Consumer Protection act

Part of: GS-II- Rights/Consumer rights (PT-MAINS-PERSONALITY TEST)

The Lok Sabha passed the Consumer Protection Bill 2019 after due consideration and discussion. The Union Minister for Consumer Affairs, Food and Public Distribution said that the bill aims at protecting the interests of consumers by establishing authorities for timely and effective administration and settlement of consumers’ dispute, to simplify a number of rules, quick redressal of their complaints and consumers will be able to get speedy justice. He said the government aims to simplify the entire process of redressal of consumer grievances.

Under the Bill, there is provision for central government to set up a Central Consumer Protection Authority (CCPA) to promote, protect and enforce the rights of consumers and will be empowered to investigate, recall, refund and impose penalties. It will regulate matters related to violation of consumer rights, unfair trade practices, and misleading advertisements. There is also a provision for class action law suit for ensuring that rights of consumers are not infringed upon. The authority will have power to impose a penalty on a manufacturer or an endorser of up to 10 lakh rupees and imprisonment for up to two years for a false or misleading advertisement.

Several countries like Canada, Estonia have devised advertisement regulations for unhealthy foods targeted at children. Countries such as the UK, Ireland and Belgium have specifically banned celebrity endorsement of unhealthy foods. The impact of such restrictions has been reported to be significant.

The present passed Bill seeks to replace the three-decade-old Consumer Protection Act, 1986.

Salient Features of the Bill

1. Central Consumer Protection Authority (CCPA): Executive Agency to provide relief to a class of consumers. The CCPA will be empowered to-
   a. Conduct investigations into violations of consumer rights and institute Complaints /Prosecution
   b. Order recall of unsafe goods and services
   c. Order discontinuance of Unfair Trade Practices and Misleading Advertisements
   d. Impose penalties on Manufactures /Endorsers /Publishers of Misleading Advertisements

2. Simplified Dispute Resolution process
   i) Pecuniary Jurisdiction enhanced to-
      • District Commission –Up to Rs1 crore
      • State Commission- Between Rs1 crore and Rs 10 crore
      • National Commission –Above Rs.10 crore
   ii) Deemed admissibility after 21days of filing
   iii) Empowerment of Consumer Commission to enforce their orders
   iv) Appeals only on question of law after second stage
v) Ease of approaching consumer commission

- Filing from place of residence
- E-filing
- Videoconferencing for hearing

3. Mediation

- An Alternate Dispute Resolution (ADR) mechanism
- Reference to Mediation by Consumer Forum wherever scope for early settlement exists and parties agree for it.
- Mediation cells to be attached to Consumer Forum
- No appeal against settlement through mediation

4. Product Liability

A manufacturer or product service provider or product seller to be responsible to compensate for injury or damage caused by defective product or deficiency in services

The Basis for product liability action will be:

- Manufacturing defect
- Design defect
- Deviation from manufacturing specifications
- Not conforming to express warranty
- Failing to contain adequate instruction for correct use
- Services provided are faulty, imperfect or deficient

New Bill- Benefit to Consumers

Presently Consumer only have a single point of access to justice, which is time consuming. Additional swift executive remedies are proposed in the bill through Central Consumer Protection Authority (CCPA)

Deterrent punishment to check misleading advertisements and adulteration of products

Product liability provision to deter manufacturers and service providers from delivering defective products or deficient services

Ease of approaching Consumer Commission and Simplification of Adjudication process

Scope for early disposal of cases through mediation

Provision for rules for new age consumer issues: e-commerce & direct selling

Rights of consumers: Six consumer rights have been defined in the Bill, including the right to:

1. be protected against marketing of goods and services which are hazardous to life and property;
2. be informed of the quality, quantity, potency, purity, standard and price of goods or
services;
3. be assured of access to a variety of goods or services at competitive prices; and
4. seek redressal against unfair or restrictive trade practices.

The bill proposes strict action against the advertiser in case of misleading advertisements but not against the media through which the advertisement is being publicised.

Celebrities can be fined up to ₹10 lakh. For repeat offences, this may rise to ₹50 lakh, with a jail term of up to five years.

Concerns

The principle of separation of powers:

- The Bill does not specify that the Commissions will comprise a judicial member. If the Commissions were to have members only from the executive, then the principle of separation of powers may be violated. This is in contrast with the existing Consumer Protection Act, 1986, which states that the Commissions at various levels will be headed by a person qualified to be a judge.

Independence of these quasi-judicial bodies:

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

Qualification:

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

Advisory function:

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

Unfair trade by rivals and penalizing misleading celebrity endorsement:

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

Standing Committee recommendations not addressed:

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

Suggestion for Improvement

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

Way Forward:

Misleading ads, tele-marketing, multi-level marketing, direct selling and e-commerce pose new challenges to consumer protection and will require appropriate and swift executive intervention to prevent consumer detriment.

However, certain issues such as the appointment of mediators to settle disputes are contentious as this would lead to arm-twisting of the weaker parties and may encourage corruption.

The Bill does not address the fundamental problem of protracted and complicated litigation, the bane of consumer forums constituted under the Consumer Protection Act of 1986. Instead, it provides an alternative to the consumer forums, in the form of mediation.

The setting up of a Consumer Authority and absence of provisions to streamline the conducting of cases in courts may only lead to greater regulations and complexities.

Addressing these issues is necessary to ensure that the new amendments bring about definitive improvements in the CPA.

Conclusion:
India is likely to cross China’s population by 2024 and consumerism is growing fast.

With the passage of the Consumer Protection Bill in Parliament, consumer rights are set to receive a massive boost. The new regulations put more responsibility on companies for misleading advertising and faulty products.

In a global first, it also lays out penalties for celebrities endorsing or promoting false advertising and adulterated goods.

The emergence of global supply chain, rise in global trade and rapid development of e-commerce have led to a new delivery system for goods and services and also provided new options and opportunities for consumers.