Member have different view -points, then the matter is referred to other Member to give his opinion within a period of two months. The Committee feel that the period of two months is too long and this period may be curtailed to one month from the date of reference to ensure its speedier disposal.

Appeal against order of District Commission.

Clause 37. Any person aggrieved by an order made by the District Commission may prefer an appeal against such order to the State Commission on the grounds of facts or law within a period of thirty days from the date of the order, in such form and manner, as may be prescribed:

Provided that no appeal shall lie from an order passed by the District Commission under section 71 on the basis of settlement reached between the parties:

Provided further that the State Commission may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that there was sufficient cause for not filing it within that period:

Provided also that no appeal by a person, who is required to pay any amount in terms of an order of the District Commission, shall be entertained by the State Commission unless the appellant has deposited in the prescribed manner fifty per cent. of that amount.

3.35 On the question of time limit for preference of appeals, the representatives of Consumer Education and Research Centre (CERC) , Ahmedabad stated as under:

"Sir, the next small suggestion that I have is that currently the procedure for appeal is that within 30 days we have to make an appeal. If that is made 45 days, then it will be easier for the consumers from the rural areas because many times from the District to come to the State and to the National, it becomes difficult. My submission is that the number of days from 30 if we can increase to 45."

3.36 The Committee feel that the period of thirty days as prescribed in the Bill for filling of appeal against the order of the District Commission to the State Commission by the consumers is apparently too short. This period of thirty days

may not be sufficient for the aggrieved person particularly who are illiterate or those who reside in remote areas. The Committee, therefore, recommend that the time period of thirty days may be enhanced to forty-five days.

Officers and employees of State Commission.

Clause 39. (1) The State Government shall determine the nature and categories of the officers and other employees required to assist the State Commission in the discharge of its functions and provide the Commission with such officers and other employees as it may think fit.

3.37 The Committee are of the view that the President of the State Commission will be in a better position to advice the Government on exact requirement of the officers and staff for the State Commission for its effective and efficient functioning. The Committee, therefore, recommend that the words 'in consultation with President of State Commission' may be inserted after the words 'the State Government' in Clause 39 (1) of the Bill.

Dismissal of frivolous or vexatious complaints

Clause 61. Where a complaint instituted before the District Commission, the State Commission or the National Commission as the case may be, is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, dismiss the complaint and make an order that the complainant shall pay to the opposite party such cost, not exceeding fifty thousand rupees, as may be specified in the order.

3.38 On the issue of 'frivolous or vexatious' complaints, the Secretary stated during evidence as under:-

"We got your point. You feel that the words 'frivolous' and 'vexatious' need to be defined. We will certainly consult the Legislative Department on this. But normally words which have got common meaning, which is available in the dictionary -- 'vexatious' means again and again supposing he is filing the same complaint -- those definitions if they are commonly known or understood, every such word is not defined in the Act. But still we will consult the Legislative Department and see what best we can do about it."

3.39 The Committee are of the view that this provision may deter consumers from making complaints to the Consumer Courts considering that in the event of their complaint being found to be false after investigation, such complainant is liable to be penalized. The Committee, therefore, desire that the Department may carefully go through this provision again so as to clearly define the words 'frivolous and vexatious complaints' with a view to ensure that consumer is not penalized for lodging a complaint before any of the consumer commissions even though it is found at later stage that the complaint is considered frivolous for reasons beyond the control of the complainant.

D. Product Liability

Clause 72. (1) Where any personal injury, death, or property damage is caused to the consumer resulting from defects in the manufacture, construction, design, formula, preparation, assembly, testing, service, warning, instruction, marketing, packaging, or labelling of any product, the manufacturer or producer of such product shall be liable for the product in product liability action:

Provided that in any product liability action, personal injury shall not include mental anguish or emotional harm in the absence of proof of related and contemporaneous personal physical injury, illness, or death."

Clause 73. (1) A manufacturer shall be liable in any product liability action, to a claimant if the claimant establishes all of the following by a preponderance of the evidence:—

(a) the product contains a manufacturing defect or there is a deviation from manufacturing specifications;

(b) the product is defective in design;

(c) the product failed to contain adequate instructions of correct use to avoid danger or warnings of the improper/incorrect use;

(d) the product did not conform to an express warranty with respect to the product made by the manufacturer or product seller;

(e) the defendant was the manufacturer of the actual product that was the cause of harm for which the claimant seeks to recover compensatory damages; and

(f) the dangerous aspect of the product was the proximate cause of the harm suffered by the claimant.

(2) The claimant shall prove by a preponderance of the evidence that, at the time the product left the manufacturer's control, the manufacturer knew or, in light of then existing scientific and technical knowledge, reasonably should have known of the danger that caused the claimant's harm.

(3) A manufacturer shall not be liable for failure to instruct or warn about a danger that is known or open and obvious to the user or consumer of the product, or should have been known or open and obvious to the user or consumer of the product, taking into account the characteristics of, and the ordinary knowledge common to, the persons who ordinarily use or consume the product.

(4) A manufacturer may be subject to liability under this section although it did not engage in negligent or fraudulent conduct in making the express warranty.

3.40 Summary of views/suggestions placed before the Committee

Consumer Unity & Trust Society, Jaipur (Rajasthan) - From caveat emptor to Strict Liability. 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.

PRS Legislative Research - The Bill requires a consumer in a product liability action against a manufacturer to show that seven conditions are met. The burden of proof on the consumer may be unreasonable.

Consumer Education and Research Centre, Ahmedabad - No burden of proof on consumers and penalties for manufacturers needs to be included.

Citizen Consumer and Civic Action Group, Chennai - In Section 73 (1), the word 'all' may be substituted by the word 'any'.

3.41 At the time of deposing before the Committee, the representatives of the following Voluntary Consumer Organizations/Institutions etc. stated as under:-

(i) VOICE

"So, we have welcomed this provision as well. Then, the new chapter on product liability is for the first time ever has come in the statute book. What is the liability of the manufacturer who is manufacturing a product which has a design

defect or which has any shortcoming as a part of its design; it has been overlooked and has become dangerous? Here, not only one person is affected but thousands of people will be affected. Such laws and legislations are there in every country of the world to protect the interests of consumers. It was missing in our country and it has been brought from other statutes. We understand that. But we do not have to invent a wheel when somebody has already invented it. So, we welcome that all. Its working will show whether it has been effective or not."

(ii) Consumer Education and Research Centre (CERC) , Ahmedabad

"Sir, clause 73 requires to be reworked. Clause 73 requires radical reworking. I will tell you why. First and foremost when you read it, there is one error which, probably, has already been pointed out to you. Clause 73(1) says, 'a manufacturer shall be liable, in any product liability action, to a claimant if the claimant establishes all the following by a preponderance.' Sir, this cannot be all the following. Just grammatically, you cannot have a product with deficient design, product has failed, adequate instructions and all that. All those are not necessary. Even a few of them may be necessary. So, this is a re-wording which is required. It is a draftsmanship issue.

But there is a more important fundamental point which I want to place for your consideration. My view is and we have put it in the table having regard to other laws across the world, where a study and submission have been made by Smt. Pritee, that clauses (e) and (f) of 73(1) are the only two things which a consumer should establish. That is all. He must establish that the defendant was the manufacturer of the actual product. That was the cause of harm for which the claimant seeks to recover compensation and the complainant must also establish that the dangerous aspect of the product was proximate cause of the harm he suffered. He must establish these two. But the rest of it, the liability and the proof, must be on the other side. So, it is a strict liability after meeting the thresholds of (e) and (f). So, (e) and (f) can remain in 73(1) but we would respectfully submit that as far as the burden thereafter is concerned, how someone will prove that the design is defective. It is impossible. It is for the manufacturer to prove that the design is not at fault because otherwise it will be fairly meaningless. So, please consider this. It is a question of burden of proof. But certain minimum facts have to be established by the consumer."

(iii) PRS Legislative Research Institute for Policy Research Studies

"The point that I would like to raise is related to the chapter on product liability which is Chapter 6 Clauses 72 to 75. This concept was not there in the 1986 Act. Clause 72 states that if personal injury, death or property damage is caused to the consumer resulting from defects in a product, the manufacturer shall be liable for product liability action. I wish to point out two aspects related to this Chapter. First, Clause 73(1) mentions six conditions that need to be proved by preponderance of evidence to claim product liability and it is not any of six but all of six. These include manufacturing defect, design defect, inadequate instructions for use, non-conformity with warranty, product actually made by the

defendant and that the defect in the product caused the damage. You have to prove all these. Now, Clause 73 Sub-clause 2 states that the claimant must prove that the manufacturer knew or should have known the danger. Now, even if any one of these conditions is not met, damages cannot be claimed. For example, if there was no design defect but the harm was due to manufacturing defect, damages cannot be claimed. So, these may need to be examined."

3.42 The Department in their written reply have suggested the following changes with regard to Product Liability:-

- i. "Consumer need to prove only one of the conditions to establish liability and not all conditions in Clause 73 (1).
- ii. Clause 73(2) which put heavy burden on consumer is proposed to be deleted.
- iii. Product liability defined to include services while liability for service deficiency is not provided; this is now proposed to be included."

3.43 The Committee find that Clause 73 (1) of the Bill puts undue burden on the consumer as consumer/claimant has to prove all the six conditions mentioned to make manufacturer liable in any product liability action. If any of these conditions is not met, the manufacturer will not be held liable. Besides, the consumer must also prove that the manufacturer had knowledge of or should have reasonable knowledge of the damages associated with the product. The Committee, therefore, recommend that the word "all' in Clause 73 (1) be replaced with the word "any" in the Bill. Accordingly, the provision relating to product liability in the Bill may be suitably redrafted to take care of the consequent effect thereto.

Similar provision with regard to the conditions for establishing deficiency in service may also be incorporated to enable the consumer claim compensation for deficiency in services rendered by the service provider.

Clause 75 (1) - No product liability action may be asserted against a product seller other than the manufacturer, unless—

(i) the product seller exercised substantial control over the aspect of the design, testing, manufacture, packaging, or labelling of the product that caused the alleged harm for which recovery of damages is sought;

(ii) the product seller altered or modified the product, and the alteration or modification was a substantial factor in causing the harm for which recovery of damages is sought;

(iii) the product seller made an express warranty as to such product independent of any express warranty made by a manufacturer as to such product, such product failed to conform to the product seller's warranty, and the failure of such product to conform to the warranty caused the harm complained of by the claimant;

(iv) the claimant is unable, despite a good faith exercise of due diligence, to identify the manufacturer of the product;

(v) the manufacturer is not subject to service of process under the laws of the State; or

(vi) the court determines that the claimant would be unable to enforce a judgment against the manufacturer:

Provided that in such cases as specified in clauses (i) to (vi) the claims shall be asserted only against the product seller other than a manufacturer.

Clause 75 (2) A product seller other than a manufacturer is liable to a claimant on the basis of negligence if the claimant establishes that—

(i) the product seller sold the product involved in such action;

(ii) the product seller did not exercise reasonable care in assembling, inspecting, or maintaining such product; or in passing on warnings or instructions from such product's manufacturer about the dangers and proper use of such product; and

(iii) such failure to exercise reasonable care was a proximate cause of the harm complained of by the claimant.

3.44 The Committee note that the Bill provides for liability only to manufacturer. The Committee strongly feel that the liability provisions should apply to any or all parties involved in the chain right from the manufacturer to retailer for any damage caused by that product. The number of persons constituting the chain may vary from product to product. For instance, the chain may include the manufacturer of component part, an assembling manufacturer, the wholesaler and the retailer. Besides, manufacturers and importers, the chain should also include manufacturer who do not manufacture at their own but supply their own brands (private label) re-package, modify, customize the things. The Committee, therefore, recommend that in the light of above, Clause 75(1) needs to be revisited. The Committee also desire to include provision for penalties, fine and imprisonment for manufacturers, importers etc. Further, similar proviso be also made with regard to parties involved in the chain of service providers with provision for penalties, fines etc. in relation to the services provided.

Protection of action taken in good faith.

Clause 76. No suit, prosecution or other legal proceedings shall lie against the members of the District Commission, the State Commission or the National Commission or any officer or person acting under the direction of the District Commission, the State Commission or the National Commission for executing any order made by it or in respect of anything which is in good faith done or intended to be done by such member, officer or person under this Act or under any rule or order made thereunder.

3.45 The Committee are of the firm view that the CCPA should function independently without any fear or favour for the promotion and protection of the interest of the consumers. The Committee, therefore, recommend that since

CCPA is an executive authority, the Chief Commissioner, Commissioners and officials of the CCPA be provided protection for action taken in good faith. The Department may accordingly insert a suitable provision in the Bill.

Penalties

Clause 79. (1)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.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the District Commission or the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of the first class for the trial of offences under this Act, and on Conferment of such powers, the District Commission or the State Commission or the National Commission, as the case may be, shall be deemed to be a Judicial Magistrate of the first class for the purpose of the Code of Criminal Procedure, 1973.

(3) All offences under this Act may be tried summarily by the District Commission or the State Commission or the National Commission, as the case may be.

3.46 Summary of views/suggestions placed before the Committee

Consumer Guidance Society, Mumbai - Penalty clause at Clause 79 should find place after Clause 60.

3.47 The Committee are of the view that it would be more appropriate if the penalty clause may immediately follow the Clause relating to enforcement of orders of the District Commission, State Commission or the National Commission as provided in Clause 60. The Committee, therefore, recommend that the penalty clause may be provided as Clause 61 and the subsequent clauses be re-numbered accordingly.

Power of Central Government to make rules.

Clause 82 (2) Without prejudice to the generality of the foregoing power, such rules may provide for,—

- (a) the number of other official and non-official members under clause (b) of sub-section (2) of section 4;
- (b) the procedure for the transaction of business under sub-section (2) of section 5;
- (c) the number of officers, experts and professionals to be appointed under sub-section (7) of section 11;
- (d) salary, allowances and other terms and conditions of the Commissioner and Deputy Commissioner under section 13; etc. etc.....

3.48 The Committee note that E-Commerce, Direct selling and Multi level marketing are on the rise and consumer complaints are also on the rise. At present there is a vacuum in the area of regulation in these sectors. Since Department of Consumer Affairs is concerned with 'Internal Trade', the Committee desire that the Department may be vested with the powers to make regulations on these subjects also. The Committee further feel that CCPA may be vested with the necessary powers to make regulations for its functioning in an effective manner.

The Committee, accordingly, urge that the Department of Consumer Affairs may, in order to give effect to the above recommendations, take necessary steps to make consequential changes wherever required, including in the definitions with adequate justifications.

**NEW DELHI
11 April, 2016
22 Chaitra, 1937(Saka)**

**J C DIVAKAR REDDY,
Chairperson,
Standing Committee on Food,
Consumer Affairs and Public Distribution**

ANNEXURE-II

List of Central Ministries/Organizations/Institutions/Individuals which appeared before the Committee for evidence with whom the Committee had discussions

I. Central Ministries/Departments of Government of India

1. Ministry of Food, Consumer Affairs and Public Distribution (Department of Consumer Affairs),
2. Ministry of Law and Justice (Legislative Department)

II. Voluntary Consumer Organizations/Institutions/Industry Associations

1. Consumer Guidance Society of India, Mumbai
2. Consumer Online Foundation, New Delhi
3. Voluntary Organization in Interest of Consumer Education (VOICE) New Delhi
4. Consumer Education and Research Centre, Ahmedabad
5. Federation of Indian Chambers of Commerce and Industry (FICCI),
6. Associated Chambers of Commerce and Industry of India (ASSOCHAM), New Delhi
7. PHD Chamber of Commerce and Industry, New Delhi
8. Mumbai Grahak Panchayat, Mumbai
9. PRS Legislative Research Institute for Policy Research Studies, New Delhi.
10. Toxics Watch Alliance (TWA), Patna
11. Internet and Mobile Association of India (IAMAI)
12. Advertisement Standards Council of India (ASCI)
13. National Association of Software and Services Companies (NASSCOM)

III. Individuals

1. Ms. Pushpa Girimaji, National Media Centre, Nathpura, Gurgaon
2. Prof. Ashok Patil, National Law School of India University Bengaluru, Karnataka - 560242
3. Smt. S. Saroja, Director, Consumer Advisory and Outreach, Chennai

Details of Sitzings held by the Committee

| Sl. No. | Date of sitting | Subject |
|----------------|------------------------|--|
| 1. | 22.09.2015 | <p>Briefing by the representatives of Department of Consumer Affairs on the various provisions of the Bill.</p> <p>The Committee also decided to invite the views/suggestions of the general public/associations/institutions etc. by issuing press advertisements in both print and electronic media. The Committee further decided that various Central Ministries as well as Chief Secretaries of all State Governments/UT Administrations were also requested to furnish their views in the form of replies to a List of Points.</p> |
| 2. | 02.12.2015 | <p>The Committee heard the views of the representatives of:-</p> <p>(i) Consumer Guidance Society of India, Mumbai.</p> <p>(ii) Consumer Online Foundation, New Delhi.</p> <p>(iii) Voluntary Organization in Interest of Consumer Education (VOICE), New Delhi.</p> |
| 3. | 03.12.2015 | <p>The Committee heard the views of the representatives of Consumer Education and Research Centre, Ahmedabad.</p> |
| 4. | 16.12.2015 | <p>The Committee heard the views of the representatives of:-</p> <p>(i) Federation of Indian Chambers of Commerce and Industry (FICCI);</p> <p>(ii) Associated Chambers of Commerce and Industry of India (ASSOCHAM), New Delhi.</p> |

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| 5. | 17.12.2015 | The Committee heard the views of the representatives of:- (i) PHD Chamber of Commerce and Industry, New Delhi. (ii) Mumbai Grahak Panchayat, Mumbai. |
| 6. | 22.12.2015 | The Committee heard the views of:- (i) Ms. Pushpa Girimaji, National Media Centre, Gurgaon (ii) Prof. Ashok Patil, National Law School of India University, Karnataka. (iii) Smt. S. Saroja, Director, Consumer Advisory and Outreach, Chennai. |
| 7. | 12.01.2016 | The Committee heard the views of the representatives of:- (i) PRS Legislative Research Institute for Policy Research Studies, New Delhi. (ii) Toxics Watch Alliance (TWA), Patna. |
| 8. | 22.01.2016 | The Committee heard the views of the representatives of:- (i) Internet and Mobile Association of India, New Delhi. (ii) Advertisement Standards Council of India, Mumbai (iii) National Association of Software and Services Companies (NASSCOM), New Delhi. |
| 9. | 02.02.2016 | Clause-by-clause consideration of 'The Consumer Protection Bill, 2015' with the representatives of (i) Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs) and (ii) Ministry of Law and Justice (Legislative Department). |
| 10. | 08.02.2016 | Further Clause-by-clause consideration of 'The Consumer Protection Bill, 2015' with the representatives of (i) Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs) and (ii) Ministry of Law and Justice (Legislative Department). |
| 11. | - | Consideration and adoption of the Report on 'The Consumer Protection Bill, 2015.' |

ANNEXURE - IV

MINUTES OF THE SECOND SITTING OF THE STANDING COMMITTEE ON FOOD, CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION (2015-16) HELD ON TUESDAY, 22 SEPTEMBER, 2015

The Committee sat from 1100 hrs. to 1230 hrs. in Committee Room 'B', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri J.C. Divakar Reddy - Chairperson

Members

Lok Sabha

1. Shri Babu Lal Choudhary
2. Shri Dharmendra Kumar
3. Shri Ravinder Kushawaha
4. Smt. Sakuntala Laguri
5. Shri R.K.Bharathi Mohan
6. Shri Sunil Kumar Mondal
7. Smt. Priyanka Singh Rawat
8. Shri Bhola Singh
9. Shri Brijbhusan Sharan Singh
10. Shri Nandi Yeliaiah

Rajya Sabha

11. Dr. Bhushan Lal Jangde
12. Shri K.K.Ragesh
13. Dr. K. Keshva Rao

SECRETARIAT

1. Shri P.V.L.N. Murthy - Joint Secretary
2. Shri A.K.Shah - Director
3. Shri H. Ram Prakash - Additional Director
4. Shri Khakhai Zou - Deputy Secretary

Representatives of the Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs)

Shri C. Viswanath

Secretary

Shri G. Gurucharan

Special Secretary

- | | |
|-------------------------|--|
| 3. Smt. Bharti Das | Chief Controller of Accounts (CCA)/JS (In- charge) |
| 4. Shri Anil Srivastav | Registrar, National Consumer Dispute Redressal Commission (NCDRC) |
| 5. Shri G.N.Sreekumaran | Consultant |

At the outset, Hon'ble Chairperson welcomed the members to the sitting of the Committee convened for briefing by the representatives of Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs) on 'The Consumer Protection Bill, 2015' referred by Hon'ble Speaker to the Committee for examination and report within three months. The Hon'ble Chairperson then recalled that during the last sitting of the Committee held on 14 September, 2015 the Committee had decided to undertake study tour to Lucknow, Mumbai, Ahmedabad and Udaipur from 28 September to 3 October, 2015. The Hon'ble Chairperson informed that the necessary permission from Hon'ble Speaker is still awaited thereto and as not much time is left for making arrangements for the proposed study tour to Ministry/host organizations. Besides, some Members had also requested the Hon'ble Chairperson for change in dates of the Tour Programme. Thereafter, the Committee decided and authorized the Chairperson to finalize/re-schedule the study tour to the last week of October, 2015.

[Witnesses were then called in]

2. The Hon'ble Chairperson welcomed the Special Secretary (Department of Consumer Affairs) in the absence of Secretary, Department of Consumer Affairs who was to attend a Cabinet Meeting and was permitted to brief the Committee on the Bill based on written request from Secretary, Department of Consumer Affairs. Hon'ble Chairperson while tracing out the various stages of examination leading to the introduction of the Bill in Lok Sabha desired the Special Secretary, Department of Consumer Affairs to enlighten the Committee about the salient features, aims and objectives of the Bill. The Hon'ble Chairperson also apprised them of the provisions of Direction 55(1) of 'The Directions by the Speaker'. Thereafter, the Special Secretary, Department of Consumer Affairs made a Power point Presentation on the Bill before the Committee outlining various features of the Bill. The Secretary, Department of Consumer Affairs subsequently joined to brief the Committee.

3. The following are some of the important points that were explained in detail by the representatives of the Department of Consumer Affairs to the Committee:-

- (i) Unfair trade practices;
- (ii) Unfair contracts;
- (iii) Direct selling and e-commerce;
- (iv) Mediation;
- (v) Contract liability;
- (vi) Central Consumer Protection Authority - Power and functions;
- (vii) Central Consumer Protection Authority - Penal powers;
- (viii) Consumer Grievance Redressal Agency;
- (ix) Composition of Consumer Commission;
- (x) Consumer Dispute Redressal Agency - Reforms and functioning.

4. The Hon'ble Chairperson and Members of the Committee also raised several queries on the Bill which were replied to by the witnesses. The Chairperson then thanked the witnesses for appearing before them and sharing their views with the Committee.

[The witnesses then withdrew]

5. Considering the wider applicability of the provisions of the Bill, the Committee also decided to invite the views/suggestions of institutions/consumer associations /NGOs/individuals/experts etc. on the various provisions of the Bill by issuing a Press

Communiqué and thereafter to hear selected experts/individuals based on the response received before finalizing the Report on the Bill.

6. The Committee also decided to hold their next sitting on Monday, 5 October, 2015 at 1030 hrs.

7. A verbatim record of the proceedings has been kept.

The Committee then adjourned.

ANNEXURE - V

MINUTES OF THE SIXTH SITTING OF THE STANDING COMMITTEE ON FOOD, CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION (2015-16) HELD ON WEDNESDAY, 02 DECEMBER, 2015

The Committee sat from 1600 hrs. to 1820 hrs. in Committee Room 'E', Basement, Parliament House Annexe, New Delhi.

PRESENT

Shri J.C. Divakar Reddy - Chairperson

Members

Lok Sabha

14. Shri Babu Lal Choudhary
15. Shri Dharmendra Kumar
16. Shri Ravinder Kushawaha
17. Dr. Swami Sakshiji Maharaj
18. Shri Sunil Kumar Mondal
19. Shri Midhun Reddy
20. Shri Bhola Singh

Rajya Sabha

21. Shri Shadi Lal Batra
22. Shri Pankaj Bora
23. Dr. Bhushan Lal Jangde
24. Dr. Prabhakar Kore
25. Shri K.K.Ragesh
26. Dr. K. Keshva Rao

Secretariat

1. Shri P.V.L.N. Murthy - Joint Secretary
2. Shri Lovekesh Kumar Sharma - Director
3. Shri H. Ram Prakash - Additional Director
4. Shri Khakhai Zou - Deputy Secretary

WITNESSES

Representatives of Voluntary Consumer Organizations (VCOs)

- (i) Dr. Kamath, Chairman
Consumer Guidance Society of India, Mumbai

- (ii) (a) Shri Bejon Kumar Misra
International Consumer Policy Expert, Founder Trustee,
Consumer Online Foundation, New Delhi
(b) Mr. Piyush Misra, Director
(c) Mr. Suhaan Mukerji, Legal Adviser
(d) Mr. Shashank Deo Sudhi, Legal Coordinator

- (iii) Prof. Sri Ram Khanna, Managing Trustee
Shri Ashim Sanyal, Chief Operating Officer
Shri H.K. Awasthi, Legal Head
Voluntary Organization in Interest of Consumer Education (VOICE)
New Delhi

At the outset, the Hon'ble Chairperson welcomed the Members of the Committee to the sitting convened to hear the views/suggestions of the representatives of Voluntary Consumer Organizations (VCOs) on various provisions of 'The Consumer Protection Bill, 2015". The Committee also decided to invite the views/suggestions of State Governments/ UT Administrations as well as some Central Ministries of the Government on various provisions of the Bill.

[The representative of the Consumer Guidance Society of India, Mumbai - Dr. Kamath was then called in]

2. The Hon'ble Chairman welcomed the representative of Consumer Guidance Society of India, Mumbai to the sitting and mentioned, inter-alia, that the discussions held are confidential as required under the provisions of Direction 55(1) of the Directions by the Speaker and Direction 58 of the Directions by the Speaker regarding the confidentiality of the proceedings before the Report of the Committee on the Bill is presented to the House and requested the representative to share his views/suggestions on any chapter, clause or provisions of the Consumer Protection Bill, 2015. Thereafter, the representative of the Consumer Guidance Society of India,

Mumbai briefed the Committee about his views/suggestions on the Bill. The following are some of the important points that emerged during the deliberations of the Committee:-

- (i) Filing of complaints - Instead of filing cases where the complainant resides, it should be made where the cause of action arises;
- (ii) Consumer Courts - written argument or letter asking for verbal explanation is not desirable;
- (iii) Judgements given by Consumer Courts are unduly lengthy and preferably they should be in one or two pages;
- (iv) Mediation should be mandatory before litigation;
- (v) Presence of advocates should not be necessary in Consumer Courts;
- (vi) Waiver of too many conditions to be fulfilled by consumer for registration of complaint;
- (vii) Consumer Protection Council needs to meet more frequently;
- (viii) Need to appoint regular officers in Consumer Courts; etc.

4. The queries raised by the Chairperson and Members of the Committee during the course of the deliberation were responded to by the representative. The Hon'ble Chairperson then thanked the witness for appearing before the Committee and sharing views with them.

[The witness then withdrew.]

[At 1700 hrs, the representatives of Consumer Online Foundation were then called in]

5. After welcoming the representatives of Consumer Online Foundation, the Hon'ble Chairperson mentioned that under the provisions of Direction 55(1) and Direction 58 of the Directions by the Speaker, the discussions held shall be confidential before the Committee present their report to the Parliament.

6. Thereafter, the representative made his presentation before the Committee on the various provisions of the Bill. The witnesses appreciated the Bill as a whole and emphasized that the Committee may carefully examine the following issues:-

- (i) Speedy redressal of consumer grievances;
- (ii) Strict implementation of the provisions of the Bill;
- (iii) Once the law is passed, States/UTs should be directed to implement it with immediate effect;
- (iv) Territorial as well as pecuniary jurisdiction of the District Forums should be done away with;
- (v) Clear definition of consumers should be spelt out and the words 'commercial purpose' should be deleted from the Bill;
- (vi) The MRP in all the products should be realistic and relevant to the quality of the product and should be uniform;
- (vii) Minimum Standard Mark should be made mandatory for every product;
- (viii) Need to check spurious products and responsibility of the manufacturer, wholesaler, retailer etc.

7. The representatives of Consumer Online Foundation responded to the queries raised by the Chairperson and the members on the aforesaid issues.

[The witness then withdrew.]

[At about 1730 hrs, the representatives of Voluntary Organization in Interest of Consumer Education (VOICE) were then called in]

8. After welcoming the witnesses, the Hon'ble Chairperson mentioned that under the provisions of Direction 55(1) and Direction 58 of the Directions by the Speaker, the discussions held shall be confidential before the Committee present their report to the Parliament.

9. The witnesses also welcomed 'The Consumer Protection Bill, 2015' as it brings cases of medical practitioner, real estate sector, electrical goods etc. comes under the

ambit of the law. The following are some of the important points that emerged during the deliberations of the Committee:-

- (i) The new chapters introduced in the Bill are all welcome steps;
- (ii) The new clause relating to product liability is welcome as it is in line with the laws prevalent in other developed countries;
- (iii) Cost of litigation should be made as low as possible in the interest of consumers, particularly in rural areas;
- (iv) Toll free number given by the States are not functioning - needs to be looked into;
- (v) Complaints regarding low value products should be addressed expeditiously etc.

10. The queries raised by the Chairperson and Members of the Committee during the course of the deliberation were responded to by the representatives of VOICE. The Hon'ble Chairperson then thanked the witness for appearing before the Committee and sharing their views with them in a free and frank manner.

[The witnesses then withdrew.]

A verbatim record of the proceedings was kept.

The Committee then adjourned.

ANNEXURE - VI

MINUTES OF THE SEVENTH SITTING OF THE STANDING COMMITTEE ON FOOD, CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION (2015-16) HELD ON THURSDAY, 03 DECEMBER, 2015

The Committee sat from 1600 hrs. to 1705 hrs. in Committee Room 'E', Basement, Parliament House Annexe, New Delhi.

PRESENT

Shri J.C. Divakar Reddy - Chairperson

Members

Lok Sabha

2. Shri Babu Lal Choudhary
3. Shri Dinesh Kashyap
4. Shri Dharmendra Kumar
5. Dr. Swami Sakshiji Maharaj
6. Shri R.K.Bharathi Mohan
7. Shri Sunil Kumar Mondal
8. Shri Bhola Singh

Rajya Sabha

9. Dr. Bhushan Lal Jangde
10. Shri K.K.Ragesh

Secretariat

- | | | |
|-------------------------------|---|---------------------|
| 1. Shri P.V.L.N. Murthy | - | Joint Secretary |
| 2. Shri Lovekesh Kumar Sharma | - | Director |
| 3. Shri H. Ram Prakash | - | Additional Director |
| 4. Shri Khakhai Zou | - | Deputy Secretary |

WITNESSES

Representatives of Voluntary Consumer Organizations (VCOs)

- (i) Mr. Shyam Divan, Sr. Advocate - Supreme Court and Trustee
Consumer Education and Research Centre
Ahmedabad
- (ii) Smt. Pritee Shah, Chief General Manager
Consumer Education and Research Centre
Ahmedabad

At the outset, the Hon'ble Chairperson welcomed the Members of the Committee to the sitting convened to hear the views/suggestions of the representatives of Voluntary Consumer Organizations (VCOs) on the various provisions of 'The Consumer Protection Bill, 2015'.

[The representatives of the Consumer Education and Research Centre, Ahmedabad - were then called in]

3. The Hon'ble Chairman welcomed the representatives of Consumer Education and Research Centre, Ahmedabad to the sitting and mentioned, inter-alia, that the discussions held are confidential as required under the provisions of Direction 55(1) of the Directions by the Speaker and Direction 58 of the Directions by the Speaker regarding the confidentiality of the proceedings before the Report of the Committee on the Bill is presented to the House and requested the representatives to share their views/suggestions on any chapter, clause or provisions of the Consumer Protection Bill, 2015. Thereafter the representatives of the Consumer Education and Research Centre, Ahmedabad briefly explained the activities of the organizations and stated that it was the only VCO in the country having its own laboratories for testing of pharmaceuticals, food and electricals. He welcomed the Consumer Protection Bill. The following are some of the important points that emerged during the deliberations of the Committee:-

- (ix) The Bill needs to be thoroughly revisited by Law Department;

- (x) In Chapter 2, except clause 6 rest of the provisions appear to be unnecessary;
- (xi) No qualifications were prescribed for Members of Consumer Protection Council which results in its inefficient functioning;
- (xii) In Chapter 4, Central Consumer Protection Authority should be made a corporate body and vested with real powers;
- (xiii) There is mismatch between Section 5, Section 11 and Section 19 of the Bill;
- (xiv) Section 16 may be closely looked into as it may not be desirable to give power of search and seizure to the Consumer Protection Council;
- (xv) Clear and uniform procedure should be prescribed for the Central, State and District Consumer Courts;
- (xvi) Whether the Central Consumer Protection Authority should be entrusted with the power to summon persons or documents should be decided by Parliament and not the Central Government
- (xvii) There should be one authority to look into misleading advertisements
- (xviii) The provisions relating to appeals may be carefully re-looked into;
- (xix) In Chapter 4, Section 35 (1) (l) regarding power to provide adequate cost to parties needs careful examination;
- (xx) In Chapter 5 prescribing upper age limit for mediation may be done away with;
- (xxi) In Chapter 6, Section 73 needs radical revision and the provisions relating to Clause (e) and (f) should be retained as necessary condition for the consumer to establish for the purpose of admissibility of the complaint;
- (xxii) The burden of proof of defective products, deficient service should rest with the manufacturer and not the consumer;
- (xxiii) There are lot of gaps in the provisions of misleading advertisements and unfair trade practice which needs careful examination;
- (xxiv) In order to strictly implement the provision, uniform code should be evolved to deal with misleading advertisements; etc.

4. Thereafter, it was also suggested that the time for appeal may be increased from 30 days to 45 days in the interest of consumers particularly those living in rural areas.

5. The queries raised by the Chairperson and Members of the Committee during the course of the deliberation were responded to by the witnesses. The Hon'ble Chairperson then thanked the witnesses for appearing before the Committee and sharing their views with them in a free and frank manner.

[The witness then withdrew]

A verbatim record of the proceedings was kept.

The Committee then adjourned.

ANNEXURE - VII

MINUTES OF THE EIGHTH SITTING OF THE STANDING COMMITTEE ON FOOD, CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION (2015-16) HELD ON WEDNESDAY, 16 DECEMBER, 2015

The Committee sat from 1600 hrs. to 1745 hrs. in Committee Room 'B', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri J.C. Divakar Reddy - Chairperson

Members

Lok Sabha

2. Shri Babu Lal Choudhary
3. Shri Dinesh Kashyap
4. Dr. Swami Sakshi Maharaj
5. Shri R. K. Bharathimohan
6. Shri Sunil Kumar Mondal
7. Shri Bhola Singh
8. Shri Prabhubhai Nagarbhai Vasava
9. Shri Nandi Yeliaiah

Rajya Sabha

10. Shri Shadi Lal Batra
11. Dr. Bhushan Lal Jangde
12. Dr. K. Keshva Rao

Secretariat

1. Shri Lovekesh Kumar Sharma - Director
2. Shri H. Ram Prakash - Additional Director
3. Shri Khakhai Zou - Deputy Secretary

WITNESSES

Representatives of Industry Associations

I. Federation of Indian Chambers of Commerce and Industry

- (i) Mr. Suresh Jagirdar, FICCI FMCG Committee and Chief Legal Counsel - Marico
- (ii) Mr. Rohington Mehta, Member, FICCI FMCG Committee - ITC
- (iii) Mr. Pawan Kaul, Member, FICCI Ecommerce Committee and Head - Corporate Affairs, Snapdeal
- (iv) Ms. Shilpa Gupta, Head - Retail & FMCG, FICCI
- (v) Ms. Surabhi Pant, Senior Assistant Director, FICCI

II. ASSOCHAM, New Delhi

- (i) Mr. Dev Bajpai, Member ASSOCHAM and Executive Director (Legal & Corporate Affairs), HUL
- (ii) Ms. Devkanya Roy Choudhury, Member ASSOCHAM and Senior Associate General Council, ITC
- (iii) Dr. Ombeer Singh Tyagi, Senior Director ASSOCHAM
- (iv) Mr. Ravi Ranjan Singh, ASSOCHAM

At the outset, the Hon'ble Chairperson welcomed the Members of the Committee to the sitting convened to hear the views/suggestions of the representatives of Industry Associations on various provisions of 'The Consumer Protection Bill, 2015'.

[The representative of the Federation of Indian Chambers of Commerce and Industry (FICCI) were then called in]

2. The Hon'ble Chairperson welcomed the representative of Federation of Indian Chambers of Commerce and Industry (FICCI) to the sitting and mentioned, inter-alia, that whatever discussions held were to be treated as Confidential under the provisions of Direction 55(1) and Direction 58 of the Directions by the Speaker till the Report of the Committee on the Bill was presented to the House. He then requested the representatives to share their views/suggestions on any chapter, clause or provisions of the Consumer Protection Bill, 2015. Thereafter, the representatives of FICCI briefed the Committee about their views/suggestions on the Bill. The following were some of the important points that emerged during the deliberations of the Committee:-

- (i) There should be one authority to look into misleading advertisements i.e. Advertisement Standard Council of India (ASCI);
- (ii) ASCI should be empowered to look into the legal aspects of misleading advertisements;
- (iii) Power to Central Consumer Protection Authority (CCPA) should not be conflicting with power of other authorities;
- (iv) Provisions relating to Sections 16 and 17 needs to be reviewed as it gives judicial authority to the executive or vice-versa;
- (v) Provision relating to Section 35(1) (j) needs to be re-examined as the quantum i.e. 25% of the value of the produce advertised is too high;
- (vi) The concept of e-commerce need to be introduced;
- (vii) Warranty of the product advertisement may be introduced online and should be made binding to all;
- (viii) IT platform should not be treated as manufacturers; etc.

4. The queries raised by the Chairperson and Members of the Committee during the course of the deliberation were responded to by the representatives. The Hon'ble Chairperson then thanked the witnesses for appearing before the Committee and sharing their views with them.

[The witnesses then withdrew.]

[At 1715 hrs, the representatives of ASSOCHAM were then called in]

5. After welcoming the representatives of ASSOCHAM, the Hon'ble Chairperson mentioned that under the provisions of Direction 55(1) and Direction 58 of the Directions by the Speaker, the discussions held shall be treated as Confidential till the Committee present their report to the Parliament.

6. Thereafter, the representatives made their presentation before the Committee on various provisions of the Bill. The witnesses appreciated the Bill as a whole and emphasized that the Committee may carefully examine the following issues:-

- (i) The concept of mediation will help in disposal of consumer complaints at Consumer Courts;
- (ii) CCPA being an investigating authority should not have the power to pass orders;
- (iii) There should be one authority to look into misleading advertisements i.e. Advertisement Standard Council of India (ASCI);
- (iv) CCPA should not have the power to adjudicate in case of misleading advertisements;
- (v) Clear definition of 'unfair contract' needs to be re-defined;
- (vi) Perishable products i.e. food items should be excluded from the concept of Return or Refund within 30 days; etc.

7. The representatives of ASSOCHAM responded to the queries raised by the Chairperson and the members on the aforesaid issues.

8. The Hon'ble Chairperson then thanked the witnesses for appearing before the Committee and sharing their views with them in a free and frank manner.

[The witnesses then withdrew.]

A verbatim record of the proceedings was kept.

The Committee then adjourned.

ANNEXURE - VIII

MINUTES OF THE NINTH SITTING OF THE STANDING COMMITTEE ON FOOD, CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION (2015-16) HELD ON THURSDAY, 17 DECEMBER, 2015

The Committee sat from 1500 hrs. to 1700 hrs. in Committee Room 'B', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Dr. K.Keshava Rao - Acting Chairperson

Members

Lok Sabha

2. Shri Dharmendra Kumar
3. Shri Ravinder Kushawaha
4. Dr. Swami Sakshi Maharaj
5. Shri R. K.Bharathimohan
6. Shri Sunil Kumar Mondal
7. Shri Bhola Singh
8. Shri Prabhubhai Nagarbhai Vasava

Rajya Sabha

9. Shri Pankaj Bora
10. Shri K.K.Ragesh

Secretariat

- | | | |
|-------------------------------|---|---------------------|
| 1. Shri P.V.L.N.Murthy | - | Joint Secretary |
| 2. Shri Lovekesh Kumar Sharma | - | Director |
| 3. Shri H. Ram Prakash | - | Additional Director |
| 4. Shri Khakhai Zou | - | Deputy Secretary |

WITNESSES

Representatives of Industry Association and VCO who appeared before the Committee on Thursday, 17 December, 2015

I. PHD Chamber of Commerce and Industry, New Delhi

- (i) Mr Saurabh Sanyal, Secretary General
- (ii) Mr Durgesh C Sharma, Director

II. Mumbai Grahak Panchayat, Mumbai

- (i) Shri Shirish Deshpande, Chairman

In the absence of Chairperson, the Committee chose Dr. K. Keshava Rao, M.P. Rajya Sabha to act as Chairperson for the sitting in terms of the provisions of Rule 258(3) of the Rules of Procedure and Conduct of Business in Lok Sabha. Thereafter, the acting Chairperson welcomed the Members of the Committee to the sitting convened to hear the views/suggestions of the representatives of Industry Association and Voluntary Consumer Organization on various provisions of 'The Consumer Protection Bill, 2015'.

[The representatives of PHD Chamber of Commerce and Industry were then called in]

2. The acting Chairperson welcomed the representatives of PHD Chamber of Commerce and Industry to the sitting and mentioned, inter-alia, that whatever discussions held were to be treated as confidential under the provisions of Direction 55(1) of the Directions by the Speaker till the Report of the Committee on the Bill is presented to the Houses. He also mentioned that under the provision of Direction 58, though the witness might desire their evidence to be treated as confidential such evidence is liable to be made available to the members of Parliament. He then requested the representatives to share their views/suggestions on any chapter, clause or provisions of the Consumer Protection Bill, 2015. Thereafter, the representatives of PHD Chamber of Commerce and Industry briefed the Committee about their views/suggestions on the Bill supplementing the views expressed in their written

memoranda submitted earlier. In response to the Member's queries, they requested that they be given some time to re-submit their comprehensive views/suggestions on various provisions of the Bill. The acting Chairperson directed them to furnish their views in ten days to the Committee Secretariat.

3. The acting Chairperson then thanked the witnesses for appearing before the Committee and sharing their views with them.

[The witnesses then withdrew.]

[At 1530 hrs, the representative of Mumbai Grahak Panchayat was then called in]

4. After welcoming him, the acting Chairperson mentioned that under the provisions of Direction 55(1) of the Directions by the Speaker, the discussions held would be treated as confidential till the Committee present their report to the Parliament. He also mentioned that under the provision of Direction 58, though the witness might desire their evidence to be treated as confidential such evidence is liable to be made available to the members of Parliament.

5. Thereafter, he made his presentation before the Committee on the various provisions of the Bill. Expressing that the Bill as a whole is a very welcome initiative by the Government, he explained to the Committee about his views/suggestions on various clause-wise provisions of the Bill. He, however, expressed his view that there was sufficient scope for improvement in areas like definition of the terms such as 'defects', 'deficiency', 'service' etc. He also suggested some changes in the wordings of the clauses in Section 2 of the Bill. His main suggestions were as follows:-

- (i) Deletion of the proviso related to Section 26(a) 2nd proviso;
- (ii) Adding the word 'President' before the words every member in Section 29(2);
- (iii) Adding the words 'in consultation with the President of the Forum' in Section 30(1);
- (iv) State Government should not be given the power to appoint the staff of State Commissions, District Forums etc;

- (v) Need to clarify as to what is meant by 'thrice the limits of such value as may be prescribed' pertaining to Section 31(1);
- (vi) Not to make it mandatory for the President of the State Commission to preside over the proceedings of various benches that may be set up by a State; etc.

6. The witness then responded to the queries raised by the acting Chairperson and the members on the aforesaid issues. The Hon'ble Chairperson then thanked the witness for appearing before the Committee and sharing his views with them in a free and frank manner.

[The witnesses then withdrew.]

7. The Committee thereafter took up for consideration the Draft Report on action taken by the Government on the observations/recommendations contained in the Fourth Report of the Committee on Demands for Grants (2015-16) pertaining to Department of Consumer Affairs. After some discussion, the Members felt that they be given more time for detailed analysis and it was decided that the same may be taken up for consideration at their next sitting to be held on 22 December, 2015.

A verbatim record of the proceedings was kept.

The Committee then adjourned.

ANNEXURE -IX

MINUTES OF THE TENTH SITTING OF THE STANDING COMMITTEE ON FOOD, CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION (2015-16) HELD ON TUESDAY, 22 DECEMBER, 2015

The Committee sat from 1600 hrs. to 1725 hrs. in Committee Room 'B', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri J.C. Divakar Reddy - Chairperson

Members

Lok Sabha

2. Shri Sanjay Haribhau Jadhav
3. Shri Dharmendra Kumar
4. Shri Ravinder Kushawaha
5. Smt. Sakuntala Laguri
6. Dr. Swami Sakshi Maharaj
7. Shri R. K. Bharathimohan
8. Shri Sunil Kumar Mondal
9. Shri Bhola Singh
10. Shri Prabhubhai Nagarbhai Vasava

Rajya Sabha

11. Shri Shadi Lal Batra
12. Dr. Bhushan Lal Jangde
13. Dr. K. Keshva Rao

Secretariat

1. Shri P.V.L.N. Murthy - Joint Secretary
2. Shri Lovekesh Kumar Sharma - Director
3. Shri H. Ram Prakash - Additional Director
4. Shri Khakhai Zou - Deputy Secretary

WITNESSES

Non-official Experts

- (i) Ms. Pushpa Girimaji
170, National Media Centre
Nathpura, Gurgaon
- (ii) Prof. Ashok Patil
National Law School of India University
Teachers Colony
Chandra Lay, Nagarbhavi
Bengaluru, Karnataka - 560242
- (iii) Smt. S. Saroja
Director, Consumer Advisory and Outreach
Citizen, Consumer and Civic Action Group (CAG)
9/5, IInd Street, Padmanabha Group
Adyar, Chennai - 600020

At the outset, the Hon'ble Chairperson welcomed the Members of the Committee to the sitting convened to hear the views/suggestions of the Non-official experts on various provisions of 'The Consumer Protection Bill, 2015'.

[Ms. Pushpa Girimaji was then called in]

2. The Hon'ble Chairperson welcomed the non-official expert to the sitting and mentioned, inter-alia, that whatever discussions held were to be treated as confidential under the provisions of Directions 55(1) of the Directions by the Speaker till the Report of the Committee on the Bill was presented to the House. He also mentioned that under the provision of Direction 58, though the witness might desire their evidence to be treated as confidential such evidence is liable to be made available to the members of Parliament. He then requested her to share views/suggestions on any chapter, clause or provisions of the Consumer Protection Bill, 2015. Thereafter, Ms. Pushpa Girimaji briefed the Committee about her views/suggestions on the Bill as follows:-

- (i) The objects of the Central, State and District Consumer Councils shall be to promote and protect the rights of consumers;

- (ii) The posts of Commissioners and Deputy Commissioners of Consumer Councils should not be occupied by Bureaucrats alone and their status and remuneration should also be rationalized ;
- (iii) The age limit of the Commissioners of Consumer Councils be raised from 65 years to 70 years;
- (iv) the Central Consumer Protection Authority should be made as strong as possible while ensuring that their authority does not overlap with other regulatory authorities such as the Food Safety and Standards Authority of India (FSSAI);
- (v) Pecuniary jurisdiction of District Consumer Councils may be limited to cases involving 20 lakhs and no lawyer should be allowed to be involved in cases involving upto Rs. 2 lakhs;
- (vi) The provision relating to admission of cases may be re-visited and adjournments in small cases should not be allowed;
- (vii) The proposal relating to setting up of Mediation Centres may be re-considered and instead thereof trade and industry may be encouraged to set up some kind of alternative grievance redressal mechanism;
- (viii) The provision relating to product liability may be defined clearly; etc.

3. The queries raised by the Chairperson and Members of the Committee during the course of the deliberation were responded to by the witness. The Hon'ble Chairperson then thanked the witness for appearing before the Committee and sharing her views with them.

[The witnesses then withdrew.]

[At 1630 hrs, Prof. Ashok Patil was then called in]

4. After welcoming the witness, the Hon'ble Chairperson mentioned that under the provisions of Direction 55(1) of the Directions by the Speaker, the discussions held were to be treated as confidential before the Committee present their report to the Parliament. He also mentioned that though the witness might desire their evidence to be

treated as confidential, such evidence is liable to be made available to the members of Parliament under the provision of Direction 58.

5. Thereafter, the witness made his presentation before the Committee on various provisions of the Bill. The witness appreciated the Bill as a whole and emphasized that the Committee might carefully examine the following issues:-

- (i) The definition of Electronic Intermediary in Section 2 (16) of the Bill may have the same meaning as assigned to it under clause (w) of sub-section (1) of Section 2 of the Information Technology Act, 2008;
- (ii) Similarly, the term 'extraneous matters' relating to food items may also be defined properly in the line of Food Safety and Standards Act;
- (iii) The terms 'mediation' as well as 'mediator' may also be comprehensively defined so as to remove confusion in its interpretation;
- (iv) Retired Supreme Court Judge and not High Court's Judges be appointed to the post of Commissioner of State Commissions ;
- (v) The nominee of Supreme Court should invariably be included in the Selection Committee for appointment of members of Consumer Councils;
- (vi) It should be made mandatory for the consumer courts to convene atleast two sitting per year;
- (vii) The Central Consumer Protection Authority should be empowered to suo-motto investigate and take action against habitual offenders;
- (viii) Misleading Advertisements should be named and shamed in public;
- (ix) Online mediation as well as serving of electronic notices may be encouraged to cut delays;
- (x) Need to strengthen implementation of Consumer Laws; etc.
- (xi)

6. The witness responded to the queries raised by the Chairperson and the members on the aforesaid issues.

7. The Hon'ble Chairperson then thanked the witness for appearing before the Committee and sharing his views with them in a free and frank manner.

[The witnesses then withdrew.]

[At about 1655 hrs, Smt. S. Saroja was then called in]

8. After welcoming the witness, the Hon'ble Chairperson mentioned that under the provisions of Direction 55(1) of the Directions by the Speaker, the discussions held were to be confidential before the Committee present their report to the Parliament. He also mentioned that under the provision of Direction 58, though the witness might desire their evidence to be treated as confidential such evidence is liable to be made available to the members of Parliament.

9. The witness made her presentation before the Committee and the following were some of the important points that emerged during the deliberations of the Committee:-

- (i) Definition of Consumer should be widened to include free services provided by the Central or State Government or any authority of the State whether consideration has been paid or not;
- (ii) The word 'Grievance' in Section 2 (14) be deleted and it should be replaced with the word 'Dispute';
- (iii) The provision relating to Section 2 (42) (iv) be re-worded as 'entitles a party to the contract to change the terms of contract or to terminate the contract unilaterally' and the words 'without reasonable cause' be deleted;
- (iv) The functions and powers of the Consumer Protection Councils and Central Consumer Protection Authority appear to be overlapping with that of the Competition Commission and this may be looked into;
- (v) A Retired Supreme Court Judge (not High Court's Judge) be made the President of National Commission;
- (vi) The terms and conditions of service of the Presidents and Members of the State Commissions may be rationalized;
- (vii) The pecuniary jurisdiction of the State and District Consumer Councils should be defined more clearly; etc.

10. The queries raised by the Chairperson and Members of the Committee during the course of the deliberation were responded to by the witness. The Hon'ble Chairperson then thanked the witness for appearing before the Committee and sharing her views with them in a free and frank manner.

[The witness then withdrew.]

A verbatim record of the proceedings was kept.

The Committee then adjourned.

WITNESSES

Non-official Experts

A. PRS Legislative Research Institute for Policy Research Studies, New Delhi.

- (i) Dr. M.R. Madhavan, President,.
- (ii) Dr. Mandira Kala,
- (iii) Ms. Tanvi Deshpande,
- (iv) Ms. Prianka Rao,

B. Toxics Watch Alliance (TWA), Patna

- (i) Shri Gopal Krishna

At the outset, the Hon'ble Chairperson welcomed the Members of the Committee to the sitting convened to hear the views/suggestions of the Non-official experts on various provisions of 'The Consumer Protection Bill, 2015'.

[Dr. M.R. Madhavan and others representatives of the PRS Legislative Research Institute for Policy Research Studies, were then called in]

2. The Hon'ble Chairperson welcomed the non-official experts to the sitting and mentioned, inter-alia, that whatever discussions held were to be treated as confidential under the provisions of Directions 55(1) of the Directions by the Speaker till the Report of the Committee on the Bill was presented to the House. He also mentioned that under the provision of Direction 58, though the witness might desire their evidence to be treated as confidential such evidence is liable to be made available to the members of Parliament. He then requested the expert to share views/suggestions on any chapter, clause or provisions of the Consumer Protection Bill, 2015. Thereafter, the witness briefed the Committee about his views/suggestions on the Bill as follows:-

- (i) Supervisory role of the Central Government over the dispute redressal commissions could affect the independent functioning of such redressal bodies, supervisory functioning may violate principle of separation of powers;
- (ii) There is unreasonable threshold to claim product liability and ambiguity regarding inclusion of services under it; and

(iii) The Bill does not lay principles to determine whether a contract is unfair. It provides an exhaustive list for this determination which may not cover new forms of contracts.

3. The queries raised by the Chairperson and Members of the Committee during the course of the deliberation were responded to by the witnesses. The Hon'ble Chairperson then thanked the witnesses for appearing before the Committee and sharing their views with them.

[The witnesses then withdrew.]

[At 1520 hrs, Shri Gopal Krishna, was then called in]

4. After welcoming the witness, the Hon'ble Chairperson mentioned that under the provisions of Direction 55(1) of the Directions by the Speaker, the discussions held were to be treated as confidential till the Committee present their Report to the Parliament. He also mentioned that though the witness might desire their evidence to be treated as confidential, such evidence is liable to be made available to the members of Parliament under the provision of Direction 58.

5. Thereafter, the witness made his presentation before the Committee on various provisions of the Bill. The witness emphasized that the Committee might carefully examine the following issues:-

- (i) The Consumer Protection Bill, 2015 must be renamed as Citizen and Consumer Protection Bill, 2015;
- (ii) The definition under Section 2(1) should include electoral promises by political parties;
- (iii) Section 2(30) which reads "product", should include electronic database and biometric database as a product;
- (iv) Section 2(37) which reads "services" should also include health and medical services. The definition of "consumer rights" needs to be revised and it should be categorically defined as rights of "citizen and consumer rights". At present its definition is unclear, conflicting and confusing. It should incorporate all kinds of constructions instead of limiting itself to only construction of housing;

- (v) Under Section 5 at least one meeting of Central Council in a year appears to be a reflection on poverty of ambition of the drafters of the Bill.
- (vi) Under Section 7 State Consumer Protection Council which is led by the Minister Incharge of the Department of Consumer Affairs in the State Government, should be headed by a Judge or a Jurist.
- (vii) Under Section 11 the Central Consumer Protection Authority (CCPA) should be headed by individuals of legal, judicial background.
- (viii) Under Section 18 the Bill should provide a Schedule for an inventory of chemical and hazardous chemicals, substances and particles including nano- particles with their impact on health.
- (ix) Section 72 should incorporate manufacturer's extended producers' responsibility principle where by the manufacturer is made responsible for either taking the end-of-life product back as part of Take Back Policy.
- (x) Instead of creating a Commission for the protection of rights of "citizen and consumers" there is a need to create a proper Consumer Court at all the levels;
- (xi) The proposed legislation must make it clear that when there is a conflict between suppliers and manufacturers on one hand and "citizen and consumers" on the other, Consumer Court will give precedence to constitutional rights in the face of unfair trade and unethical business practices;

6. The queries raised by the Chairperson and Members of the Committee during the course of the deliberation were responded to by the witness. The Hon'ble Chairperson then thanked the witness for appearing before the Committee and sharing his views with them in a free and frank manner.

[The witness then withdrew.]

A verbatim record of the proceedings was kept.

The Committee then adjourned.

ANNEXURE - XI

MINUTES OF THE TWELFTH SITTING OF THE STANDING COMMITTEE ON FOOD, CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION (2015-16) HELD ON FRIDAY, 22 JANUARY, 2016

The Committee sat from 1100 hrs. to 1235 hrs. in Committee Room 'D', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri J.C. Divakar Reddy - Chairperson

Members

Lok Sabha

2. Shri Babu Lal Chaudhary
3. Shri Dharmendra Kumar
4. Shri Ravinder Kushawaha
5. Dr. Swami Sakshiji Maharaj
6. Shri R. K. Bharathimohan
7. Shri Sunil Kumar Mondal
8. Shri Kamlesh Paswan
9. Shri Ramchander Paswan
10. Shri C.S. Putta Raju
11. Shri Bhola Singh

Rajya Sabha

12. Shri K.K. Ragesh
13. Shri Dhiraj Prasad Sahu

Secretariat

1. Shri Lovekesh Kumar Sharma - Director
2. Shri H. Ram Prakash - Additional Director

WITNESSES

Non-official Experts

A. Representatives of the IAMAI:

- (i) Ms. Chitrita Chatterjee - Associate Vice President

B. Representatives of the ASCI:

- (i) Ms. Shweta Purandare - ASCI Secretary General
- (ii) Shri Dilip Cherian - ASCI member
- (iii) Shri Arunabh Dassharma - ASCI Board member
- (iv) Shri Ram Poddar - ASCI Board Consultative Committee member
- (v) Shri Sameer Kumar - ASCI

C. Representatives of the NASSCOM:

- (i) Ms. Bishakha Bhattacharya - Sr. Director
- (ii) Shri Abhishek Mahorey,
- (iii) Shri Amitendra Antal,
- (iv) Shri Neelakantan Natarajan,
- (v) Shri Mohit Bansal,
- (vi) Shri Gaurav Singh,

At the outset, the Hon'ble Chairperson welcomed the Members of the Committee to the sitting convened to hear the views/suggestions of the Non-official experts on various provisions of 'The Consumer Protection Bill, 2015'.

[Ms. Chitrita Chatterjee was then called in]

4. The Hon'ble Chairperson welcomed the non-official expert to the sitting and mentioned, inter-alia, that whatever discussions held were to be treated as confidential under the provisions of Directions 55(1) of the Directions by the Speaker till the Report of the Committee on the Bill was presented to the House. He also mentioned that under the provision of Direction 58, though the witness might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament. He then requested the expert to share views/suggestions on any chapter, clause or provisions of the Consumer Protection Bill, 2015. Thereafter, the witness briefed and suggested that products need to be classified as perishable and non-perishable. In response to the queries raised by Hon'ble Chairperson and other

Members, the witness stated that response to the queries, if permitted, would be submitted shortly to the Committee.

3. The Hon'ble Chairperson then thanked the witness for appearing before the Committee and sharing her views with them.

[The witnesses then withdrew.]

[At 1125 hrs, Ms. Shweta Purandare and other representatives of the ASCI were then called in]

4. After welcoming the witness, the Hon'ble Chairperson mentioned that under the provisions of Direction 55(1) of the Directions by the Speaker, the discussions held were to be treated as confidential before the Committee present their report to the Parliament. He also mentioned that though the witness might desire their evidence to be treated as confidential, such evidence is liable to be made available to the members of Parliament under the provision of Direction 58.

5. Thereafter, they made a presentation before the Committee on various provisions of the Bill. The witnesses appreciated the Bill as a whole and briefed the Committee as under:-

- (i) The industry would support the powers of the Central Consumer Protection Authority (CCPA) in relation to curbing misleading advertisements with regards to:
 - 1. accepting complaints from the public against any advertisements
 - 2. raising any suo-moto complaints against any advertisements
 - 3. deciding on appropriate corrective action including levying penalty in case of advertisements deemed to be misleading or in Breach of the law such as Drugs and Magic Remedies Act etc., on the Advertiser.
- (ii) ASCI proposes that CCPA should engage with the ASCI as a PPP model supporting and strengthening Self-Regulatory mechanism, truly demonstrating "More Governance and less Government".

6. The witness responded to the queries raised by the Chairperson and the other members of the Committee during the deliberation.

7. The Hon'ble Chairperson then thanked the witness for appearing before the Committee and sharing their views with them in a free and frank manner.

[The witnesses then withdrew.]

[At about 1205 hrs, representatives of the NASSCOM were called in]

8. After welcoming the witnesses, the Hon'ble Chairperson mentioned that under the provisions of Direction 55(1) of the Directions by the Speaker, the discussions held were to be confidential before the Committee present their report to the Parliament. He also mentioned that under the provision of Direction 58, though the witness might desire their evidence to be treated as confidential such evidence is liable to be made available to the members of Parliament.

9. The witness briefed the Committee and following were some of the important points that emerged during the deliberations of the Committee:-

(i) In Clause 2.1, exclude "invoice" from the definition of "advertisement"

(ii) In Clause 2.7.vii, this provision needs to be reviewed to enable online single click contracts.

(iii) In Clause 2.16, should replace existing clause with "electronic intermediary' shall have the same meaning as ascribed to it in the Information Technology Act, 2000 as amended"

(iv) In Clause 2.30, 2.31 & 2.32, expand provision 2.30 to include a reference to the definition for service, for consistency across 2.31 and 2.32 (which also refer to service providers).

(v) In Clause 2.41.(H), in the last line the term stipulated should be followed by terms of sale. As a whole this should read as: "after selling such goods and rendering of such services, refuses to take back or withdraw the goods or withdraw or discontinue the service and refuses to refund the consideration thereof, if paid, within a period of thirty days after the receipt of goods or availing of services if it is so stipulated by the terms of sale and requested by the consumer;"

(vi) In Clause 80(2), consider introducing a clause that mandates warranties across all channels including **online** will be honoured equivocally.

10. The queries raised by the Chairperson and Members of the Committee during the course of the deliberation were responded to by the witnesses. The Hon'ble Chairperson then thanked the witnesses for appearing before the Committee and sharing their views with them in a free and frank manner.

[The witnesses then withdrew.]

A verbatim record of the proceedings was kept.

The Committee then adjourned.

ANNEXURE - XII

MINUTES OF THE THIRTEENTH SITTING OF THE STANDING COMMITTEE ON FOOD, CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION (2015-16) HELD ON TUESDAY, 02 FEBRUARY, 2016

The Committee sat from 1100 hrs. to 1210 hrs. in Committee Room 'B', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri J.C. Divakar Reddy - Chairperson

Members

Lok Sabha

2. Shri Babu Lal Chaudhary
3. Shri Dharmendra Kumar
4. Shri Ravinder Kushawaha
5. Dr. Swami Sakshi Maharaj
6. Shri R. K.Bharathimohan
7. Shri Sunil Kumar Mondal
8. Shri Kamlesh Paswan
9. Shri Ram Chander Paswan
10. Shri Bhola Singh
11. Shri Brijbhusan Sharan Singh

Rajya Sabha

12. Shri Shadi Lal Batra
13. Dr. Bhushan Lal Jangde
14. Shri K.K.Ragesh

Secretariat

1. Shri Lovekesh Kumar Sharma - Director
2. Shri Khakhai Zou - Additional Director

Witness

I. **Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs)**

- | | | | |
|----|-----------------------|---|-------------------|
| 1. | Shri C. Viswanath | - | Secretary |
| 2. | Shri G. Gurucharan | - | Special Secretary |
| 3. | Shri P.V. Rama Sastri | - | Joint Secretary |
| 4. | Shri Anil Bahuguna | - | Joint Secretary |
| 5. | Shri G.N. Sreekumaran | - | Consultant |
| 6. | Shri Anil Srivastava | - | Registrar (NCDRC) |
| 7. | Shri Ravinder Kumar | - | Director |

II. **Ministry of Law & Justice (Legislative Department)**

- | | | | |
|----|----------------------------|---|--------------------------------|
| 1. | Dr. Mukulita Vijayawargiya | - | Additional Secretary |
| 2. | Smt. Veena Kothavale | - | Additional Legislative Counsel |
| 3. | Shri Ishwar Chand Sharma | - | Deputy Legislative Counsel |

At the outset, the Hon'ble Chairperson welcomed the Members of the Committee to the sitting convened to have clause-by-clause consideration of the 'The Consumer Protection Bill, 2015' with the representatives of the Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs) and the Ministry of Law and Justice (Legislative Department).

2. The Hon'ble Chairperson welcomed the representatives of the Ministries to the sitting and mentioned, inter-alia, that whatever discussions held were to be treated as confidential under the provisions of Directions 55(1) of the Directions by the Speaker till the Report of the Committee on the Bill was presented to the House. Thereafter, the Secretary, Department of Consumer Affairs briefed the Committee about their suggestions for amendment to the various clauses of the Bill with the help of power-point presentation. The main suggestions, inter-alia, include the following:-

- (i) The words 'oral or written' may be inserted in Clause 2(1) regarding advertisements;
- (ii) In clause (16), the definition 'electronic intermediary' shall have the same meaning as defined in Section 2(i)(w) of The Information Technology Act, 2000;

- (iii) Entities such as a firm whether registered or not, a Hindu undivided family, a Cooperative Society and a local authority may also be construed as 'person' in Clause (28);
- (iv) In clause (41), the word 'product' may substitute the word 'goods';
- (v) Details of the composition of the Central Consumer Protection Council as well as State Consumer Protection Councils;
- (vi) Functions of the Central Consumer Protection Authority;
- (vii) Details of the composition of the Selection Committee;
- (viii) Powers and functions of the Central Consumer Authority;
- (ix) Suggest that the word 'food' may be replaced by the words 'product or service'.
- (x) Establishment of one or more benches of the National Commission at such places as deem necessary;
- (xi) The word 'any' shall replace the word 'all' in Clause 73(1);
- (xii) Liability of service provider;
- (xiii) Power to make regulations by the Central Authority with the previous approval of Central Government etc.

4. The Hon'ble Chairperson and Members of the Committee also raised queries regarding adulteration of products, misleading advertisements etc. and the need to incorporate in the appropriate place of the Bill provisions for stringent penalties including imprisonment for such defaulters etc.

5. The queries raised by the Chairperson and Members of the Committee during the course of the deliberation were responded to by the witnesses. The Hon'ble Chairperson then thanked the witness for appearing before the Committee and sharing views with them in a free and frank manner.

[The witness then withdrew.]

The Committee then decided to meet again on Monday, 08 February, 2016 for further clause-by-clause consideration of the Bill.

The Committee then adjourned.

ANNEXURE - XIII

MINUTES OF THE FOURTEENTH SITTING OF THE STANDING COMMITTEE ON FOOD, CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION (2015-16) HELD ON MONDAY, 08 FEBRUARY, 2016

The Committee sat from 1510 hrs. to 1555 hrs. in Committee Room 'C', Ground Floor, Parliament House Annexe, New Delhi.

Shri J.C. Divakar Reddy

PRESENT

- Chairperson

Members

Lok Sabha

2. Shri Babu Lal Chaudhary
3. Shri Dharmendra Kumar
4. Smt. Sakuntala Laguri
5. Dr. Swami Sakshi Maharaj
6. Shri R. K. Bharathimohan
7. Shri Sunil Kumar Mondal
8. Shri Ram Chander Paswan
9. Smt. Priyanka Singh Rawat
10. Shri Bhola Singh

Rajya Sabha

11. Shri Shadi Lal Batra
12. Dr. Bhushan Lal Jangde
13. Shri K.K. Ragesh
14. Shri Veer Singh

Secretariat

1. Shri P.V.L.N. Murthy - Joint Secretary
2. Shri H. Ram Prakash - Additional Director
3. Shri Khakhai Zou - Additional Director

Witnesses

I. Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs)

- | | | | |
|----|------------------------|---|-------------------|
| 1. | Shri C. Viswanath | - | Secretary |
| 2. | Shri G. Gurucharan | - | Special Secretary |
| 3. | Shri P.V. Rama Sastri | - | Joint Secretary |
| 4. | Shri Anil Bahuguna | - | Joint Secretary |
| 5. | Shri G. N. Sreekumaran | - | Consultant |
| 6. | Shri Anil Srivastava | - | Registrar (NCDRC) |

II. Ministry of Law & Justice (Legislative Department)

- | | | | |
|----|-------------------|---|-----------------|
| 1. | Shri Udaya Kumara | - | Joint Secretary |
|----|-------------------|---|-----------------|

At the outset, the Hon'ble Chairperson welcomed the Members of the Committee to the sitting convened to have further clause-by-clause consideration of the 'The Consumer Protection Bill, 2015" with the representatives of Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs) and Ministry of Law and Justice (Legislative Department).

[The witnesses were then called in]

2. The Hon'ble Chairperson welcomed the representatives of the Ministries to the sitting and mentioned, inter-alia, that whatever discussions held were to be treated as confidential under the provisions of Directions 55(1) of the Directions by the Speaker till the Report of the Committee on the Bill was presented to the House. Thereafter, the Secretary, Department of Consumer Affairs briefed the Committee about their suggestions regarding misleading advertisements and food adulteration with the help of power-point presentation.

3. The Hon'ble Chairperson pointed out that it is not only 'food adulteration', but efforts be made to prevent 'adulteration of products for human consumption including agricultural inputs like pesticides'. The Hon'ble Chairperson and Members of the Committee also raised queries regarding adulteration of products, misleading advertisements etc. and the need to incorporate provisions for stringent penalties

including imprisonment for such defaulters in the Bill at appropriate places. Further, some Members also wanted that the provision of frivolous or vexatious complaints mentioned at Clause 61 should also be defined in definition clause to avoid any ambiguity.

4. The queries raised by the Chairperson and Members of the Committee during the course of the deliberation were responded to by the witnesses. The Hon'ble Chairperson then thanked the witness for appearing before the Committee and sharing their views with them in a free and frank manner.

[The witness then withdrew.]

The Committee then adjourned.

ANNEXURE - XIV

MINUTES OF THE SEVENTEENTH SITTING OF THE STANDING COMMITTEE ON FOOD, CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION (2015-16) HELD ON MONDAY, 11 APRIL, 2016

The Committee sat from 1030 hrs. to 1210 hrs. in Committee Room 'E', Basement, Parliament House Annexe, New Delhi.

PRESENT

Shri J.C. Divakar Reddy - Chairperson

Members

Lok Sabha

1. Shri Babu Lal Choudhary
2. Shri Sanjay Haribhau Jadhav
3. Shri Dharmendra Kumar
4. Smt. Sakuntala Laguri
5. Dr. Sakshi Maharaj
6. Shri Sunil Kumar Mondal
7. Shri Ram Chander Paswan
8. Shri Bhola Singh
9. Shri Brij Bhusan Sharan Singh
10. Shri Prabhubhai Nagarbhai Vasava

Rajya Sabha

11. Dr. Bhushan Lal Jangde
12. Shri K.K.Ragesh
13. Shri Veer Singh

SECRETARIAT

1. Shri P. V. L.N. Murthy - Joint Secretary
2. Shri Lovekesh Kumar Sharma - Director
3. Shri H. Ram Prakash - Additional Director
4. Shri Khakhai Zou - Additional Director
5. Shri R. C. Sharma - Deputy Secretary

2. At the outset, the Chairperson welcomed the members of the Committee and apprised them that the sitting had been convened to take oral evidence of the representatives of the Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs) in connection with examination of the Demands for Grants (2016-17) and to consider and adopt the draft Report on 'The Consumer Protection Bill, 2015'.

[Witnesses were then called in]

3. XXXXXXXX XXXXXXX XXXXXXX XXXXX XXXXX XXXXXXX

4. XXXXXXXX XXXXXXX XXXXXXX XXXXX XXXXX XXXXXXX

[Witnesses then withdrew]

5. The Committee then took up consideration of the draft Report on 'The Consumer Protection Bill, 2015'. After due discussion, the Committee adopted the draft Report on the Bill without any amendment. The Committee then authorized the Chairperson to finalize the aforesaid Draft Report in the light of the factual verification of the Department concerned, if any, and present the same to Parliament during the current Budget Session.

6. A verbatim record of the proceedings has been kept.

The Committee then adjourned.

XXXXXX Matter not related to the Report.