

RGICS



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RGICS LEGISLATIVE BRIEF

(February, 2018)

The Consumer Protection Bill, 2018

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RGICS Legislative brief

The Consumer Protection Bill, 2018

2

KEY MESSAGES

Introduces Class Action Suits for the first time: The Bill will introduce class action lawsuits to India, which means that a group of people with the same or similar injuries caused by the same product or action can sue the company as a group. If the verdict goes in their favor, all consumers in the group stand to benefit.

Does not do enough to ensure the quality and safety of products and services: As per the Bill, the national regulator (CCPA) will focus more on matters relating to violation of consumer rights, unfair trade practices and false or misleading advertisements than on enforcing one of the most crucial right of the consumer, right to safe goods and services thus providing for protection of the interests of consumers which is also stated as the purpose of the Bill.

Major definitions left vague will mean dilution of objectives of the Bill: Bill needs to clearly state what does it mean by misleading advertisements, due diligence and the parameter for the process of exercising it in case of misleading advertisements with adequate justification so as to avoid any ambiguity.

Does not envisage an accessible and credible mechanism whereby both, consumers and celebrities can verify quality of products and services: While holding both the endorser and manufacturer accountable for product quality is a positive move, there is no repository of information envisaged where both consumers and endorsers can verify the quality of products and services that comes in the market. It is important for the government to ensure eco-system/processes via a central agency that ensures that products/services meet an acceptable quality standard, as practiced internationally.

Lacunae in Bill may lead to higher costs being borne by the consumer: As the Bill fails to clarify what will be considered as ‘due diligence’ and its mechanism, the endorser will have to take help of a third party agency, cost which will be added to their fee, which in turn will be added to the cost borne by the manufacturer and passed on to the end consumer.

Provisions for product liability maybe too loose: While the Bill holds the manufacturer and endorser liable for product performance and misleading advertisements, it also provides them a fairly easy escape mechanism under certain circumstances, which defeats the intent and purpose of the provision.

Bill contains nothing to address lack of accountability as far as e-commerce platforms are concerned: Although the Bill proposes to empower the Centre to make rules for preventing unfair trade practices in online trade, unfortunately, the proposed law does not have any provision to counteract Section 79 that favors the e-retailers as it allows them to continue to benefit from their status of being mere intermediaries.

RGICS Legislative brief

The Consumer Protection Bill, 2018

3

PART I. INTRODUCTION

The Consumer Protection Act, 1986 was enacted to provide for better protection of the interests of consumers and for the purpose of making provision for establishment of consumer protection councils and other authorities for the settlement of consumer disputes, etc. However, there are several shortcomings in the proposed bill.

The 2015 Bill was introduced in Lok Sabha on August 10, 2015 sought to: (i) establish a regulatory body to enforce consumer rights, (ii) establish redressal agencies to adjudicate consumer disputes, (iii) enable consumers to file claims for product liability, and (iv) define unfair contracts and allow consumers to file complaints against them. It was later sent to the Standing Committee on Food, Consumer Affairs and Public Distribution (Chair: Mr J. C. Divakar) and the committee submitted its report on the Consumer Protection Bill, 2015 on April 26, 2016.

The Consumer Protection Bill 2018 was supposed to have taken the committee's views into consideration and is considered to be an important bill as it proposes to completely overhaul the current laws stipulated under the archaic Consumer Protection Act, 1986. While most of the changes sought by the committee have been included, some provisions regarding definitions, penalties on endorsers, e-commerce complaints, laboratories for adulterated food have not been clearly outlined, thus leaving room for misinterpretations/ambiguity.

The following table has looked at key aspects of the Bill and lists the differences between both the Consumer Protection Bill 2015 and the newly introduced Bill 2018 along with the recommendations of the Committee Report of 2016, on the same:

| Key Features | Consumer Protection Bill 2015 ¹² | Views of Standing Committee 2016 based on the 2015 Bill ³ | Provisions in the 2018 Bill ⁴ based on the earlier Bill and report | Comments-Impact on the consumers |
|--------------------------|---|--|---|---|
| Definition of a Consumer | A consumer is defined as a person who buys any good or avails a service for a consideration. It does not include a person who obtains a good for resale or a good or service for commercial purpose. It covers transactions through all modes including offline, and online through electronic means, | | No change | In the era of increased online shopping it is a welcome move by the government that it has focused on unfair trade practices on online trade. However government must take cognizance of the fact that e-commerce transactions differ in certain respects from an ordinary contract, and there is a need for separate |

¹ <http://www.prsindia.org/uploads/media/Consumer/Consumer%20Protection%20bill,%202015.pdf>

² http://ncdrc.nic.in/bare_acts/Consumer%20Protection%20Act-1986.html

³ <http://www.prsindia.org/uploads/media/Consumer/SCR-%20Consumer%20Protection.pdf>

⁴ http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/1_2018_LS_Eng.pdf

RGICS Legislative brief

The Consumer Protection Bill, 2018

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| | <p>teleshopping, multi-level marketing or direct selling.</p> <p>To address emergence of global supply chains, rapid development of e-commerce and to tackle misleading advertisements, telemarketing, multi-level marketing and direct selling the Bill also attempts to define e-commerce. At the same time, it endeavours to empower the Centre to make rules for preventing unfair trade practices in online trade.</p> | | | <p>section to effectively deal with the issues of e-commerce. Else section 79 of the IT Act will allow the online platforms to escape liability as intermediaries leaving the consumers with no major relief</p> |
| <p>Rights of consumers</p> | <ul style="list-style-type: none"> i. the right to be protected against the marketing of goods and services which are hazardous to life and property; ii. the right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be so as to protect the consumer against unfair trade practices; iii. the right to be assured, wherever possible, access to a variety of goods and services at competitive prices; iv. the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate forums; v. the right to seek redressal against unfair trade | <p>The Committee recommended that the Bill should expand the rights of consumers to include the right to terminate a contract based on the quality of goods and services.</p> | <p>The recommendation on termination a contract based on the quality of goods and services is missing</p> | <p>Even though the Bill gives power to the consumers to hold contracts as unfair under six specified conditions, by not including this recommendation by the committee, the government indirectly allows poor quality goods and services to be offered in the market putting the lives of the consumers at risk..</p> |

RGICS Legislative brief

The Consumer Protection Bill, 2018

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| | <p>practices or restrictive trade practices or unscrupulous exploitation of consumers; and</p> <p>vi. the right to consumer education.</p> | | | |
| Central Consumer Protection Authority | <p>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.</p> | <p>The Committee stated that this function of the CCPA overlaps with the functions of the commissions. It therefore recommended that the CCPA should not be vested with any judicial powers.</p> | <p>The recommendation has not been incorporated. Instead the CCPA will now have an investigation wing, headed by a Director-General, which may conduct inquiry or investigation into violation of consumer rights. Its functions include, inquiring into violations of consumer rights, investigating and launching prosecution at the appropriate forum; (ii) passing orders to recall goods or withdraw services that are hazardous, reimbursement of the price paid, and discontinuation of the unfair trade practices, as defined in the Bill; (iii) issuing directions to the concerned trader/ manufacturer/ endorser/ advertiser/ publisher to either discontinue a false or misleading advertisement, or modify it; (iv) imposing penalties, and; (v) issuing safety notices to consumers against dangerous or unsafe goods and services.</p> | <p>The powers of the Central Consumer Protection Authority and the commission's need to be separated to allow the judiciary (commissions) to function independently. Hence as per the current Bill it allows CCPA, apart from its main functions to intervene in any proceedings before the District Commission or State Commission or National Commission, as the case may be, in respect of any allegation of violation of consumer rights or unfair trade practices. The step as a result may not result in speedy trial for the consumer as it aims to do.</p> |
| Penalties for misleading advertisement | <p>The Bill includes the presentation of misleading advertisements under the definition of unfair trade</p> | <p>The Committee recommended that strict penalties to deal with misleading advertisements should be included in the</p> | <p>The recommendation has been incorporated but with exceptions. Any manufacturer or service provider who causes</p> | <p>Even though the recommendation of holding the endorsers responsible for misleading advertisements is a positive step, the practice of</p> |

RGICS Legislative brief

The Consumer Protection Bill, 2018

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| | practices. | Bill. It suggested a fine of Rs 10 lakh or an imprisonment of two years or both, to deter such advertisements. It also suggested that these penalties be applicable to the persons who endorse the products in the advertisements | <p>a false or misleading advertisement to be made which is prejudicial to the interest of consumers shall be punished with imprisonment for a term which may extend to two years and with fine which may extend to INR 1 Million, for the first offence; and for every subsequent offence, be punished with imprisonment for a term which may extend to five years and with fine which may extend to INR 5 Million.</p> <p>Instead of jail term, celebrities endorsing misleading ads will have to pay penalty of up to Rs. 50 lakh and serve a ban of up to three years. However it does provide a way out to for the endorsers if they have practiced due diligence, the mechanism of which are not specified.</p> | due diligence as prescribed in the Bill will ultimately burden end consumers who would have to pay a higher cost for the product. Hence in its present form this provision will not be beneficial for the consumers. |
| Product liability | The 2015 Bill defines 'product liability' as the manufacturer's or service provider's responsibility to provide compensation for an injury caused by a defective product or deficiency in services. The Bill specifies six conditions regarding a defective product which are to be proven by a consumer in order to claim product liability | The Committee has noted that it is unclear if deficiency in services is covered under the Bill. The Committee also observed that this puts an undue burden on the consumer, since he will not be able to claim liability if any one of the conditions are not met. It recommended that the provision be redrafted such that the consumer has to prove any one of the conditions instead of all six of them | The recommendations have not been fully incorporated. It is unclear how the consumer can claim product liability for deficiency in services under the Bill in the absence of specified conditions A product manufacturer shall be liable in a product liability action, if— (a) the product contains a manufacturing defect; or (b) the product is defective in design; or (c) there is a deviation from manufacturing | The provisions stated under this particular section need more clarity; the provision can create a regulatory loophole and keep manufacturers out of the purview of prescribed penalties. |

RGICS Legislative brief

The Consumer Protection Bill, 2018

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| | | | <p>specifications; or (d) the product does not conform to the express warranty; or (e) the product fails to contain adequate instructions of correct usage to prevent any harm or any warning regarding improper or incorrect usage..In additions, to claim compensation, a consumer has to prove any one of the conditions for defect or deficiency, as specified in the Bill. In addition, liability on manufacturers and service providers, online and offline, will not be primarily limited to any consumer who buys goods or avails service but towards all consumers i.e., introducing the idea of class action suits to the masses and allowing a majority of consumers to gain benefit at once. However it also provides the manufacturer a way out under certain circumstances such as if the consumer was under the influence of alcohol while using the product or for failure to instruct or warn about a danger which is obvious or commonly known to a consumer. In a country where a high percentage of consumers are largely ignorant about the safe usage of a product, this provision could simply take away the rights of consumers.</p> | |
| Consumer Disputes Redressal | The Bill established Consumer Dispute Redressal Commissions at the national, state and district levels. Under | The Committee recommended that the jurisdiction of district commissions may be raised | The recommendations have been incorporated with additions. | The overall provisions proposed under the Consumer Disputes Redressal Commission section |

RGICS Legislative brief

The Consumer Protection Bill, 2018

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| <p>Commission</p> | <p>the Bill, consumer disputes regarding goods or services with a value of up to Rs50 lakh will go to the district commission, and those with a value of up to Rs 10 crore will go to state commissions.</p> | <p>to Rs 1 crore.</p> <p>.</p> <p>The Bill also stated 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.</p> | <p>The Pecuniary Jurisdiction of the Consumer Disputes Redressal Agencies has been revised. As per the rules, the jurisdiction of the District Forums has now been extended to INR 10 Million from the earlier limit of INR 2 Million. Similarly, the State Forums can now entertain complaints where the value of dispute exceeds INR 10 Million, but does not exceed INR 100 Million. Finally, the National Forums can now entertain complaints where the value of the disputes exceeds INR 100 Million. The three-tier structure for adjudicating consumer disputes still remains in the form of district forums, state and national commissions but with enhanced values at each level, considering the current market realities.</p> <p>Further, provision of “Mediation” as an Alternate Dispute Resolution Mechanism has also been provided.</p> <p>The District Commission shall now consist of a President; and not less than two and not more than such number of members as may be prescribed, in consultation with the Central Government. However, The Central Government may, by notification, make rules to provide for the qualifications, method of recruitment, procedure</p> | <p>including the provision of “Mediation” as an Alternate Dispute Resolution Mechanism uphold the recommendations of the committee making it more convenient for the consumers.</p> <p>However, the government needs to make sure that it does not interfere too much in the functioning of the commissions affecting their independent functioning</p> |
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RGICS Legislative brief

The Consumer Protection Bill, 2018

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| | | | for appointment, term of office, resignation and removal of the President and members of the District Commission | |
| Adulterated food | Not specific mention in the Bill | The Committee recommended that well-equipped laboratories should be established in the country to deal with the issue of adulteration of products such as food, drugs, fertilizers, seeds, etc. It also recommended a penalty of a fine of Rs 10 lakh, imprisonment of 2 years, and a suspension of license for two years, for the adulteration of these products. | <p>The recommendations have been incorporated with additions. The Bill proposes that if the party is found guilty of adulteration and results in the death of a consumer, the offender is liable with imprisonment for a term which shall not be less than 7 years, but which may extend to imprisonment for life and with fine which shall not be less than INR 1 Million.</p> <p>In case of causing injury not amounting to grievous hurt to the consumer, with imprisonment for a term which may extend to one year and with fine which may extend to three lakh rupees;</p> <p>And causing injury resulting in grievous hurt to the consumer, with imprisonment for a term which may extend to seven years and with fine which may extend to five lakh rupees.</p> | The overall provisions proposed under the Adulterated food section are positive. However, the Committee's view on equipped laboratories is not mentioned in the Bill and should be taken seriously as the CAG too in its recent report on the functioning of the FSSAI has raised concerns regarding the poor condition of the laboratories functioning under latter. |
| Unfair contracts | The Bill defined unfair contracts as contracts between consumers and manufacturers, which contain any of six specified terms of | The Committee recommended that the Bill should lay down principles which would determine whether contract term is | The recommendation has been incorporated. | This is a positive step by the government as it holds the manufacturer/company responsible for any defect/issues with the |

RGICS Legislative brief

The Consumer Protection Bill, 2018

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| | contracts. 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. | unfair. This would allow terms of contracts other than the specified six to be classified as unfair. | | product/ services |
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RGICS Legislative brief

The Consumer Protection Bill, 2018

11

PART III: THE [PROPOSED] BILL

The Consumer Protection Bill, 2018 was introduced in Lok Sabha by the Minister of Consumer Affairs, Food and Public Distribution, Mr. Ram Vilas Paswan on January 5, 2018. It replaces the Consumer Protection Act, 1986. A Consumer Protection Bill to replace the Act was introduced in 2015, but has been withdrawn post the introduction of the 2018 Bill. Key features of the 2018 Bill include

- For the first time, India will have a Central Consumer Protection Authority, which will act as a national regulator for the protection of consumer rights. Designed along the lines of the United States Federal Trade Commission, this agency will have the power to take suo motu action against companies indulging in unfair trade practices, misleading advertisements and violation of consumer rights to the detriment of consumers.
- The Bill will introduce class action lawsuits to India, which means that a group of people with the same or similar injuries caused by the same product or action can sue the company as a group. If the verdict goes in their favor, all consumers in the group stand to benefit. In the event of a consumer suffering from injury, death or damage resulting from any defect in the product as a result of faulty manufacturing, construction, design, testing, packaging and labeling, among other facets of the production process, the manufacturing company will be held liable
- One of the key new features of the Bill is the provision dealing with disputes that pertain to online purchase. At present, the law isn't clear on refunds or dispute settlement for online shoppers. Moreover, under the present law, a consumer can proceed with legal action against a seller only at the place where the transaction in question is said to have occurred. If the new bill passes, the consumer can file a complaint electronically or at the consumer court closest to his/her residence.
- The new bill also has provisions for hefty penalties and jail terms for adulteration and misleading advertisements by companies. Moreover, celebrities found to endorse such advertisements are liable to pay a hefty fine, endure a ban on any endorsement and even suffer a jail term. In a bid to deter consumers from filing false or frivolous complaints against endorsers, the bill seeks to raise the penalty for doing so from Rs. 10,000 to Rs 50,000.
- The Bill provides for several provisions aimed at simplifying the consumer dispute adjudication process of the Consumer Disputes Redressal Agencies, inter alia, relating to enhancing the pecuniary jurisdiction of the Consumer Disputes Redressal Agencies; increasing minimum number of Members in the State Consumer Disputes Redressal Commissions and provisions for consumers to file complaints electronically, etc.

RGICS Legislative brief

The Consumer Protection Bill, 2018

12

PART IV. CRITIQUE OF THE BILL

Introduces Class Action Suits for the first time: The Bill will introduce class action lawsuits to India, which means that a group of people with the same or similar injuries caused by the same product or action can sue the company as a group. If the verdict goes in their favor, all consumers in the group stand to benefit.

Does not do enough to ensure the quality and safety of products and services: According to Pushpa Girimaji, Consumer Rights columnist and advocate, the Bill, seems to proposing a national regulator (CCPA) which will focus more on matters relating to violation of rights of consumers, unfair trade practices and false or misleading advertisements than enforcing one of the most crucial right of the consumer, right to safe goods and services thus providing for protection of the interests of consumers which is also stated as the purpose of the Bill. As per Ms. Girimaji, the committee constituted in 2014 to draft the new Bill had pushed for the creation of the role of a Commissioner and Deputy Commissioner to be appointed under the authority, and that each members role would be to exclusively look at safety of goods and services, quality assurance and standards, enforcement of consumer protection laws, prevention of unfair trade practices including misleading advertisements. However these aspects of the CCPA which were there in the 2015 Bill have been left out in the revised Bill. This regressive move of the government defeats the very purpose of the legislation.

Major definitions left vague will mean dilution of objectives of the Bill: Misleading advertisements have been debated for years. Legal experts say any ad that falsely describes a product or service or gives a false guarantee could be treated as one. However, the Consumer Protection Act, 1986, does not specify the exact definition of a misleading ad. However, the 2018 Bill states that any manufacturer or service provider, who puts up a false or misleading advertisement, will be punished with imprisonment of up to two years and fine of up to Rs 10 lakh. For every subsequent offence, the offender will be punished with imprisonment that may extend to five years and fine, which may extend to Rs 5 million. Penalty can be imposed on the endorser, who could be a celebrity, but the provision of imprisonment is not applicable to the endorsers. However they shall be banned from endorsing for a period of up to 3 years. This is very similar to the obligation that Advertising Standards Council of India places on celebrities. The ASCI code on celebrity endorsements notes that a “celebrity should do due diligence to ensure that all description, claims and comparisons made in the advertisements they appear in or endorse are capable of being objectively ascertained and capable of substantiation and should not mislead or appear deceptive.”

Issue A: Bill needs to clearly define misleading advertisements: While the advertising industry welcomed the proposed Bill that will safeguard the interests of the consumer, some experts believe that the nuances of the implementation process need further clarity. What is ‘misleading’, and who defines ‘misleading’? Some industry members have expressed concerns about creativity being curbed by this Bill. They believe that ads tend to take some creative liberties and if they do not harm the consumer, they should be permissible. “What is

RGICS Legislative brief

The Consumer Protection Bill, 2018

13

misleading to you may not be misleading to me. This is grey area right now; it as to be formalized⁵. For that the (ASCI) has to define what should be done and how to do it. ASCI now needs to make very clear and explicit guidelines as to what is allowed and what is not.” Moreover, definition of the word 'advertisement' is misleading. Ads are meant to create a larger-than-life image for a brand. Therefore, ads that portray deception are the ones that are harmful rather than misleading.

Issue B- Does not envisage an accessible and credible mechanism whereby both, consumers and celebrities can verify quality of products and services: The other issue with implementation and the concept of misleading is that there is no repository of information where consumers or celebrities can verify claims. The fundamental requirement for the redressal mechanism to work is information symmetry, and for that the Indian marketplace needs a central agency through which consumers can look up to find information about products and services. Thus there should be one place where consumers can go and log a question although many consumers now do that on social media and many brands have responded, but what is the recourse for consumers when brands do not respond? How can the consumer verify that what a brand is claiming is genuine? Even the celebrity cannot verify the same if the consumer cannot do so. .

Therefore, while holding the endorser accountable along with the manufacturer is a positive move, what is needed is a kind of repository of information where both consumers and endorsers can verify the quality of products and services that comes in the market. It is incumbent upon the government to create an eco-system/process/constitute a central agency that ensures that products/goods meet the standard quality requirements irrespective of what they offer, to be sold as a certified safe product as practiced internationally . This will be helpful as it will ensure:

- Sale of safe and quality goods and services in the market
- Promote consumer rights awareness
- Allow the endorser to verify the product in an easy manner before endorsing it.
- It makes it easier for the consumer to identify whether the product is safe for use
- Avoids the scenario of misleading advertisements in the first place

International Leanings not incorporated: Although none of the major economies hold celebrities liable for misleading advertisements, the following table lists out laws pertaining to safety specific regulations practiced in different countries, some of the best practices that should have been referred to while drafting the Bill.

| Country | Name of the Law | The provisions ensuring common Safety Standards that both the manufacturer and the consumer have to adhere to |
|-----------|--|--|
| Australia | Australian Consumer Law (ACL) on product safety under <i>Competition and Consumer Act 2010 (CCA)</i> . | Under the Australian Consumer Law, a common safety standard for the products is made mandatory by either trade practices regulation or |

⁵ Sudip Ghose, Senior VP Sales and Marketing VIP Industries

RGICS Legislative brief

The Consumer Protection Bill, 2018

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| | | <p>Commonwealth Gazette notice published by Australian Standard for the supplier, to check . It is of two types:</p> <ol style="list-style-type: none">1. Safety standards - goods must comply with particular performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging rules.2. Information standards - prescribed information must be given to consumers when they purchase specified goods (e.g. labelling for cosmetics, tobacco products and care labelling for clothing and textile products). |
| France | French Civil Code | <p>The Directorate-General for Competition, Consumer Affairs and Prevention of Fraud is heavily involved in the prevention of accidents occurring in everyday life and has, in this regard, a general competence in dealing with matters of safety of industrial products. It also publishes a list of recall notices of product and several reporting forms of risk products for professionals</p> |
| United States of America | Consumer Bill of Rights, 1962 | <p>Apart from the other essential rights such as right to choice, redressal and information, right to safety was formally enacted in 1972 and is enforced by the federal Consumer Product Safety Commission (CPSC). The CPSC</p> |

RGICS Legislative brief

The Consumer Protection Bill, 2018

15

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| | | has established product standards, testing regulations, and warning labels to assert consumer rights. |
| The United Kingdom | Consumer Contracts and Regulations Act 2014 | There are specific provisions to protect consumers transacting online.). Under UK's E-Commerce Regulations, virtually every commercial website is covered by the Regulations. |

Issue C- Provisions for product liability maybe too loose : Under the CCPA section, while the Bill also states that endorser will be liable to a penalty in cases of false and misleading advertisements, in the subsequent sections, he/she can be let off the hook if the endorser has exercised due diligence to verify the claims. The concern with this clause is that there is no clear definition of due diligence specified in the Bill. Secondly, there is no specified parameter for the process of exercising ‘due diligence. **Therefore, such a provision can create a regulatory loophole and keep celebrities out of the purview of prescribed penalties.** “The bill is a disappointment since on one hand it has penalty provisions for the endorsers and on the other it is giving them a route to get away because the clause of due diligence will act in their defense. This clause negates the penalty provisions of the Bill and would not serve the purpose for which it has been proposed,” says Pushpa Girimaji, consumer rights columnist and consumer safety advocate.

Similarly, under the section of Product liability which is meant to hold the manufacturer accountable for defective and unsafe products, there are circumstances listed in the Bill under whom the product manufacturer shall not be liable for failure to instruct or warn about a danger which is obvious or commonly known to a consumer. In a country where a high percentage of consumers are largely ignorant about the safe usage of a product, this provision could simply take away the rights of consumers. Further, the manufacturer can escape liability by saying that the consumer who filed the complaint was under the influence of alcohol or any form of drug not prescribed by a doctor.

Issue D-Lacunae in Bill may lead to higher costs being borne by the consumer: As the Bill fails to clarify what will be considered as ‘due diligence’ and its mechanism, the endorser will have to take help of a third party agency, cost which will be added to their fee, which in turn will be added to the cost borne by the manufacturer and passed on to the end consumer.

Bill contains nothing to address lack of accountability of e-commerce platforms: For the first time, the bill has brought the e-commerce giants in its broad ambit. However it does not seem to be deal with issue in a comprehensive manner. The legal loophole to be plugged in case of sale of fake goods online is Section 79 of the Information Technology Act, according to advocate Pavan Duggal, a cyber law specialist. “Whenever there is online fraud, e-retailers have been quick to shrug off responsibility by claiming to be intermediaries⁶, Duggal

⁶ Under Section 79 of the IT Act, the word intermediary is defined as “any person who on behalf of another person stores or transmits that message or provides any service with respect to that message and includes the telecom service providers,

RGICS Legislative brief

The Consumer Protection Bill, 2018

16

says. Unfortunately, the proposed law does not have any provision to counteract Section 79 of the IT Act. So, in effect, if a consumer is unaware of fraud and does not request a return within the time period specified in the online seller's trading policy, he will have no recourse available to him at a later date.

Under this scenario, it will not be wrong to suggest that since e-commerce transactions differ in certain respects from an ordinary contract, there is need for separate section to effectively deal with the issues of e-commerce. In the era of increased online shopping, a study conducted by the Indian Institute of Management-Ahmedabad (IIM-A) has stressed on the need for a separate law for e-commerce with a view to protect rights of web consumers in India, on the lines of regulations present in UK and Europe (the European Union has come up with the 'Directive on the Protection of Consumers in respect of distance contract which the Union countries have given effect to. The UK Government too introduced the Consumer Protection Regulations Act in 2000. This was later repealed in June 2014, and replaced by the Consumer Contracts and Regulations act-which had specific provisions to protect consumers transacting online.).⁷ Under UK's E-Commerce Regulations, virtually every commercial website is covered by the Regulations. The UK has overridden the country of origin principle in the Regulations by providing UK enforcement authorities with powers to take measures against information society service providers established outside of the UK but within the EEA if the service provider has been found by the UK authority to have behaved in a manner inconsistent with "any requirement" of the Regulations. Before taking action however, the UK authority is required to ask the Member State in which the service provider is established to take measures against the service provider and given it time to take measures itself and notify the European Commission of its intention to take such measures. Significantly this means that UK regulators can take measures against service providers located elsewhere in the EEA if they felt it was necessary in order to "protect consumers "In this context a re-haul of the applicable laws is essential, to be in tune with the changing business model and facilitate safe e-commerce transactions.

internet service providers, web-hosting service providers, search engines, online-payment sites, online auction sites, online marketplaces and cyber cafes". Intermediaries are not liable for any third party information, data, or communication link made available by them if their function is "limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted; the intermediary does not initiate the transmission, select the receiver of the transmission, and select or modify the information contained in the transmission; and the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the central government may prescribe in this behalf".

⁷AkhileshwarPathak, E-Retailing and the Consumer Protection Bill, 2015: Drawing from the European Union Consumer Directives, Indian Institute of Management Ahmedabad-380 015, India available at http://www.esocialsciences.org/Download/repecDownload.aspx?fname=A20151015101321_20.pdf&fcategory=Articles&Aid=7644&fref=repec

RGICS Legislative brief

The Consumer Protection Bill, 2018

PART V. CONCLUSION

Consumer protection is a crucial issue as the purchase of goods and services entitles the consumer to certain rights which are as follows: Right to Safety, Right to be informed, Right to choose, Right to seek redressal and lastly, Right to consumer education. While certain new provisions of the Bill such as product liability, class action suits, fines regarding misleading advertisements, holding endorsers accountable for any product that they endorse in the market, are positive developments, the issues discussed above should be taken into consideration to ensure consumers from the poor and marginalized sections of society are also able to reap the benefits of proposed Bill. Several loopholes such as misleading definitions, lack of accountability of e-commerce platforms etc should be addressed with the help of experts to be able to achieve the real purpose of the Bill , i.e. protection of consumers.

RGICS Legislative brief

The Consumer Protection Bill, 2018

VI. BACKGROUND INFORMATION/REFERENCE DOCUMENTS

- i. http://ncdrc.nic.in/bare_acts/Consumer%20Protection%20Act-1986.html
- ii. <http://www.livelaw.in/highlights-consumer-protection-bill-2018-read-bill/>
- iii. <http://www.indialegalive.com/special-story/imperfect-legislation-42311>
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