

CONSUMER PROTECTION BILL 2015 - NOTION OF LIABILITY RE-DEFINED?

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ABSTRACT

Liberalized economic progress across the globe has set the Consumers' Sovereignty as a standard and the recent move to place the Consumer Protection Bill 2015 in Indian Parliament is nothing but the cohesive approach towards the globalization and the incorporation of more democratized norms to promote: a) an efficient market economy; and b) the consumers' sovereignty. With the introduction of Consumer Protection Bill 2015 which seeks to replace the old Consumer Protection Act 1986, we are witnessing a paradigm shift in our Consumer Protection Laws. This article is an attempt to give a brief overview of the key changes that have been introduced in the bill with a specific focus on the notion of liability. The main endeavour of author(s) is to point out the lacunas in the present bill along with few suggestions and see how the present bill if results into an Act will affect the realm of Liability Standards within the ambit of 'Consumer Protection Act in India'.

I. INTRODUCTION

The Consumer Protection Bill, 2015,¹ which was introduced in Lok Sabha on August 10, 2015 by the Minister of Consumer Affairs, Food and Public Distribution, Mr. Ram Vilas Paswan has always been talk of the town for several reasons since its introduction. This present bill seeks to replace the existing 'Consumer Protection Act 1986' with a view to widen the ambit and modernise the law on consumer protection so that it can cater to the needs of the changing market.² Industrial revolution which is the catalyst behind the growth of international trade and

¹ Bill No.226 of 2015 Also available at < <http://consumeraffairs.nic.in/writereaddata/CP%20Bill%202015.pdf> >

² Available at <<http://www.prsindia.org/billtrack/the-consumer-protection-bill-2015-3965/>> last accessed on, 27/12/2015.

commerce has expanded the horizon of business and trade. It has resulted in providing or making available to the consumers, variety of goods and a host of services like insurance, transport, electricity, housing, entertainment, finance and banking etc. But, at the same time it also exposes the consumer to various risks. Consumer³ forms the bedrock of any industrialized society and is the epicentre of all the activities of market economy where the activities such as production, supply and distribution of goods and services takes place. With the advent of globalisation, integration, mutual co-operation and consensus between the countries at the global arena market activities are now not just confined to a particular territory rather it has transcended the geographical boundaries and have traversed a long trajectory of growth. Recognizing its potential, countries across the globe have realised that protecting & creating consumer awareness which results in a sound consumer base should be of paramount importance. Realising the need of the hour India too has leapfrogged from its obsolete laws by introducing the new Consumer Protection Bill 2015 (hereinafter bill) to remain at par with the changing landscape of the global competitive market.

II. KEY CHANGES WHICH HAVE BEEN INTRODUCED INTO THE BILL

With the introduction of Consumer Protection Bill 2015⁴ we are certainly entering into a new regime of consumer protection laws in India with a hope to remain at par with the dynamic market along with the ever changing consumer base and its priorities. The said bill undoubtedly is a laudable step by the legislature and a significant stride in addressing the concerns of the burgeoning consumer base of our country. However at the same time the said bill has also been fraught with certain lacunas & confusions which need to be properly addressed before its enforcement in order to achieve its true purpose. Now, let us give a brief overview of the changes which has been introduced in the bill.

A. Establishment of Consumer Protection Authority

The instant bill seeks to establish a 'Central Consumer Protection Authority' (hereinafter CCPA) to promote, protect and enforce the rights of consumers.⁵ The bill outlines the main

³ Sec. 2(8) of Consumer Protection Bill 2015 defines consumer as any person who buys any goods for consideration; hires or avails any services for consideration.

⁴ Ibid. 3

⁵ Sec. 11 (1) Chapter. 3 of the Consumer Protection Bill 2015.

object of the CCPA as to protect and enforce the right of consumers, prevent unfair trade practices and ensure that no person is engaged in any unfair trade practices or take part in the publication which is misleading in nature.⁶ It further says that CCPA will carry out the following functions, among others: (i) Inquiring into violations of consumer rights, investigating and launching prosecution at the appropriate forum; (ii) Passing orders for recall of goods, or withdrawal of services and reimbursement of the price paid, and pass directions for discontinuation of unfair trade practices;⁷ (iii) issuing safety notices and order withdrawal of advertisements;⁸ and (iv) declaring contracts that are unfair to a consumer as void.⁹

B. "Consumer Redressal Commission"

The bill proposes to set up 'Consumer Disputes Redressal Commission' at the district, state & central level¹⁰ with a view to facilitate a consumer to file complaint against (i) Unfair or restrictive trade practices, (ii) Defective goods or services, (iii) Overcharging or deceptive charging, (iv) The offering of goods or services for sale which may be hazardous to life and safety, and (v) incurring loss due to an unfair contract.¹¹ Another important aspect which the current bill has introduced is the mediation as a method of resolving consumer dispute whereby it proposes to establish consumer mediation cell and attach it to the 'Redressal Commission' at District, State & Central level.¹² Also there are various other changes which the bill has introduced. The said bill has also defined the powers vested in the district commissions wherein it can remove the defect, replace the good, return the price amount, stop the sale or manufacture of hazardous products, discontinue unfair trade practices or pay compensation for any loss suffered by the consumer.¹³ Failure to comply with an order of any of the commission held a person liable for imprisonment from one month to three years, or with a fine from 10,000 rupees to 50,000 rupees.¹⁴ The Bill provided that the orders passed by the Consumer Court will act as

⁶ Sec 15 Chapter. 3 of the Consumer Protection Bill 2015.

⁷ Sec .16 (1) (x) Chapter. 3 of the Consumer Protection Bill 2015.

⁸ Sec .16 (1) (xii) Chapter 3 of the Consumer Protection Bill 2015.

⁹ Available at <<http://www.prsindia.org/billtrack/the-consumer-protection-bill-2015-3965/>> last accessed on 26/12/2015.

¹⁰ Sec. 26 Chapter.4 of the Consumer Protection Bill 2015.

¹¹ See. Chapter .4 of the Bill Also available at <<http://www.prsindia.org/billtrack/the-consumer-protection-bill-2015-3965/>> last accessed on 26/12/2015.

¹² Chapter .5 of the Consumer Protection Bill, 2015.

¹³ Available at <<http://www.prsindia.org/billtrack/the-consumer-protection-bill-2015-3965/>> last accessed on 26/12/2015.

¹⁴ sec.79 (1) chapter.7 of the Consumer Protection Bill, 2015.

a decree of the civil court¹⁵ which gives more teeth to the consumer court where they can enforce their decree which was taken very casually previously. The bill has also made provisions for admissibility of complaints where it will be deemed as admissible if the question of admissibility is not decided within 21 days. Furthermore, the complaint has to be dealt with within 90 days thereby, increasing the efficiency of the judicial proceedings.

III. PROVISIONS WHICH REQUIRE RE-APPRAISAL

The penalty provisions up to Rs. 10 Lakhs for failure to comply with the order of CCPA¹⁶ has just been confined to the advertisers advertising the food products which is injurious to the mankind. However, for other things we already have district, state and central commission which are taking up the cases of e-commerce entities like Flipkart, Amazon etc. even in the absence of current bill. Therefore, the current mechanism gives rise to the following two different opinions:

- (a.) Whether we should allow the system to use its own intelligence with an overarching kind of a legal framework that has been provided to it and then evolve on its own and have a better law?
- (b.) whether CCPA which is a creation of the current bill should be empowered by broadening its ambit of operation with regard to the penalty provisions for other entities?

Although, we do not have any dissension with the fact that the court may use its interpretative powers to supply the lacuna in the Act, yet it's quite baffling for us to understand that on one hand the legislature states it as its objective citing the changes which form the basis of a new legislation while on the other hand it appears to omit one of the vital functions of its own machinery which it has created to serve its purpose. If this is the way to proceed, it simply puts a question on the rationale behind enacting the Act.

¹⁵ Sec. 33 (11) Chapter.4 of the Consumer Protection Bill, 2015.

¹⁶ Sec. 24(2) Chapter.3 of the Consumer Protection Bill, 2015.

IV. NOTION OF LIABILITY RE-DEFINED?

A. Product Liability: A pioneering step

Strict product liability has its genesis in the concept of strict liability which has its root in the famous case of *Rayland's V. Fletcher*¹⁷. In India, there was no specific statute governing the product liability claims and the term product liability was also not defined under any Indian statute. In the matter of *Airbus Industries Vs. Laura Howell Linton*¹⁸, the Hon'ble High Court of Karnataka has held in a plain and lucid manner that doctrine of Strict Product Liability does not exist in India. However the instant bill has specifically provided the provision for Product Liability which reflects the progressive mind-set of the legislature. The most important aspect which the current bill has brought to fore is the aspect of product liability. A separate provision for '*Product liability*' has been laudable and a noble feature of the bill. It has categorically discussed the concept of product liability¹⁹ and a manufactures liability²⁰. It has been clearly mentioned in the aforesaid provisions that if there is any defect in manufacturing, construction, design, testing, service marketing etc. of a product which results in any personal injury or property damage to a consumer, the manufacturer is to be held liable in a product liability action.

Though this is certainly a welcome step to address the issues of consumer protection, however author(s) here would like to point out a lacuna in one of the key aspect of the abovementioned provision which the legislature has failed to appreciate and has committed a grave error in formulating the instant provision of product liability i.e. exclusion of emotional harm & mental anguish from the scope of personal injury. A close examination of the said provision clearly reflects the escapade of naive attitude of the legislature which might jeopardise the whole intent of introducing the liability standard. Author(s) will take examples from our day to day practice to show how consumer & the consumerism is driven by emotions in our country. To substantiate and support his point of view author(s) will take the help of a factual demonstration in the below mentioned liability of celebrities.

B. Liability of Celebrities

¹⁷ L.R. 3 H.L. 330)

¹⁸ 1994(5)KarLJ63

¹⁹ Sec. 72(1) Chapter.6 of the Consumer Protection Bill 2015.

²⁰ sec.73 (1) Chapter.6 of the Consumer Protection Bill 2015.

The recent Maggi fiasco almost substantiate the fact that existing consumer law has failed to address the consumers' concern and provide them an adequate protection within the realm of marketplace and beyond. The controversy has opened a Pandora's Box on the legal liability of celebrities who endorse food products even it exposes ambiguities in food safety. It sets the stage for current debate which provide the opportunity and open the door for judicial interpretation of which is an opportunity to interpret judicially the role and liability of these celebrity brand ambassadors. It is a well-recognised fact that these celebrities having a humongous base of their ardent fans, followers and supporters, where some way or the other they leave a deep psychological stamp on the mind of their supporters. Most of the time we can see that a consumer's decision to consume a particular product is hugely influenced by the fact that the said brand or product is being promoted or endorsed by those celebrities for which they have an affinity to the core of their heart. The recent incident of launching 4 G service of Reliance Jio exudes a classic example of how the celebrities take the mileage of their public reach for promoting a product as we saw a flurry of same comments, about the same thing at the same time when as many as 20 Bollywood stars took to the twitter to comment.²¹ Thus the positive acceptance of the products is quite pervasive in our country where more than 50% of the products are endorsed by these celebrities.²²

Thus, in the light of above mentioned factual scenario which throws some light on how the consumer behaviour and choice of products are being driven by emotions, it is quite surprising to note that the element of mental anguish and emotional harm has been excluded from the ambit of personal injury, the basis of which can be only considered in case of having the proof of related and contemporaneous personal physical injury, illness, or death arising from the consumption of that particular product.

C. Liability of E-Commerce Entities

With the Significant growth of market, expansion of business, and growth of international trade the market structure has underwent a sea change over the past 30 years. Major change which has taken place is the emergence of E-commerce something which has been cynosure of all eyes in the recent past owing to its exponential increase in operations and consumer reach. E-

²¹ Available at < <http://indianexpress.com/article/trending/trending-in-india/so-many-celebrities-had-the-exact-same-thought-as-they-tweeted-celebratingjio-messages/>> Last accessed on 29/12/2015

²² Available at < <http://archive.financialexpress.com/news/why-celebrities-in-india-have-runaway-success-with-brand-endorsements/1178390>> last accessed on 27/12/2015.

commerce finds its mention in the statement of object and reasons of the instant bill. Rapid development of e-commerce have led to new delivery systems for goods and services and have provided new options and opportunities for consumers.²³ Meteoric rise in the E-commerce has made the consumer vulnerable to new forms of unfair trade and unethical business practices. Various risks such as misleading advertisements, tele-marketing, multi-level marketing, direct selling and e-tailing which the e-commerce entails has come into sharp focus which pose new challenges to consumer protection. In our opinion current legislation seems to lack at the attempt to make the new entities that has evolved to be accountable. Although its definition have been brought in but the way it should be weaved into the law that has not happened. There is a confusion regarding liability of E commerce entities. What is the liability under new category that has been recognised in the definition clause is that of electronic intermediary. Electronic market places such as Amazon, Flipkart & their liability in respect of due diligence has not been addressed. However to the relief of the consumer the bill gives the right to the consumer to cancel any contract within 30 days of the delivery of the goods or provision of service which is not sufficient to serve the purpose in the longer run.

In the light of above made discussions with respect to the notion of liability we are of the opinion that the present Bills falls a step shorter while addressing some of the key issues.

V.CONCLUSION

The current provisions which have been introduced in the bill reminds us of the famous quote of Shakespeare "The Fault dear Brutus, is not in our Stars, But in ourselves."²⁴ The point which is being emphasized here is that when our system itself is not full proof to deal with and curb the activities that exploits consumers, the menace is bound to remain unabated. The bill proposes to make significant positive changes to the existing regime of consumer protection law and give to the consumers, a new lease of life and a teeth to the regulation of consumer protection laws in India. Though, the notion of liability has been re-defined to a certain extent in the present bill but at the same time we need to understand that the problem lies at the implementation level. To bridge the gap there is dire need to have a combined, consistent and concerted effort to address the concerns which can be foreseen in a concrete manner so that the

²³ Statement of object and reasons para.2 of the Consumer Protection Bill 2015.

²⁴ Julius Caesar (Act I, Scene II) Play written by Shakespeare

bill achieves its purpose. So, in our opinion the legislature must bear in mind three key aspects i.e. Firstly it must empower CCPA with respect to penalty provisions regarding other entities, Secondly inclusion of emotional harm and mental anguish within the ambit of personal injury would make a lot of sense in realising the goal of consumer protection which the legislature intends to achieve by introducing product liability. Last but not the least legislature must clearly define the liability with respect to due diligence of the facilitators of the electronic market place such as Flipkart, Amazon etc. in the era of e-commerce and the liability of other entities. Let us hope that the current bill would not lag behind under the shadow of politics and diplomacy rather gets properly modified to fill the existing lacunas wherein it can properly address the current confusion & concerns before its enactment & enforcement as a prime legislation of the country regulating our consumer protection laws. It is for all of us to wait and watch how effectively it serves its purpose and achieve its intent.