

Consumer Protection Bill, 2015

India is predicted to be amongst the fastest growing markets. By 2020, India is projected to be the world's third largest middle class consumer market behind China and USA. **As per a market research report, by 2030 India is likely to surpass both countries with an aggregated consumer spend of nearly US \$13 trillion.** With a growing economy and resultant increase in purchasing power of consumers, there is a need to safeguard the consumers from exploitation and adulterated and sub-standard goods and services. In order to provide for better protection of interests, the Consumer Protection Act, 1986 was adopted on 24th December, 1986.

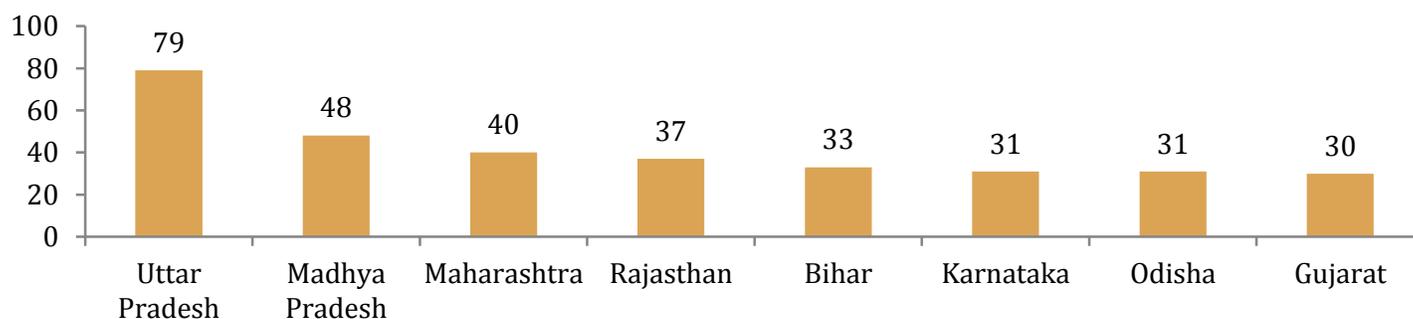
Salient Features of the Act:

- ✓ The Act provides for establishing three-**tier consumer dispute redressal machinery** at the national, state and district levels.
- ✓ It applies to all goods and services.
- ✓ The Act provides for relief of a specific nature and also for compensation to the consumer as appropriate.
- ✓ The Act also provides for setting up of **Consumer Protection Councils (Consumer Forums)** at the Central, State and District levels, which are advisory bodies to promote and protect the rights of the consumers.

As per the provisions of the Act, quasi-judicial bodies have been set up in each District and State and at the National level, called the District Forums, the State Consumer Disputes Redressal Commissions and the National Consumer Disputes Redressal Commission respectively. **At present, there are 650 District Forums, out of which 619 are functional.** In Chhattisgarh, one-third of the Consumer Forums are not functional. **Uttar Pradesh, Madhya Pradesh and Maharashtra have the highest number of District Consumer Forums.** There are 35 State Commissions and the National Consumer Disputes Redressal Commission is (NCDRC) at the apex.

Each District Forum is headed by a person who is or has been or is eligible to be appointed as a District Judge and each State Commission is headed by a person who is or has been a Judge of High Court. **The National Commission, constituted in the year 1988, is headed by a sitting or retired Judge of the Supreme Court of India.**

State-wise Number of Functional District Consumer Fora



Amendments to the Consumer Protection Act, 1986

Based on the implementation experience of the provisions of the Act, it was **amended thrice in 1991, 1993 and 2002**. The delay in disposal of cases at the district, state and national levels, including the level of pendency, was a major cause of concern for the Government. Therefore, **proposals were made to further amend the Act which led to the passing of the Consumer Protection (Amendment) Act, 2002**. The amended provisions empowered the senior-most member to preside over the Bench in case of absence of the President so that the Forum functions uninterrupted. Further, Presidents of the National Commission & the State Commissions were empowered to constitute Benches with one or more Members for their effective functioning.

The amendments were mainly aimed at:

- ✓ Facilitating quicker disposal of complaints
- ✓ Enhancing the capability of redressal agencies
- ✓ Streamlining procedures and widening the scope of the Act
- ✓ Rationalizing the qualifications and procedure of selection of President and Members of the Consumer Forums

Challenges of the Existing Provisions

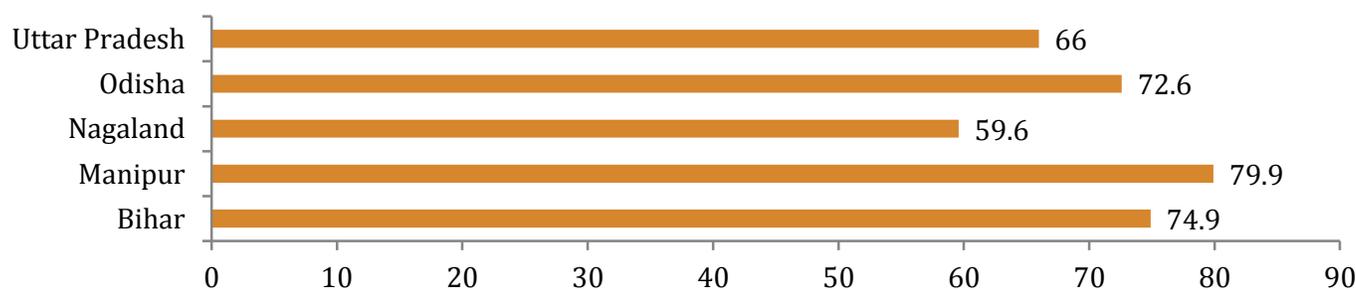
Though the Act has succeeded in bringing about fair play in the supply of goods and services and redressal of consumer grievances through the consumer courts, some shortfalls in the existing provisions still need to be addressed. These shortfalls include delay in disposal of cases resulting in pendency, restrictive definitions, shortage of manpower, etc.

Table 1: Total Number of Consumer Complaints Filed / Disposed since Inception

Name of Agency	Cases Filed since Inception	Cases Disposed of since Inception	Cases Pending	% of Total Disposal
National Commission	98063	88031	10032	89.8%
State Commissions	694546	598477	96069	86.2%
District Forums	3650986	3365999	284987	92.2%

As per the 26th report of the Standing Committee on Food, Consumer Affairs and Public Distribution, the disposal rate is satisfactory. **However, there have been instances where the proceedings have continued for very long though it is expected that they should be decided within a period of 90 days**. The delay in expedited disposal of cases is highly prevalent in the State Commissions in Bihar, Manipur, Nagaland, Odisha and Uttar Pradesh.

Percentage of Disposal of Cases in State Commissions



Some of the other issues noticed in the Consumer Protection Act, 1986, were as follows:

- a) A number of **definitions in the Act were restrictive** and did not cover all situations/contingencies not specifically mentioned in the definition, e.g. definition of branch office, defect, deficiency etc.
- b) The seller of goods or provider of services, after selling such goods or rendering of such services, could **refuse to take back the goods or discontinue the service and refuse to refund the amount paid by the consumer**, with no legal remedy for the consumer under the Act.
- c) **Refusal of the seller of goods/service provider to furnish a bill to the consumer** for payment made was not considered as an unfair trade practice against which a complaint could not be filed in a Consumer Forum.
- d) **'Unfair contract'** has not been specifically included as a ground for filing a complaint in the Consumer Forums
- e) There was no legal provision in the Act for giving additional charge of a non-functioning forum to President of forum of adjoining district. This often led to a **shortage of manpower**, especially in District Forums, which causes delay in disposal.

Table 2: Number of Vacant Posts

	Vacant Posts of President	Vacant Posts of Members
National Commission	0	2
State Commission	1	18
District Forum	150	348

Consumer Protection Bill, 2015

The **new Consumer Protection Bill 2015**, which was introduced in the monsoon session of Parliament, seeks to address some of these issues and replace the extant Act. The law hopes to facilitate development of new markets and to further widen the ambit and a scope of the law to incorporate nuances and avoid loopholes.

Key features of the Bill

a) Complaints

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 publicized a misleading advertisement as it impinges on the rights of consumers to make informed choices. Advertisement refers to any audio or visual publicity, representation or pronouncement made through all mediums including the Internet. It can also include any notice, circular, label, wrapper, invoice or any other document.

b) Product Liability

The Bill seeks to make manufacturers liable for any injury attributed to the defect in the product. It enables the person to make a claim of product liability, if he has suffered any injury, property damage or death due to a

defect in a product. 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. **The claimant would have to establish that the manufacturer had known or ought to have known of the dangerous aspect about the product** that caused the harm.

c) Regulatory Body

A **new regulatory body, i.e. the Central Consumer Protection Authority (CCPA)**, will act to enforce consumer rights, impose penalties and pass orders regarding recall of products, unfair contracts, misleading advertisements etc, and others. It will play the role of an executive agency that is consumer centric, can make class action intervention, or initiate suo moto action when necessary to prevent unfair trade practices or consumer detriment.

d) Unfair terms in contracts

The Bill enumerates **six 'tests' to identify unfair contracts**. A contract is said to be unfair if it contains **any one** of the following: (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.

e) Unfair trade practices

Unfair trade practice has been identified to include: (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.

f) Punitive Measures

Failure to comply with an order of the District, State or National Commissions, will attract **imprisonment up to three years or a fine of up to Rs. 50,000, as compared to Rs. 10,000 in the past**.

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**.

g) Mediation Cells

The Bill introduces **mediation as a mode of alternative dispute resolution**. Mediation cells are to be attached to consumer dispute redressal agencies at the district, state and national level. These will help in out-of-court settlement of disputes by a mediator, except in cases of grave threats to life, physical or mental injuries.

h) Pecuniary jurisdiction

The pecuniary jurisdiction, which is based on the billed value of goods and services, has been increased for the District, State and National adjudicatory bodies.

	1986 Act	2015 Bill
District	Up to Rs. 25 lakh	Up to Rs. 50 lakh
State	Between Rs. 25 lakh and Rs. 1 crore	Between Rs. 50 lakh and Rs. 10 crore
National	Above Rs. 1 crore	Above Rs. 10 crore

i) Composition of Adjudicatory Body

The strength of State and National Commissions has been increased which may help expedite the disposal of cases. The composition of adjudicatory bodies has been broadened to include technical members as well.

	1986 Act	2015 Bill
District	Headed by current or former High Court judge and 2 other members.	Headed by person qualified to be a district judge or a district magistrate, and 2 other members.
State	Headed by current or former High Court judge and 2 other members	Headed by current or former high court judge and 4 other members.
National	Headed by current or former Supreme Court Judge and 4 other members.	Headed by current or former Supreme Court Judge and at least 15 other members

j) District Forums

The District Commission may issue the following orders: 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. Appeals from its decisions will be heard by the State Commission. Further appeals may be filed before the National Commission, and then before the Supreme Court.

The District Commission will have the power to grant punitive damages of a sum equal to or more than 25% of the value of defective goods and services.

k) Online Services

The bill seeks to allow online filing of cases as well, as make it mandatory for the consumer forums to publish the data regarding filing, disposal of complaints etc on their respective website. Similarly, it envisages bringing e-commerce within the purview of the CPA.

Critical Analysis

The changes brought about by the market economy, the marketing practices as well as the rapid advances in the area of digital technology, have all had an impact on consumer protection in India. The 2015 Bill seeks to address the lacunae present in the 1986 Act and increase the scope of consumer protection. However, there are certain aspects of the Bill which raise concerns:

- ✓ 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. 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**. This violation may also take place due to the change in composition of the District Commissions, wherein it can be headed by a District Magistrate who is part of the executive.
- ✓ The draft bill provides for mediation as a mechanism to resolve the disputes. Introduction of such a provision is likely to **delay the process of settlement**.
- ✓ The Bill places **unreasonable burden on the claimant to establish liability of the manufacturer**. S/he is required to prove all of seven conditions with regard to a defective product. Additionally, the claimant must also prove that the manufacturer had knowledge of, or should have, under reasonable circumstances, known of the danger.

Conclusion

A robust consumer protection framework will give impetus to a strong consumer-driven economy. The Consumer Protection Bill, 2015 fills gaps which were not addressed by the pre-liberalization era Consumer Protection Act, 1986. However, there is a need to look into the feedback and concerns voices by various stakeholders as certain challenges still remain.