



KEY TAKEAWAYS OF THE CONSUMER PROTECTION BILL 2018

The Lok Sabha on December 20, 2018, passed the Consumer Protection Bill (**CP Bill**), which seeks to replace the existing Consumer Protection Act, 1986. The CP Bill comes into play to protect the consumers from new age threats like misleading internet advertisements, and other false marketing techniques using telecommunication media. The key takeaways of the CP Bill are summarised herein.

- ❖ **New authority for consumer protection:** The CP Bill provides for the establishment of a Central Consumer Protection Authority (CCPA) which would promote, protect, and enforce the rights of consumers as a class. It will also have an investigation arm. CCPA can: (i) issue safety notices; (ii) pass orders to recall goods, prevent unfair and restrictive trade practices; (iii) reimburse purchase price paid; and (iv) impose penalties for false and misleading advertisements. It may conjointly file complaints before the Consumer Disputes Redressal Commissions. Consumer Protection Councils are also proposed to be established at district, state and centre level as an advisory body, which would advise on protection and promotion of consumer rights.
 - ❖ **Unfair Contracts:** The CP Bill permits a consumer to file complaints against an 'Unfair Contract'. The Bill defines a contract as an 'Unfair Contract' which causes significantly affects the rights of the consumer, such as: (i) requiring excessive security deposits; (ii) imposing a disproportionate penalty for a breach in contract; (iii) refusing to accept early repayment of debts; (iv) terminating the contract without reasonable cause; (v) transferring a contract to a third party to the detriment of the consumer without his consent; or (vi) imposing unreasonable charge or obligations which put the consumer at a disadvantage.
 - ❖ **Increase in pecuniary jurisdiction of commissions:** The pecuniary jurisdiction of the district and state level commissions, have been raised to Rs. 1 Crore and Rs. 10,00,00,000/-, respectively. Any matter having value of more than Rs. 10,00,00,000/- can be referred to the National Commission.
 - ❖ **Mediation Cells:** Introduction of mediation cells is also envisaged in the CP Bill. The respective Commissions may refer a matter for mediation if the parties consent to settle their disputes through mediation.
 - ❖ **Filing of complaints:** Complaints can be filed electronically by the complainant in the manner prescribed by the rules. The Bill shall also enable the consumer to file the complaint from any place unlike the existing law which mandates complaint can be filed only at the place from where goods are purchased or where the service is availed.
 - ❖ The CP Bill permits Complaints against e-commerce traders also as the ambit of claim includes matters pertaining to e-commerce transaction.
- Considering the above, it is clear that the government has taken steps towards the right direction in curbing the new age difficulties faced by consumers in the today's digital era. However, following issues warrant more clarifications:
- ❖ **Composition of the Commissions:** The CP Bill delegates the power of deciding the qualifications of the president and members of the commission to the central government. Unlike existing Consumer Protection Act, 1986, the CP Bill does not prescribe minimum judicial qualifications for a member or president of the commission.
 - ❖ **Appointment of members:** The CP Bill authorizes the central government to device the method of appointing members of the commissions. The bill does not make it mandatory for the selection committee to involve members from the higher judiciary. Making the executive to determine the



appointment of the members of commissions could affect the independent functioning of the commissions. As mentioned previously, the commissions are intended to be quasi-judicial bodies, since the matters brought before the commission requires judicial review and in many instances the government would be a party to a dispute relating to deficiency in service provided by a government

enterprise, for e.g., the Railways. In such a case, there would be a conflict of interest as the government would be a party to the dispute before the commissions and will also have the power to appoint members to the commission.

MAJOR LEGAL CHANGES IN INDIA - 2018

The legal arena is undergoing an era of transformation across the globe. The Indian legislature and the judiciary while taking into account the economy and business scope of the country has brought about major changes in the legal scenario of the country in the past year, some of which are listed hereinforth:

1. Data protection and privacy:

Europe has seen a substantial legal overhaul in its data protection regime this year by adopting the General Data Protection Regulation (“GDPR”). GDPR has conferred on individuals, known as data subjects with several rights with respect to their data including, right to rectify any inaccuracy in relation to personal data, right to deletion of personal data provided such personal data is no longer required by the controller for the purposes for which it was collected, right to have access to the personal data being processed by a controller, right to receive personal data in a machine-readable format and transmit the same to another controller (data portability). The most remarkable feature of the GDPR has been its territorial scope, which includes not only business operating in the European Union, but any entity (whether established and/ or operating in the EU or not) processing personal data of individuals in the EU. In an effort to give adequate teeth to the regulation, the magnitude of penalty has set a new benchmark, with a € 10 million and € 20 million penalties.

Considering that Indian entities are affected with the territorial extension of the scope of GDPR, the first

step for Indian entities dealing with the personal data of EU residents, amongst many, to ensure compliance with the GDPR would be to revise and implement policies and processes as stringent as the GDPR. Thus, India has now introduced the Personal Data Protection Bill, 2018 which aims to avoid misuse of the personal data. The Bill was drafted after the Srikrishna Committee’s report, which provided an assessment and recommendation on data privacy and management. Both the above legal documents are almost identical but for a few minor differences such as in terminology used in the two documents, scope (where the definitions such as genetic data; health data; etc, captured in the Bill is more extensive than under GDPR).

Apart from the Bill, even the Reserve Bank of India released a notification ‘Storage of Payment System Data’ dated 6th April, 2018 specifying the mandate for regulation and supervision of data, data in financial markets, currency management, financial inclusion and literacy, and data management areas. This has been formulated to address the considerable growth in the payment ecosystem in the country and ensuring that such systems which are also highly technology dependent, necessarily adopt safe and secure measures, which are best in class. To ensure this safety, all system providers have been mandated to ensure that the entire data relating to payment systems operated by them are stored in a system only in India. This data will need to include full end-to-end transaction details / information collected / carried / processed as part of the message / payment instruction. System providers



are also required to submit the System Audit Report (SAR) and the regulation contemplates audits in furtherance of the same.

2. AMENDMENT OF COMPANIES ACT

The notification of the Companies (Amendment) Act, 2017 as well as the ordinance promulgated on 2nd November 2018 saw landmark amendments and changes in Companies Act, 2013. The key amendments include the following:

- i. **Issue of Sweat Equity (Section 13):** The new amendments allow the companies to issue sweat equities within a period of one year from the date of commencement of the company.
- ii. **Rights to Auditors (Section 40):** The provision for annual ratification of the auditors once they are appointed by the company for a period of 5 years has now been deleted.
- iii. **Annual General Meeting (Section 26):** The new amendment allows unlisted companies to hold their meeting at any place in the country with the consent of all the members. But, the provision remains same for other companies; it is to be conducted either in the headquarters or any registered office.
- iv. **Significant Beneficial Ownership (Section 90):** Significant beneficial owners (to mean a person who owns by himself or other persons hold not less than 25% of beneficial interest) are now required to make declaration after acquisition of beneficial interest in a company. Additionally, the company will need to maintain a register of members with significant beneficial interest which shall be open to inspection by members.
- v. **Private Placement (Section 49):** The entire section 49 has been replaced by the new amendment and the most critical amendment has been the rule that companies are prohibited from

utilising monies raised through private placement unless allotment has been made and return of allotment has been filed.

The Ministry of Corporate Affairs on 2nd November passed Companies (Amendment) Ordinance, 2018 to further amend the Act. Some of the major reforms made through the ordinance are:

- i. **Commencement of the Business:** The company cannot commence its business unless: a) A declaration is made by the directors of the company within 180 days from the date of commencement that every subscriber has paid the value of the shares; b) The registered office of the company has been verified by the Registrar of Companies within 30 days.
- ii. **De-clogging the National Company Law Tribunal (NCLT):** The Central Government has delegated NCLTs jurisdiction to the registrar of companies and the regional director (up to Rs 25 lakhs) for speedy trial of the corporate disputes.
- iii. **Directors:** New provisions for punishment to directors have been introduced with a financial penalty Rs 5 lakhs to Rs 25 lakhs (*against the erstwhile penal provisions*) being imposed in case of fraud, benefitting from the company's funds, and formation of company for charitable.
- iv. **Fulfilling Corporate Social Responsibility (CSR) Obligations:** As per the new ordinance, the companies have a duty to fulfill their Corporate Social Responsibility in compliance with the provisions of the Act and in case of failure, reasons have to be presented to the Board. Further the companies are required to open an "Unspent CSR Account" and deposit unutilized funds of that financial year towards fulfilling their CSR obligations.

3. E-COMMERCE RULES



The government has released new rules governing FDI in e-commerce, which shall come into effect from 1st February, 2019. This will affect the competition of the several e-commerce giants who have been giving big discounts, cashback offers and other attractive offers to customers and. Summarised below are the key aspects of the rules:

- i. E-commerce platforms have been barred from selling goods from companies in which they have an equity interest. This comes after the All India Online Vendors Association (AIOVA) filed a petition in October, 2018 with Competition Commission of India (CCI) alleging that Amazon favours merchants that it partly owns such as Cloutail and Appario. This shall prevent e-commerce platforms from selling their own goods with unfair discounts.
- ii. The rules also prevent companies from entering into exclusive agreements with e-commerce sites. For example, OnePlus will not be able to sell its OnePlus phones exclusively on Amazon. It also requires that cashbacks and discounts provided by platforms should be "fair and non-discriminatory." Thus, though the government has not entirely put a stop to e-commerce sites offering cashbacks and discounts, it has mandated the requirement of fairness.
- iii. The rules mandate market-place model based entities to file an annual compliance certificate along with a report of statutory auditor with the RBI by 30th September every year.

4. INSOLVENCY AND BANKRUPTCY CODE, 2016

Major changes were brought in to the Insolvency and Bankruptcy Code, 2016 (“Code”) in 2018, which provides much clarity, ease of process and synchronisation with other laws which are summarised herein below:

- i. As a relief to home buyers the Code has been brought in sync with the Real Estate (Regulation and Development) Act, 2016.
- ii. The process of insolvency resolution process can be initiated by a corporate applicant, which was earlier not provided for.
- iii. Creditors can invoke personal or corporate guarantees during the resolution process.
- iv. The Code now provides for a designated resolution professional responsible for ongoing legal compliances.
- v. Certain related party financial creditors are now to be exempted from participation in the committee of creditors. Since almost all decisions in a company subject to insolvency proceedings is subject to the decisions of committee of creditors, this exclusion shall further a fair insolvency process.
- vi. The Code prescribes benefits to promoters of medium, small and micro enterprises by formulating improved opportunities of resolution for these enterprises. Thresholds have been redefined for qualification as medium, small and micro enterprises to enjoy such benefits.

5. SPECIFIC RELIEF AMENDMENT ACT

The Specific Relief Amendment Act, 2018 (“Amendment Act”) has brought about few changes to the Specific Relief Act, 1963. Few of the major changes include introducing the concept of substituted performance which shall enable aggrieved party to arrange the performance of the contractual objective through a third party or through its own agency and can recover such expenses from defaulting party. The Amendment Act prevents the courts from granting an injunction in suits where the contracts relate to



infrastructure projects, if such an injunction would cause impediment or delay in the progress or completion of such a project. The Amendment Act reduces the *discretion* of the courts in cases seeking specific performance of contracts and grants a right to an aggrieved party to seek specific performance of a contract.

The Act lays down mandatory period for disposal of suits which is 12 months from date of summons. The Amendment Act has additionally now added limited liability partnerships to the list of parties who may seek specific performance. Under the Amendment Act certain civil courts are to be designated as special courts, which will deal with a suit filed under the Act in respect of contracts relating to infrastructure projects to ensure that proceedings under the Specific Relief Act, 1963 does not impede social development.

1. Fugitive Economic Offenders Act

Drawing the lesson from instances such as Mr. Vijay Mallaya and Nirav Modi fleeing the country as economic offenders, the legislature has passed the Fugitive Economic Offenders Act (“Act”). The Act defines a fugitive economic offender as any individual against whom warrant for arrest is issued for his involvement in select economic offences involving amount of at least Rs. 100 crore or more and has left

India and refuses to return so as to avoid criminal prosecution. The Act provides for a simplified process for declaring a person as a fugitive economic offender and allows authorities to provisionally attach properties of an accused while the said application is pending before the special court intended to be established under the Act. The property of an offender can be confiscated under the Act.

One of the interesting aspects of the Act is that any court or tribunal can bar a fugitive economic offender or an associated company from filing or defending civil claims before it. But this provision violates Article 21 of the Constitution i.e. the right to life which includes Right to Access Justice.

Further, there are ambiguities which have not been addressed such as whether the Central Government will share sale proceeds of the confiscated property with any other claimants who do not have such powers (e.g., unsecured creditors). Dr. Vijay Malya is the first person declared as Fugitive Economic Offender under the Act.

So far, Central Bureau of Investigation has registered 42 cases relating to chit fund and ponzi schemes scams which took place in West Bengal during the last four years.



LEX REVISERS

SEBI issues Operating Guidelines for Alternative Investment Funds in International Financial Services Centres

On the basis of deliberations in the Alternative Investment Policy Advisory Committee (AIPAC) and in consultation with other stakeholders, SEBI has provided for Operating Guidelines for Alternative Investment Funds in IFSC. The guidelines provide for registration of alternative investment funds in IFSC's, compliance requirements, conditions and restrictions on investment in Alternative Investment Funds. It also stipulates the conditions in which investment may be made by Angel Funds.

Read more at: https://www.sebi.gov.in/legal/circulars/nov-2018/operating-guidelines-for-alternative-investment-funds-in-international-financial-services-centres_41070.html

SEBI releases guidelines on fund raising by issuance of Debt Securities by Large Entities

SEBI came out with detailed guidelines on fund raising by large entities by issuance of Debt Securities. The framework shall come into effect from April 01, 2019 for entities which follow April-March as their Financial Year and the framework shall become applicable from January 01, 2020 for entities following the calendar year as the financial year.

Read more at: https://www.sebi.gov.in/legal/circulars/nov-2018/fund-raising-by-issuance-of-debt-securities-by-large-entities_41071.html

MCA Reconstitutes High Level Committee on Corporate Social Responsibility – 2018

The MCA has reconstituted the High Level Committee on Corporate Social Responsibility – 2018 under the chairmanship of Shri. Injeti Srinivas, Secretary, MCA. The Committee shall review the existing framework and guide and formulate the roadmap for a coherent policy on Corporate Social Responsibility.

Read more at: http://www.mca.gov.in/Ministry/pdf/OfficeOrderCommitteeOnCorporate_26112018.pdf

RBI notifies the Foreign Exchange Management (Borrowing and Lending) Regulations, 2018

On December 17 2018, the RBI notified the Foreign Exchange Management (Borrowing and Lending) Regulations 2018. The regulations prohibit the borrowing or lending of foreign exchange from or to a person resident in or outside India except as otherwise provided in the Foreign Exchange Management Act, 1999 or the rules as such.

Read more at: <https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=11441&Mode=0>

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