

Consumer Protection (Amendment) Bill, 2011: More power to consumers

The Consumer Protection Act, 1986 (CPA) was a landmark in empowerment of consumers. For the first time, consumers were provided with a simple, legal means of seeking redressal of their grievances against manufacturers and providers of services. But CPA was a Central legislation to be implemented by the state governments. Hence, its efficacy depends upon the state authorities. In fact, initially, state governments were lethargic, so the apex court had to be petitioned to make state governments set up redressal forums under CPA and make them operational.

Now, two and half decades later, the Central government is trying to amend the CPA. The amendments can be broadly divided into two categories: one, widen the scope of the law by adding some new definitions and expanding/widening the scope of some provisions; and two, strengthening the implementation machinery.

Deficiency: The main ground for consumer complaints is 'deficiency'. The scope of deficiency is sought to be enlarged by including acts of omission and commission that result in damage because of negligence or deliberately withholding information from the consumer.

Unfair Trade Practice: Similarly, the scope of the term 'unfair trade practice' is being enlarged by providing three additional clauses in the definition. Failure to provide a bill, cash-memo or a receipt to a consumer will be deemed an unfair trade practice. The consumer will also have a right to return the goods/services within 30 days of purchase and, if the seller fails to do so, it would be taken as an unfair trade practice. While return of goods is understandable, how can a service be returned? It can, at best, be discontinued within 30 days. There is a need for some clarity on this count.

Personal Information: Misuse of personal information by companies/traders is widely prevalent. The amendment proposes to make divulging of personal information to third parties without the permission of the consumer to be an unfair trade practice.

Onerous Contracts: It is not uncommon to find consumers being forced to sign contracts which impose onerous obligations on them. The Bill addresses this issue, to some extent; it is proposed to make contracts requiring a relatively huge security deposit or those which make a consumer pay a huge penalty for any breach that is disproportionate to be treated as an unfair contract.

Online Complaint: Our lives have started revolving around electronic systems; so, the law is being changed to make a provision for online filing of complaints. While, in principle, e-filing should simplify the task of registering complaints by consumers, it is hoped that even redressal would be provided expeditiously.

Most of the other provisions relate to improving the delivery system of justice envisaged under the CPA. The orders passed by the different authorities under CPA will be on par with a decree of the court and will be enforceable by the district collector. In addition, failure to comply with the orders under CPA would result in payment of daily penalty, in addition to the

amount payable under the order. Hopefully, such a provision should make the guilty parties to take the orders of the consumer redressal forums more seriously.

Steps are also proposed to improve the quality of members sitting on the Benches of consumer redressal forums, dispensing justice under CPA, by raising their minimum age; this will ensure that only persons of a certain seniority and experience are eligible to occupy the positions. Assistance of experts can be sought by the National Commission to help in cases as it may deem fit.

The Central government intends to keep a tab on the pendency of cases before the different authorities under CPA and each of them will be required to furnish the relevant information periodically.

Taken together, all the proposed amendments should help improve the functioning of the authorities under CPA; yet, much will depend on the seriousness with which the state governments respond to the changing needs over time.

Will our interests be better-protected with a new law?

- The Consumer Protection (Amendment) Bill, 2011 was introduced in the Lok Sabha on December 16, 2011 by Mr. K.V. Thomas. It has been referred to the Standing Committee on Food, Consumer Affairs and Public Distribution.
- The Bill defines unfair contract to include a contract which has one or more of the following clauses (a) excessive security deposit; (b) imposition of disproportionate penalty; (c) refusal to accept early repayment of debt and; (d) termination of contract without reasonable cause.
- Under the Bill unfair trade practice includes a (i) a failure to take back the goods or withdraw the services within a period of 30 days after the receipt of the goods by the consumer; and (ii) disclosure of confidential personal information.
- Under the Act, a maximum of two members are to be appointed to the District Forum. The Bill proposes that a minimum of two members should be appointed and the maximum number of members should be prescribed by the state government.
- Under the Act, the state government appoints the members of the District Forum on the recommendation of the Selection Committee. The Bill proposes that the state government may refer back the recommendation to the Selection Committee if in its opinion the nominee is not fit to be appointed.
- The Bill empowers the state government (in consultation with the State Commission) to notify places other than the district headquarters from where the District Forum may perform its functions.

- The Bill permits online filing of complaints. Under the Act, the admissibility of a complaint has to be decided within 21 days from date on which the complaint was received. The Bill proposes to increase it to 28 days.
- The Bill increases the minimum age of members from 35 years to 45 years in the case of State Commission and from 35 years to 55 years in the case of National Commission. It also increases the years of experience required to be appointed as members from 10 years to 20 years in the case of the State Commission and from 10 years to 30 years in case of the National Commission.
- Under the Act, a maximum of 50 per cent of the members of the National Commission are required to be persons having a 'judicial background.' The Bill defines the term 'judicial background' to include present and former judges of a High Court or the Supreme Court of India.
- The State Commission or the National Commission have been empowered to seek assistance from any individual or organisation if it believes that it involves the larger interest of consumers.
- The Bill provides that the orders of the District Forum, State Commission or National Commission shall be enforceable as a court decree. It levies a penalty if the order of the District Forum, State Commission or National Commission is not complied with.
- The penalty imposed shall not be less than Rs 500 or 50 percent of the value of the order whichever is higher. The Bill also gives the District Forum, State Commission or the National Commission the power to attach the property of the defaulting person.
- The District Forum, State Commission and the National Commission shall publish the data regarding the pendency of cases before it on their respective websites.
- Under the Bill the National Commission shall periodically furnish to the Central Government information regarding the cases pending before it. The State Commission shall furnish information to the state government regarding the cases pending before it.