

Legislative Brief

The Consumer Protection Bill, 2015

The Bill was introduced in the Lok Sabha on August 10, 2015 by the Minister of Consumer Affairs, Food and Public Distribution, Ram Vilas Paswan.

The Bill was referred to the Standing Committee on Consumer Affairs, Food and Public Distribution (Chairperson: Mr. J.C. Divakar Reddy) on August 26, 2015.

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Highlights of the Bill

- ◆ The Bill replaces the Consumer Protection Act, 1986. The Bill enforces consumer rights, and provides a mechanism for redressal of complaints regarding defect in goods and deficiency in services.
- ◆ Consumer Dispute Redressal Commissions will be set up at the district, state and national levels for adjudicating consumer complaints.
- ◆ The Bill establishes a Consumer Protection Authority to investigate into consumer complaints, issue safety notices for goods and services, and pass orders for recall of goods and against misleading advertisements.
- ◆ If a consumer suffers an injury from a defect in a good, he may file a claim of product liability against the manufacturer. The consumer must establish seven conditions in order to prove such a claim.
- ◆ The Bill classifies six contract terms as 'unfair'. These cover terms such as (i) payment of excessive security deposits; (ii) disproportionate penalty for a breach; (iii) unilateral termination without cause; (iv) one which puts the consumer at a disadvantage.

Key Issues and Analysis

- ◆ The Bill empowers the central government to supervise the functioning of, and issue binding directions to the district, state and national consumer redressal commissions. This could affect the independence of this quasi-judicial body.
- ◆ The District Commission, a quasi-judicial body, may be headed by a District Magistrate, who is part of the executive. This could violate the principle of separation of powers between the judiciary and executive.
- ◆ The National Commission, headed by a judicial member and comprising at least 15 technical or judicial members, will examine complaints on questions of law. This could contradict a Supreme Court judgment that questioned the competence of such technical members.
- ◆ In order to claim product liability, a claimant has to establish four kinds of defects in the product, the injury caused from it, and that it belonged to the manufacturer. The claimant must also establish that the manufacturer had knowledge of such a defect. It may be argued that the conditions to establish a product liability claim are unreasonable.
- ◆ The Bill defines product liability to include defects in goods and deficiency in services. However, the conditions to be proven to claim product liability do not include conditions for services. It is unclear how a consumer can claim product liability for deficiency in services under the Bill.

PART A: HIGHLIGHTS OF THE BILL

Context

A consumer is a person who buys a good or avails of a service for a payment.¹ Currently, the Consumer Protection Act, 1986 enforces rights of consumers, and provides for redressal of complaints at the district, state and national level.² Such complaints may be regarding defects in goods and deficiency in services. The Act also recognises offences such as unfair trade practices, which include providing false information regarding the quality or quantity of a good or service, and misleading advertisements.

Over the years, there have been challenges in the implementation of the Act. A high number of consumers were unaware of their rights under the Act.³ In relation to consumer disputes, while the disposal rate of cases was high (about 90%), the time taken for their disposal was long.^{4,5} It took 12 months on an average, to resolve a consumer case, and unresolved cases remained pending for 32 months.⁵ The Act does not address consumer contracts between a consumer and manufacturer that contain unfair terms. In this regard, the Law Commission of India had recommended that a separate law be enacted and presented a draft Bill in relation to unfair contract terms.⁶

In 2011, a Bill to amend the 1986 Act was introduced in Parliament to enable consumers to file online complaints, and against unfair terms in a contract. However, that Bill lapsed with the dissolution of the 15th Lok Sabha.⁷ The Consumer Protection Bill, 2015 was introduced in Lok Sabha on August 10, 2015. The Bill replaces the 1986 Act. The Bill is under examination by the Standing Committee on Food, Consumer Affairs and Public Distribution.

Key Features

Complaints to be filed under the Bill

- A consumer, or anyone on his behalf, may file a complaint on matters like: (i) defect in goods, (ii) deficiency in services, (iii) unfair or restrictive trade practices, (iv) publication of a misleading advertisement, (v) harm caused to the consumer due to a defect in a product or a deficiency in a service, and (vi) unfair terms in a contract.
- Any person may file a complaint against a person who has publicised a misleading advertisement.

Product Liability

- The Bill enables a person to make a claim of product liability against the manufacturer, if he has suffered any injury, property damage or death due to a defect in a product.
- In order to claim the manufacturer's liability, he has to prove all of the following aspects about the product: (i) it contains a manufacturing defect, (ii) it is defective in design, (iii) it did not contain adequate instructions and warnings regarding its correct use, (iv) it did not conform to an express warranty made by the manufacturer or product seller, (v) the person against whom the consumer has filed a complaint is the manufacturer of the product, and (vi) the dangerous aspect of the product was the cause of the harm suffered.
- The claimant would also have to establish that the manufacturer had known or ought to have known of the dangerous aspect about the product that caused the harm.

Unfair terms in contracts

- A contract is said to be unfair if it contains any one of the following six terms: (i) payment of excessive security deposits, (ii) payment of a disproportionate penalty for a breach in contract, (iii) refusal to accept early repayment of debts, (iv) right to terminate the contract without reasonable cause, (v) transfer of a contract to a third party to the detriment of the other party, without that party's consent, or (vi) imposing of any unreasonable charge or obligations which put the consumer at a disadvantage.

Unfair trade practices

- An unfair trade practice includes: (i) making a false statement regarding the quality or standard of a good or service, (ii) selling of goods not complying with standards, (iii) manufacture of spurious goods, (iv) not issuing a receipt for a good or service sold, (v) refusal to withdraw or refund goods or services within 30 days, (vi) disclosing personal information provided by a consumer, to any other person, etc.

Authorities established under the Bill

The Bill establishes various authorities including a regulator, adjudicatory bodies at the district, state and national level, and an advisory body. Details of these bodies are in Table 1 on the next page.

Table 1: Authorities established under the 2015 Bill

Body	Composition	Functions and Powers
Consumer Dispute Redressal Commissions (Quasi-judicial body)	District: Headed by a District Judge or District Magistrate and at least 2 technical members. State: Headed by a current or former High Court Judge and at least 4 technical members. National: Headed by a current or former Supreme Court Judge, and at least 15 judicial or technical members.	Adjudicate disputes related to defective goods and deficient services, based on their value: District: Admits complaints of a value up to Rs 50 lakh; Appeals from its orders lie before the State Commission. State: Admits complaints of a value from Rs 50 lakh to Rs 10 crore; Appeals from its orders lie before the National Commission. National: Admits complaints of a value above Rs 10 crore; Appeals from its orders lie before the Supreme Court.
Consumer Protection Authority (Regulator)	Central Authority: Commissioner (equivalent of Secretary or other eminent persons) and 5 Deputy Commissioners (equivalent of Joint Secretary or other eminent persons). Regional Offices: To be headed by officer of the level of Deputy Commissioner.	Inquire, investigate into complaints, and launch prosecution in a court or commission; Issue safety notices and pass orders in relation to recall of goods, reimbursement of prices, unfair practices, misleading advertisements, unfair contracts, etc.; Impose penalties, including fine.
Consumer Protection Council (Advisory body)	District: District Collector and other members. State: State Minister-in-charge of the Department of Consumer Affairs and up to 10 other members. National: Central Minister for the Department of Consumer Affairs and other members.	Promote and protect 6 consumer rights: (i) be protected against marketing of hazardous goods; (ii) be informed about quality, standards, etc.; (iii) access goods and services at competitive prices; (iv) be heard at forums; (v) seek redressal against exploitation; and (vi) consumer education.
Mediation cells (Alternate dispute redressal)	To be established at the central, state and district levels as prescribed by respective governments.	Settlement of disputes by a mediator [except in cases of grave threats to life, physical or mental injuries].

Sources: The Consumer Protection Bill, 2015; PRS.

Penalties

- If a person does not comply with orders of the district, state or national commissions, he may face imprisonment up to three years, or a fine up to Rs 50,000, or both.
- If a person does not comply with an order issued by the Consumer Protection Authority, he may face imprisonment of up to six months, or a fine of up to Rs 20 lakh, or both.
- The Authority may also impose penalties with regards to the advertisement and production of food. The penalty for publishing a false advertisement would be a fine of up to Rs 10 lakh. The penalty for the manufacture, sale, storage, distribution or import of food containing extraneous matter would be a fine of up to Rs 1 lakh.

PART B: KEY ISSUES AND ANALYSIS

Executive oversight of consumer redressal commissions

The Bill sets up redressal commissions at the district, state and national levels, as quasi judicial bodies for the adjudication of consumer disputes. There are some issues regarding executive supervision of the commissions, and their composition.

Executive supervision of the commissions could impinge upon their independence

Bill: Clauses 59 (4), 81

The Bill empowers the central government to (i) supervise the functioning of, and (ii) issue binding directions to the district, state and national consumer redressal commissions. It may do so to protect the rights of consumers and secure them simple, speedy and inexpensive justice. Such involvement of the executive in the functioning of the redressal commissions could violate the principle of separation of powers, and hence affect their independence. The principle of separation of powers includes independence of the judiciary, and is regarded as a basic feature of the Constitution. The Supreme Court has held that there is to be a separate judiciary free from executive control.^{8,9}

The Bill does not specify what would constitute the supervision of functions or issuance of directions by the central government. Any action of the executive that affects the adjudicatory functions of the commissions could amount to interference in their judicial decision making.

The Consumer Protection Act, 1986 does not provide for such powers to the central government. Further, other laws that set up tribunals such as the Securities Appellate Tribunal, the Telecom Disputes Settlement and Appellate Tribunal, and the Central Administrative Tribunal, etc., do not contain similar provisions.¹⁰

Composition of the District Commission could violate principle of separation of powers

Bill: Clause 27 The Bill states that the District Commission may be headed by a sitting or former District Judge *or* District Magistrate. If it is headed by a District Magistrate, who is part of the executive, the principle of separation of powers may be violated. Also, given that the other two members do not need a judicial background, the Bill permits the District Commission to be composed entirely of non-judicial members. It may be noted that the 1986 Act only permitted a person qualified to be a District Judge to head the Commission.

Inclusion of technical members in the national, state and district commissions

Bill: Clauses 27, 38, 47 The district, state and national commissions may comprise of technical members. It is not clear if the resolution of a consumer dispute would require the expertise of technical members. The Supreme Court has held that technical members could be appointed to tribunals “only if technical expertise is essential and not otherwise”. It gave the example of the Electricity Appellate Tribunal which may require an electrical engineer as a technical member. It said that the indiscriminate appointment of technical members could affect the independence of a tribunal.¹¹

Inclusion of technical members in the National Commission may contradict an SC decision

Bill: Clauses 47 (1), 62 (1) Under the Bill, the National Commission would be headed by a sitting or retired Supreme Court Judge and consist of a minimum of 15 other members, who could be technical *or* judicial. One of the roles of the Commission would include hearing of appeals from orders of the State Commission on substantial questions of law. The composition of the Commission may contradict the principles used in a Supreme Court judgment regarding the composition of the National Tax Tribunal. In that case, the Court questioned the competence of technical members, who may not have any knowledge or experience in the practice of law, in dealing with substantial questions of law.¹²

Unreasonable burden of proof on consumer to claim product liability

Bill: Clauses 72 (1), 73 (1), (2) The Bill permits a person to file a claim against a manufacturer if a defect in a product has caused personal injury, death or damage to property. In order to establish the liability of the manufacturer, the claimant is required to prove *all* of seven conditions with regard to a defective product. It may be argued that the conditions required to prove product liability are unreasonable.

The claimant must prove that the product: (i) had a manufacturing defect, (ii) had a design defect, (iii) contained inadequate instructions for use, (iv) did not conform to an express warranty, (v) belonged to the manufacturer, and (vi) caused the injury. Additionally, the claimant must prove that the manufacturer had knowledge of, or should have reasonably known of the danger associated with the product. It may be noted that *all* of these conditions need to be met. That is, even if one of these conditions is not met, the manufacturer will not be held liable. For example, if the product had no defect in design but contained a manufacturing defect, the manufacturer would not be liable.

Table 2 compares the conditions required to establish product liability in the Bill, with laws in other countries.

Table 2: International comparison of conditions to be proved by a consumer to claim product liability¹³

Conditions to be proven	India (2015 Bill)	United Kingdom	United States*	France	Australia
Defect in a product	(i) manufacturing defect; <i>and</i> (ii) design defect; <i>and</i> (iii) inadequate instructions for use; <i>and</i> (iv) non conformity with express warranty.	Product has a defect.	Manufacturing defect, <i>or</i> design defect, <i>or</i> marketing defect.	Product has a defect.	Product has a safety defect.
Injury caused by defect in product	To be proven by consumer.	To be proven by consumer.	To be proven by consumer.	To be proven by consumer.	To be proven by consumer.
Defective product made by manufacturer	To be proven by consumer.	To be proven by consumer.	To be proven by consumer.	To be proven by consumer.	To be proven by consumer.
Manufacturer's knowledge of defect	To be proven by consumer.	Presumed. Manufacturer to prove otherwise.	Presumed. Manufacturer to prove otherwise.	Presumed. Manufacturer to prove otherwise.	Not specified for injury or property damage. Presumed for death.

Sources: See endnote 13. Notes: * Based on common principles of liability applied across states in the US.

Conditions for establishing a product liability claim for services not specified

Bill:
Clauses 2
(31), 72(1),
73 (1)

The Bill specifies the conditions for establishing a defect in a product to claim product liability. However, it does not lay down conditions for establishing deficiency in services. It may be noted that the Bill defines product liability as the manufacturer's or *service provider's* responsibility to compensate a consumer for injury or damage caused by a defective good or a *deficiency in service*. In the absence of specified conditions, it is unclear how the consumer can claim product liability for deficiency in services under the Bill. For example, any harm caused from inadequate maintenance of electric wiring or poor services rendered by a taxi company fall within the definition of product liability. However, the Bill does not specify the process for making a claim in such cases.

Note that deficiency in certain services are covered under other laws. These include motor vehicle claims (The Motor Vehicles Act, 1988), claims against the railways (The Railway Claims Tribunal Act, 1987), etc.

1. Clause 2 (8), Consumer Protection Bill, 2015.
2. The Consumer Protection Act, 1986, http://www.ncdrc.nic.in/1_1.html.
3. Paragraph 1.14, 'The Consumer Protection (Amendment) Bill, 2011', 26th Report, Standing Committee on Food, Consumer Affairs and Public Distribution, December, 2012, [http://www.prsindia.org/uploads/media/Consumer/SC%20Report-Consumer%20Protection%20\(A\)%20Bill,%202011.pdf](http://www.prsindia.org/uploads/media/Consumer/SC%20Report-Consumer%20Protection%20(A)%20Bill,%202011.pdf).
4. "Total Number of Consumer Complaints Filed/ Disposed since inception Under Consumer Protection Law", National Consumer Dispute Redressal Commission, as on December 31, 2015, <http://ncdrc.nic.in/Statistics.html>.
5. "Implementation of the Consumer Protection Act and Rules", Report no. 14 of 2006, Comptroller and Auditor General of India.
6. 199th Report of the Law Commission of India: Unfair (Procedural and Substantive) Terms in Contract, August 2006.
7. The Consumer Protection (Amendment) Bill, 2011, Ministry of Consumer Affairs, Food and Public Distribution.
8. Keshavananda Bharati v. State of Kerala [1973 (4) SCC 225]; Indira Nehru Gandhi v. Raj Narain, 1975 Supp SCC 1; Chandra Mohan v. State of UP, [AIR 1966 SC 1987]; I.R. Coelho v. State of Tamil Nadu, 2007 (2) SCC 1).
9. R. Gandhi v. Union of India, (2010) 11 SCC 1; All India Judges Association v. Union of India, 2002 (4) SCC 247).
10. Section 15K, Securities and Exchange Board of India Act, 1992; Section 14, the Telecom Regulatory Authority of India Act, 1997; Section 4, The Administrative Tribunals Act, 1985.
11. R. Gandhi v. Union of India, (2010) 11 SCC 1, paragraph 44.
12. Madras Bar Association v. Union of India, 2014 (10) SCC 1, paragraph 83.
13. India: Section 73 (1), Consumer Protection Bill, 2015; United Kingdom: Product Liability and Safety Provisions, Guide to the Consumer Protection Act, 1987, Consumer Affairs Directorate; USA: Product Liability, Legal Information Institute, Cornell University Law School; France: Articles 1386-1 to 1386-18, Liability for Defective Products, French Civil Code; Australia: Sections 138, 141, The Australian Consumer Law.

Annexure: Comparison of the 1986 Act with the 2015 Bill

The Bill introduces provisions related to product liability and unfair contracts. It also creates a regulatory body called the Consumer Protection Authority and permits mediation for settlement of consumer complaints. Table 3 compares the provisions of the 1986 Act with the 2015 Bill.

Table 3: Comparison of the Consumer Protection Act, 1986 with the 2015 Bill

Provision	1986 Act	2015 Bill
Ambit of law	<ul style="list-style-type: none"> All goods and services. Free and personal services are excluded. 	<ul style="list-style-type: none"> All goods and services, including telecom and housing construction, and all modes of transactions (online, teleshopping, etc.). Free and personal services excluded.
Unfair trade practices*	<ul style="list-style-type: none"> Includes 6 types of such practices, like false representation, misleading advertisements. 	<ul style="list-style-type: none"> Adds 3 types of practices to the list, namely: (i) failure to issue a bill or receipt; (ii) refusal to accept a good returned within 30 days; and (iii) disclosure of personal information given in confidence.
Product Liability	<ul style="list-style-type: none"> No provision. 	<ul style="list-style-type: none"> The responsibility of the manufacturer if a defect in a good has caused physical damage, injury or death.
Unfair contracts	<ul style="list-style-type: none"> No provision. 	<ul style="list-style-type: none"> Lists six contract terms which may be held as unfair.
Advisory body	<ul style="list-style-type: none"> Consumer Protection Councils (CPCs), to protect rights of consumers 	<ul style="list-style-type: none"> Bill retains CPCs at the district, state and national level.
Regulator	<ul style="list-style-type: none"> No provision. 	<ul style="list-style-type: none"> Establishes a Consumer Protection Authority, a regulator to enforce consumer rights, pass orders (regarding recall of products, unfair contracts, misleading advertisements, etc), and impose penalties, etc.
Pecuniary jurisdiction of adjudicatory body	<ul style="list-style-type: none"> District: Up to Rs 25 lakh. State: Between Rs 25 lakh and Rs 1 crore. National: Above Rs 1 crore. 	<ul style="list-style-type: none"> District: Up to Rs 50 lakh. State: Between Rs 50 lakh and Rs 10 crore. National: Above Rs 10 crore.
Composition of adjudicatory body	<ul style="list-style-type: none"> District: Headed by current or former high court judge, and 2 other members. State: Headed by current or former high court judge, and 2 other members. National: Headed by current or former Supreme Court Judge, and 4 other members. 	<ul style="list-style-type: none"> District: Headed by person qualified to be a district judge or a <i>district magistrate</i>, and 2 other members. State: Headed by current or former high court judge, and 4 other members. National: Headed by current or former Supreme Court Judge, and at least 15 other members.
Alternate dispute redressal mechanism	<ul style="list-style-type: none"> No provision. 	<ul style="list-style-type: none"> Mediation cells are to be attached to consumer dispute redressal agencies at the district and state and national level.
Penalties	<ul style="list-style-type: none"> Failure to comply with an order of the district, state or national commissions will attract a penalty of imprisonment of up to three years, or fine of up to Rs 10,000, or both. 	<ul style="list-style-type: none"> Same as under the Act, except that the fine has been increased to Rs 50,000. Failure to comply with an order issued by the Consumer Protection Authority will attract an imprisonment of up to six months, or a fine of up to Rs 20 lakh, or both. Penalty for publishing a false advertisement of food will be a fine of up to Rs 10 lakh. Penalty for manufacture, sale, storage, distribution or import of food containing extraneous matter will be a fine of up to Rs 1 lakh.

Note: *Defined as deceptive practices to promote the sale, use or supply of a good or service.

Sources: Consumer Protection Act, 1986; Consumer Protection Bill, 2015; PRS.

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