

Business Standard

Debate: Can Consumer Protection Bill protect e-tail users?

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The Consumer Protection Bill, 2015 introduced in the Lok Sabha seeks to replace the Consumer Protection Act, 1986. The new law proposes to bring e-retail users and players into its fold. Experts discuss various aspects of the new Bill

Online marketplaces not liable for goods sold: Vaibhav Parikh



The new consumer protection Bill is much broader than the Consumer Protection Act, 1986 in its scope and has also specifically considered new business models, including online marketplaces. It has specifically brought the concepts of unfair contracts and product liability into its fold. Contrary to general perception, the new Bill does not make online marketplaces liable for goods sold on their platforms. They are classified as electronic intermediaries and their obligations are limited to providing necessary information, documents, and records to the district commissioner (of consumer forums) in case of an investigation; and also provide for the grievance officer who will accept the notice and provide such information. The liability to the consumer under this Bill will still be that of the seller or the manufacturer.

When consumers buy goods or services online or through mobile, they generally have to click the 'I accept' link to make their purchases. 'I accept' is acceptance of the seller's terms and conditions, which the consumer has no power to change. In some cases, a link for terms of sale is available at

the bottom of the site. Most consumers don't even read the terms and conditions before purchasing the goods or services. If this bill becomes an Act, a consumer can seek damages for any loss he has suffered due to any unreasonable penalties, obligations or conditions imposed on him under these terms. This will open up a completely new avenue of protection for consumers.

The Bill also fixes product liability against the manufacturer for any defect in the product that would cause any damage, personal injury or death. In certain cases, the product seller could also be held liable. The Bill limits the ability to claim damages relating to mental anguish or emotional harm - unless it actually leads to personal injury - which has otherwise been the basis of excessive claims. E-commerce encourages unknown manufacturers and sellers through online market places. These provisions will hold such manufacturers and sellers

accountable for defects in their goods, and protect consumers. It is envisaged that consumer complaints will be resolved expeditiously within three to five months. Further, consumers are not required to engage lawyers to fight their cases. Thus, it would become an easier and more cost effective avenue of protection for consumers.

Vaibhav Parikh
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Make cooling-off period a stated right of consumer: Akhileshwar Pathak



With the e-retail becoming a significant presence and , only going to grow, it needs appraisal if the proposed legislation addresses the problems specific to it. A theme for appraisal is if it addresses the concerns specific to the growing e-retail segment. The Bill is well-intentioned, but needs to be strengthened in its foundations.

The consumer protection law rests on the foundations of contract law - law of sale of goods and law of torts. These laws are well settled for long. A consumer law has to conceptually express this foundation and the modifications it is bringing about. Without this, the law would become unclear, conflicting and confusing. The Consumer Protection Act, 1986 (CPA) did not pay attention to this. The Bill heavily borrows from the CPA in content and style, and thus, despite the good intentions, ends up being unclear and conflicting.

The main protection for an e-retail consumer gets embroiled in this. Take the case of the main intended protection for an e-retail consumer. An e-retail consumer is at a disadvantage in having to contract without seeing, sampling or examining the goods. The other jurisdictions, for example the European Union, have guarded the consumer by giving him a 'cooling-off' period, a right to cancel the contract within a limited period of being delivered the goods. The Bill intends to give this right.

Within the settled principles of contract law, this is termination for convenience, where the parties would return the benefits and neither will claim damages. It needs to be stated as a right of the consumer. The Bill states it in a circuitous manner as an unfair trade practice if the trader refuses to 'take back' the goods or services or 'refund' the price on the 'request' of the buyer. The remedy against this in the Bill is to order the trader to 'discontinue' the unfair trade practice. The remedy was intended for the unfair trade practice of false advertisement and not adequate for cooling-off'. Even more significantly, most e-retail contracts have terms ousting the right of the buyer to terminate the contract. The provision needs to make it clear that the protection overrides terms to the contrary in the contract. Surely, these will get attended to in the further journey of the Bill.

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