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ENSURING CONSUMER PROTECTION IN THE ERA OF E-COMMERCE IN INDIA: Strategic Approaches through the Lenses of Consumer Protection Laws in India

Arun Klair & Sarita

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ENSURING CONSUMER PROTECTION IN THE ERA OF E-COMMERCE: Strategic Approaches through the Lenses of Consumer Protection Laws in India

Arun Klair & Sarita***

[Abstract: E-commerce encompasses all online activities associated with buying and selling of goods and services. It involves the digital exchange of products and services, often involving multiple parties and transferring data or currency to facilitate transactions. It is a part of the larger field of e-business, which includes all the activities needed to conduct business online. E-commerce includes things like booking a flight through an airline's website, paying for a concert ticket online, or visiting an online store to buy products or hire services. Interestingly, e-commerce is not limited to desktop computers; mobile devices are becoming a bigger part of its engine. Since smartphones are so widely used and have made online shopping more convenient, it is believed that mobile commerce (m-commerce) has surpassed desktop e-commerce sales. Thus, the proliferation of digital marketplaces has revolutionised the way consumers interact with products and services. However, this convenience comes with its own set of challenges, particularly in protecting consumer rights. This research paper aims to analyze the current landscape of consumer protection in digital marketplaces, identify key issues faced by consumers, and propose effective strategies and mechanisms to safeguard their rights. The Consumer Protection Act of 2019 and the Consumer Protection (E-commerce) Rules, 2020 have been the subject of a comprehensive examination in this paper to examine various loopholes in implementing e-commerce regulation.]

Keywords: Consumer Protection, E-commerce, Unfair Trade Practices, Online Protection

* Dr. Arun Klair, Assistant Professor of Law, Himachal Pradesh National Law University, Shimla, Himachal Pradesh, Email: arunklair@hpnlu.ac.in

** Dr. Sarita, Assistant Professor of Law, Himachal Pradesh National Law University, Shimla, Himachal Pradesh, Email: sarita@hpnlu.ac.in

I

Introductory

The advent of technology across different spheres of life has tremendously changed our lives and market structure. It has provided the consumers affordability and accessibility that a consumer desires for.¹ Various online shopping portals such as Amazon, Myntra, Ajo, Flipkart, etc. provide a range of products at consumers' doorstep. The term "digital marketplace" describes the online venue where buyers and sellers engage in business dealings, such as purchasing and selling goods and services. E-commerce has continuously expanded since the emergence of the World Wide Web in 1991.² Its origins date back to the Berlin Blockade era of 1948 to 1949 when goods were ordered and airlifted via telex.³ Since then, new technological developments and improved internet connections have helped advance e-commerce. The Boston Computer Exchange has credit for launching the first e-commerce platform in the year 1982.⁴ Now this e-commerce has fully changed the market. This market is fully virtual, made possible by websites, mobile applications, and e-commerce platforms. In contrast to conventional physical stores that are confined by geographic borders, online marketplaces are accessible worldwide. With an internet connection, buyers and sellers can connect globally and access a wide range of goods and services. The digital marketplace is available round the clock. Unlike physical stores that have set hours, online platforms allow customers to shop whenever convenient, making commerce more convenient and flexible.

To cater the varied needs and preferences of its customers, the digital marketplace provides a wide selection of goods and services. Almost anything can be bought online, including professional services, digital subscriptions, apparel, and consumer electronics. Online shopping provides an unmatched level of convenience. Using mobile devices, consumers can browse, compare prices, read reviews, and make purchases while at home or on the go. Additionally, digital platforms use algorithms and data analytics to give customers a more customized shopping experience. By providing customized product recommendations based on browsing history, preferences, and previous purchases, they may enhance consumer loyalty and satisfaction. This convenience factor has significantly contributed to the growing

¹ V.K. Agarwal, LAW OF CONSUMER PROTECTION 77 (2021).

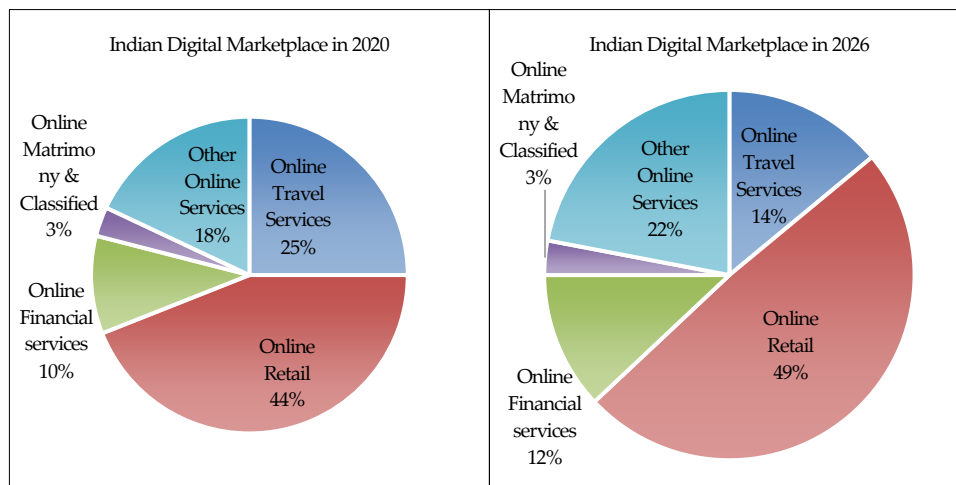
² R. Srivastava, and G. S Bagale, *Review of shift from commerce to e-commerce in India*. (1) *International Journal of Advance and Innovative Research*, 305-309 (2019).

³ N. Azamat, Iet.al., *The evolution and development of E-commerce market and E-cash*. SSRN Electronic Journal (2011) available at <https://doi.org/10.1115/1.859858> (last visited on 15.12.2023).

⁴ *Id.*

popularity of online shopping.⁵ In short it can be said that the digital marketplace has become an integral part of contemporary commerce, transforming the way businesses operate and consumers shop. Its importance stems from its capacity to offer a smooth, effective, and easily accessible platform for business endeavours, spurring innovation and economic growth worldwide.

India's e-commerce market is one of the fastest growing online marketplaces in the world. It has been published by the International Trade Administration that the value of Indian e-commerce was \$46.2 billion in 2020 and expected to grow at 18.29 percent to \$136.47 billion by 2026. This e-commerce activity gained momentum during COVID-19 pandemic. Though it can be said that e-commerce witnessed a steep decline during initial COVID-19 pandemic lockdowns, soon it was accelerated by rapid adoption of online payment options. India has emerged as a top choice for suppliers who value online sales, largely due to its large consumer base, diverse demographics, affordable digital infrastructure, and robust services and supply chain network. India has become a favoured location for suppliers who prioritize online sales, primarily because of its extensive consumer population, varied demographics, cost-effective digital infrastructure, as well as services and supply chain network.



Source⁶

⁵ Andrew D. Murray, THE REGULATION OF CYBER SPACE CONTROL IN THE ONLINE ENVIRONMENT 169 (2009).

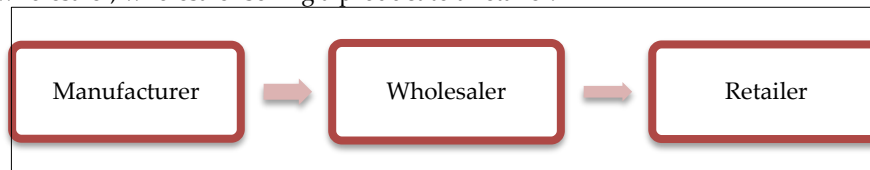
⁶ India-Online Marketplace and E-commerce, International Trade Administration, available at <https://www.trade.gov/country-commercial-guides/india-online-marketplace-and-e-commerce> (Last visited on 12 Jan. 2024).

II

Conceptualising E-Commerce

Electronic commerce, or e-commerce, is the online exchange of goods and services as well as the transfer of money and data. E-commerce depends upon digital platforms such as social media, mobile apps, and websites to facilitate buying and selling.⁷ An e-commerce website enables companies to reach consumers anywhere, whereas a physical store restricts a business to its local area. Once the customer places orders online, the product can be shipped to the customer's location, or services can be provided at his doorstep. E-commerce refers to a business framework or division within a broader business structure that allows a company or individual to engage in commercial activities via an electronic network, usually the Internet. The Consumer Protection Act of 2019 provides a definition of e-commerce, which means buying or selling goods or services, including digital protection over the digital or electronic markets.⁸ In general, electronic commerce is a business model that lets firms and individuals buy and sell things online. It operates in the following major market segments:

B2B (Business to Business), where buying and selling of goods and services is held between two business holders such as, a manufacturer selling a product to a wholesaler, wholesaler selling a product to a retailer.



B2C (Business to Consumer), where the goods are sold by the companies to consumers directly. In this process the seller is businessman and buyer is consumer such as online shopping, e-booking, e-news, e-learning etc.

C2C (Consumer to Consumer), where commercial transactions between two customers are known. In the process the seller is a consumer and the buyer is also a consumer such as Quicker, OLX etc.

C2B (Consumer to Business), where individual customers offer to sell products and services to companies who are prepared to purchase them. In this method, companies typically pay for the product or service, e.g., an innovative business practice.

B2E (Business to Employee), is a kind of intra business network which allows companies to provide products or services to their employees.

⁷ Christiana Jolaoso and Nikita Tambe, *What Is E-Commerce? Definition, Types & Getting Started*, available at <https://www.forbes.com/advisor/in/business/what-is-ecommerce/> (Last visited on 23 Dec. 2023)

⁸ Section 2(16), *The Consumer Protection Act, 2019*.

G2B (Government to Business), is a commercial transaction that takes place between Government and Businessman. Where the seller is Government and buyer is businessman such as, Government Tender.

G2C (Government to Consumer), is a commercial transaction that takes place between Government and Consumer. Where the seller is the Government and buyer is consumer such as, Goibibo, Indian Railway, IRCTC etc.⁹

III

Need For Protecting Consumer Rights in Digital Marketplace

A digital marketplace has many benefits for consumers and businesses. Technological developments and changing consumer habits continue to mould and reshape the online market, providing chances for creativity and expansion. But it also has challenges such as data privacy, cyber security, fake goods, and regulatory compliance. Therefore, the protection of the rights of consumers in digital transactions is of paramount importance. Digital transactions are subject to phishing scams, identity theft, payment fraud, different kinds of fraud and cybercrime. Without sufficient protection for consumers, people run the risk of suffering financial loss and privacy violations. Sensitive personal data, such as contact and payment details, is frequently exchanged during digital transactions. Protecting consumer rights ensures that data is handled securely and that individuals control how it is collected, used, and shared. Companies could use unfair or dishonest tactics like deceptive product descriptions, hidden costs, or false advertising without proper regulation. Preserving consumer rights encourages openness and guarantees that companies behave morally when interacting with clients.

Even though online transactions are convenient, disagreements about product quality, delivery problems, or billing errors can occur between customers and companies. At that time, consumer protection mechanisms offered customer support channels, warranties, refund policies, and other avenues for dispute resolution. Moreover, one cannot ignore the importance of consumer trust in digital marketplaces. Protection of consumer rights helps in building trust and, in return, demonstrates a commitment to fair and ethical business practices. Surety about the protection of consumer rights generates a feeling of confidence among consumers, ultimately resulting in long-term business relationships. Further, it also fosters a competitive marketplace. The more the consumers got rights, the lesser the chances

⁹ Chitranjan Pal, *E-Commerce Ecosystem Under Consumer Protection (E-Commerce) Rules, 2020*, SCS 25-27 (2021) available at https://www.icsi.edu/media/webmodules/E_Commerce_Ecosystem_Under_Consumer_Protection.pdf (last visited on 07 Jan. 2024).

of unfair business practices and monopolistic behaviours. It will also help in encouraging innovation, diversity and choice in the digital market. Encouraging access and inclusion in the digital economy requires the protection of consumer rights. It guarantees that no one will face prejudice or entry barriers and that everyone, including those with disabilities or low incomes, can engage in online transactions safely and fairly. Governments and regulatory agencies worldwide have put laws and regulations into place to protect consumer rights in digital transactions. Adherence to these legal mandates serves to safeguard not only consumers but also businesses by preventing legal ramifications and harm to their reputations.

IV

Challenges Faced by E-consumers

Misleading Information regarding Listing of Products

E-commerce platforms facilitate a multitude of product listings originating from diverse sellers, thereby introducing a considerable obstacle in the authentication process of each item. The presence of deceptive sellers increases the likelihood of counterfeit or misrepresented products being showcased, resulting in consumers acquiring goods that deviate from their anticipated quality or present safety hazards. For example, when a consumer purchases a product under the impression of it being an authentic branded item but receives a substandard imitation.¹⁰

Phishing Scams

Phishing scams encompass deceitful endeavours to acquire sensitive data, including usernames, passwords, and credit card particulars, through the guise of a reliable entity. Within the realm of electronic commerce, phishing schemes frequently manifest as deceptive emails or web pages imitating authentic e-commerce platforms or payment portals. Unaware consumers could inadvertently unveil their personal or financial information to malicious actors, empowering them to subsequently abuse it for illegal activities such as unauthorised transactions or identity fraud.¹¹

¹⁰ Jenifer Post, *Top E-Commerce Challenges Facing SMBs*, BUSINESS NEWS DAILY(March 8, 2024) available at <https://www.businessnewsdaily.com/6028-small-ecommerce-challenges.html> (last visited on 17 Mar. 2024)

¹¹ G.B Reddy & Baglekar Akash Kumar, CONSUMER PROTECTION ACT A COMMENTARY 81 (2022).

Counterfeit Products

In the realm of e-commerce without strict regulations, fosters an environment conducive to the widespread proliferation of counterfeit goods. Unlike their brick-and-mortar counterparts, online marketplaces often function as middlemen connecting sellers and buyers, offering diverse products from various origins. Thus, absence of direct supervision and authority complicates the process of confirming the genuineness of items traded on these virtual platforms. Consequently, consumers navigating online marketplaces may unintentionally acquire fake or substandard merchandise, mistakenly perceiving it as authentic. Such transactions result in dissatisfaction from the reception of subpar products and present potential hazards, particularly in industries like electronics, beauty products, and pharmaceuticals, where counterfeit variants may lack appropriate quality assurance or compliance with safety protocols. Furthermore, the widespread reach of electronic commerce aggravates this problem, as counterfeit items can effortlessly traverse national boundaries, rendering the enforcement of regulations and the accountability of wrongdoers arduous.¹²

Misleading Marketing about Products

E-commerce platforms, serving as intermediaries that connect sellers and buyers, may, at times, engage in behaviours that prioritize sales over transparency and accuracy. This may materialise in various ways, such as overstated assertions about product attributes or advantages, altered images that distort the actual look or standard of the product, or inadequate disclosures concerning pricing, availability, or shipment terms. In such scenarios, consumers are confronted with deceptive promotions or inaccurate product specifications, resulting in various detrimental effects. For example, customers might buy a product based on untrue claims or portrayals only to discover that it fails to meet their anticipations.¹³ This could result in disheartenment, aggravation, and a decrease in trust between the seller and the online store facilitating the transaction. Furthermore, misleading marketing undermines consumer trust in the online marketplace, deterring future transactions and harming the credibility of authorised vendors.¹⁴

Consumer Dispute Redressal

In electronic commerce's dynamic and often intricate realm, resolving conflicts and grievances between buyers and sellers can pose notable obstacles, particularly within the digital sphere where transactions may entail parties in separate

¹² B. Amable *et.al.*, *Internet: The Exclusive Quest of Frictionless Economy*, 2003, available at https://www.frdp.org/wp-content/uploads/2020/08/IV-conf_Report-2_2002NEW.pdf (last visited on 17 Nov. 2023).

¹³ *Director General (Investigation & Registration) v. Hindustan Lever Ltd.*, (2002) 3 CPJ 86.

¹⁴ *Lakhanpal National Ltd. v. MRTS Commission*, (1989)3 SCC 251.

jurisdictions or nations. The involvement of cross-border transactions may hinder the resolution of disputes due to disparities in legal frameworks, jurisdictional complexities, and diverse consumer protection statutes. Moreover, the existence of dishonest sellers who partake in deceitful or fraudulent behaviours further complicates the task of effectively settling disputes.

Data Privacy

In the age of e-commerce, obtaining, keeping, and analysing massive amounts of client data have become crucial for conducting business online. However, this strategy raises severe concerns about data privacy and protection because, during their transactions, customers entrust e-commerce platforms with sensitive personal and financial information. Hence, to uphold consumer trust in e-commerce, it becomes imperative to ensure the confidentiality, integrity, and security of data and privacy. E-commerce websites collect a range of personal information on its users, including names, addresses, phone numbers, email addresses, credit card information, demographic and browsing history, and purchase preferences.

Lack of Digital Literacy

Digital literacy, or the ability to use digital technologies effectively and critically, is increasingly crucial in today's interconnected world. However, despite the rapid expansion of e-commerce, a significant portion of consumers may lack the necessary skills to navigate online shopping platforms safely and effectively. This lack of digital literacy can leave consumers vulnerable to various risks and challenges associated with online transactions, including security threats, fraudulent activities, and misinformation. One of the primary challenges digitally illiterate consumers face is the inability to recognise and avoid online scams and phishing attempts. Without a basic understanding of cybersecurity best practices, such as recognising suspicious emails or websites, consumers may inadvertently become victim to phishing scams, malware attacks, or identity theft. Similarly, digitally illiterate consumers may struggle to differentiate between legitimate e-commerce platforms and fraudulent websites, increasing the likelihood of purchasing from unreliable or unsafe sources. Moreover, navigating the complexities of online transactions, such as comparing product prices, reading product descriptions, and understanding payment options, can be daunting for individuals with limited digital literacy skills. This may lead to misunderstandings, errors, or dissatisfaction with the online shopping experience, ultimately undermining consumer confidence in e-commerce platforms.¹⁵ These challenges pose a serious concern. Hence it becomes imperative to analyse different consumer protection mandates at international and national level.

¹⁵ Andrew D. Murray, THE REGULATION OF CYBER SPACE CONTROL IN THE ONLINE ENVIRONMENT 79 (2009).

V

International Mandates for Protection of Rights of Consumer *vis-à-vis* E-commerce

E-commerce facilitates transactions for the purpose of vending goods and services via electronic means. It enhances efficiency and expands options by yielding cost efficiencies, fostering competitiveness, and refining the organization of production processes.¹⁶ The Organization for Economic Co-operation and Development (OECD) and the United Nations Conference on Trade and Development (UNCTAD) guarantee consumer interests globally. Consumer International (CI) is a consortium comprising around 250 consumer groups from over 100 nations, established in 1960. Its objective is to safeguard the consumer rights in international political arenas and the global commercial sphere. Additionally, the European Consumer Cooperation Network, the European Consumer Center Network (ECC-Net), the APEC Electronic Consumer Directing Group (APECESG), the Ibero Amerikanische Forum under Consumer Protection Agenturen (FIAGC), and the International Consumer Protection and Enforcement Agencies are among the other key international bodies that uphold fair competition in both local and international trade.¹⁷ OECD Guidelines recognised following essential dimensions of consumer protection in e-commerce:

- All the consumers need to have access to e-commerce.
- Transparent and effective consumer protection to check fraudulent, misleading and unfair practices online is required to build consumer trust and confidence.
- The government should create an effective redressal mechanism for consumers.

Hence, it emphasises the importance of consumer protection authorities in ensuring their ability to protect e-commerce consumers and cooperate in cross-border matters.¹⁸ For the protection of consumers from online fraud, there is Econsumer.gov. It is a collaboration of consumer protection agencies from 41

¹⁶ The United Nations Economic Commission for Europe (UNECE) guidelines on e-commerce, available at https://unece.org/fileadmin/DAM/stats/groups/wggna/GuideByChapters/Chapter_13.pdf, pp 249–263, (last Visited on 7 Dec. 2023).

¹⁷ R. Srivastava, and G. S Bagale, *Review of shift from commerce to e-commerce in India*. (1) *International Journal of Advance and Innovative Research*, 305-309 (2019).

¹⁸ OECD/LEGAL/0422, *Recommendation of the Council on Consumer Protection in E-commerce* (OCED 2016) available at https://www.oecd-ilibrary.org/industry-and-services/oecd-recommendation-of-the-council-on-consumer-protection-in-e-commerce_9789264255258-en (last Visited on 24 Nov. 2023)

countries around the world to investigate different types of international online frauds such as online shopping/internet services/ computer equipment, credit and debit, telemarketing & spam, jobs and money, lottery or sweepstake or prize scams, imposter scams i.e., family, friend, government, or business etc.¹⁹

With the emergence of ICT (Information and Communication Technology), the new area of jurisprudence has been known i.e., cyber law which specifically deals with law and order in cyberspace. In 1996, the first Model Law on E-Commerce (MLEC) was adopted by the United Nations Commission on International Trade and Law (UNCITRAL) to bring a uniform law relating to e-commerce at international level. India being a signatory to this enacted the Information Technology Act, 2000 and also incorporated the required changes in consumer protection laws.²⁰

VI

Indian Legal Regime on E-commerce

Consumer protection in India is founded upon the English system, encompassing a variety of laws with precise and sophisticated provisions aimed at safeguarding consumers and upholding their rights. The heritage of consumer protection legislation in India dates back to the advent of the legislative era in the 19th century, progressing through numerous historical phases. The ancient ethical principles, such as those found in the Manu Smriti, an ancient legal text, laid down guidelines for fair trade practices, established a code of ethics for merchants, and delineated penalties for offences committed against consumers.²¹

The transformation brought about by the British system in India resulted in a significant overhaul of traditional practices and legal structures, leading to the establishment of a justice-based legal framework. Various legislation enacted during the British Period, such as the Indian Contract Act, 1872, the Sale of Goods Act, 1930, the Indian Penal Code, 1860, and the Drugs and Cosmetics Act, 1940 were instrumental in regulating the import, production, distribution, and sale of

¹⁹ Report International Scams Online, available at <https://www.econsumer.gov/#crnt> (last visited on 15 Jan. 2023).

²⁰ Karnika Seth, COMPUTERS, INTERNET AND NEW TECHNOLOGY LAWS A COMPREHENSIVE REFERENC WORK WITH SPECIAL FOCUS ON DEVELOPMENTS IN INDIA 100 (2016).

²¹ Rajib Bhattacharya, *An Analysis on the Various Aspects of Consumer Protection in India*, I (6), IJR 7 (July 2014), available at <https://journals.pen2print.org/index.php/ijr/article/download/241/574> (last visited on 27 Nov. 2023).

adulterated or misrepresented drugs and cosmetics. These statutes serve to offer legal safeguards to consumers.

After the Independence of India, various Consumer Protection legislations were implemented. These include the Prevention of Food Adulteration Act of 1954; the Essential Commodities Act of 1955; the Standard of Weights and Measures Act of 1976; and the Consumer Protection Act of 2019. The new act introduced novel concepts of consumer protection, redressal, establishment of the Central Consumer Protection Authority, penalties for misleading advertisements, unfair trade practices, product liability, e-complaints, video conferences, mediation provision, revised pecuniary jurisdiction, and more.

The preamble of the Indian Constitution delineates the concept of consumer justice where it ensures social, economic, and political facets, portraying it as an essential component of the broader justice framework that the state is mandated to guarantee to its populace. The primary objective of consumer justice lies in safeguarding the entitlements of consumers, while also embracing the notion of addressing consumer complaints, thus serving as a manifestation of social justice. The Indian Contract Act, 1872 offers provisions indicative of the prioritization of consumer interests.²² The legislation dictates the protocols for the formulation and execution of contracts within the Indian jurisdiction. Adherence to the stipulations outlined in the Act is imperative for ensuring the legal validity and enforceability of every contract. Therefore, over time, the conventional approach to contractual agreements has been supplanted by the contemporary technological method of contract formation. Recent developments include the utilization of web pages, online agreements, and electronic contracts.

The formation of electronic contracts is based on various forms such as click wrap, browse wrap, and shrink wrap contracts. Within these contractual agreements, the terms and conditions are established between the parties involved online. In a click wrap contract, acceptance is indicated by clicking on an "I accept" tab, with the terms and conditions presented in a scroll box. Browse wrap agreements aim to bind parties through the act of browsing the website. Shrink wrap agreements require the contracting party to review terms and conditions only after opening the box containing the product. The validity of e-contracts in India is depending upon the Indian Contract Act, 1872, with these contracts governed by the foundational principles of the same Act. This legislation ensures legal validity for e-contracts, in conjunction with the Information Technology Act, 2000. But there are chances of use of unfair trade practices²³ by the seller, and that too is high in e-commerce.

²² *Cardill v. Carbolic Smoke Ball company*, (1893)1 QB 256.

²³ Section 2 (46) of Consumer Protection Act, 2019: "unfair contract" means a contract between a manufacturer or trader or service provider on one hand, and a consumer on

Provisions Relating to E-commerce in the Information Technology Act, 2000

In the realm of electronic contracts, the seller showcases advertised products, establishes prices, and defines terms and conditions for the purchase of such products. In these contracts, the seller displays advertised products, establishes prices, and sets terms and conditions for the purchase of such products. When the terms and conditions are agreed upon and payment is fulfilled, the transaction reaches its conclusion. The legal validity of electronic contracts hinges on their electronic formation in compliance with the stipulations of the Indian Contract Act, 1872, and in accordance with the Information Technology Act, 2000.²⁴ The Law Commission of India, with the goal of safeguarding consumers, suggests in its report No. 199 entitled "Unfair (Procedural and Substantive) Terms in Contracts" that there is no need to alter the provisions of the Indian Contract Act, 1872 and the Specific Relief Act, 1963. Therefore, the recently enacted Consumer Protection Act, 2019 introduces fresh regulations concerning unfair contracts.²⁵ Unfair contracts within a contractual agreement are addressed by Section 23 (3) of the Indian Contract Act, 1872, while recourse is available under Sections 73 and 74 of the Indian Contract Act for a party experiencing inequity in a contractual exchange. The judiciary observed that the terms of a contract would not be binding if it is proven that the buyers of the property were left with no alternative but to formally agree to the terms presented.²⁶

the other, having such terms which cause significant change in the rights of such consumer, including the following, namely:--

- (i) requiring manifestly excessive security deposits to be given by a consumer for the performance of contractual obligations; or
- (ii) imposing any penalty on the consumer, for the breach of contract thereof which is wholly disproportionate to the loss occurred due to such breach to the other party to the contract; or
- (iii) refusing to accept early repayment of debts on payment of applicable penalty; or
- (iv) entitling a party to the contract to terminate such contract unilaterally, without reasonable cause; or
- (v) permitting or has the effect of permitting one party to assign the contract to the detriment of the other party who is a consumer, without his consent; or
- (vi) imposing on the consumer any unreasonable charge, obligation or condition which puts such consumer to disadvantage

²⁴ Rachna Chaudhary, *Remedies for Breach of E – Contracts*, Vol. 3 Issue 9 JOURNAL OF CONTEMPORARY ISSUES OF LAW 1 (2023) available at <https://jciil.syndicate.com/wp-content/uploads/2023/06/Rachna-Choudhary.pdf> (last visited on 14 Aug, 2023).

²⁵ Ministry of Consumer Affairs, Food's Public Distribution (Department of Consumer Affairs) 2020, available at <https://pib.gov.in> (last visited on 12 Nov. 2023).

²⁶ Raghav Parthasarathy, 2021, Fairness in contracts A Consumer Law perspective, (2023)

The Information Technology Act, 2000 establishes a legal structure for e-commerce and commercial dealings. These transactions rely on e-governance and offer validation for electronic records. The Act enhances security for online transactions and establishes a legal framework for this purpose. Furthermore, it includes provisions for addressing cyber offenses and imposing penalties for such actions. This legal acknowledgment serves as the basis for e-commerce and the protection of consumer rights.²⁷ The Information Technology Act adds important issues of security of business and commercial transactions. The Act makes e-commerce transactions secure by providing punishment for certain offences such as source code attacks under section 65, hacking (section 66), breach of privacy and confidentiality (section 72), publish false digital Signature certificate (Section73), etc.²⁸

The Information Technology Amendment Act, 2008 includes provisions for protection, breach of privacy and provides relief for data against disclosure of information in lawful contract.²⁹ Section43 (A) of the Act fixes the liability of a body corporate in the matters of sensitive personal data or information. It provides that if any body corporate possesses or handles any sensitive personal data or information, it should maintain reasonable security to rule out any wrongful loss of wrongful gain to any person. Failure to do so would attract compensation to victim.³⁰ The Information Technology Act confirms the validity of e-contracts under section 10A.³¹

available at <https://ceerapub.nls.ac.in/fairness-in-contracts-a-consumer-law-perspective/> (last visited on 14 Aug, 2023).

²⁷ Kanika Satyan, *E-Commerce and Consumer Rights: Applicability of Consumer Protection Laws in online Transactions in India*, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2626027 (last visited on 14 Jan. 2024).

²⁸ Parul Sinha, *Electronic Contracts and Consumer Protection: Does Legislation provide adequate Consumer Protection*, BHARTI LAW REVIEW, available at: <http://docs.manupatra.in/newsline/articles/Upload/880CF833-0147-488C-8282-4F157FB4F4C5.parul1.pdf> (last visited on 14 Jan. 2024).

²⁹ Section 72 (A) of IT Act, 2000: Punishment for Disclosure of Information in Breach of Lawful Contract.—Save as otherwise provided in this Act or any other law for the time being in force, any person including an intermediary who, while providing services under the terms of lawful contract, has secured access to any material containing personal information about another person, with the intent to cause or knowing that he is likely to cause wrongful loss or wrongful gain discloses, without the consent of the person concerned, or in breach of a lawful contract, such material to any other person, shall be punished with imprisonment for a term which may extend to three years, or with fine which may extend to five lakh rupees, or with both.

³⁰ Section 43-A, *The Information Technology Act*, 2000.

³¹ Section 10A of IT Act, 2000: Validity of contracts formed through electronic means.—

Contd...

VII

E-Commerce *vis-a-vis* Consumer Protection Act, 2019

Safeguard against Misleading Advertisements

The Consumer Protection Act, 2019 has broadened the scope of defining a "consumer" to encompass individuals who purchase or access goods or services online or via electronic mediums. It aims to enhance the safeguarding of consumers engaging in digital transactions. Moreover, it has incorporated a definition of advertisement to encompass any form of audio or visual promotion, representation, approval, or declaration disseminated through platforms such as electronic media, the internet, or websites. Under the Consumer Protection Act of 2019, the Central Consumer Protection Authority (CCPA) has been established. The CCPA has been entrusted with the task of overseeing issues concerning false or deceptive advertisements that could harm the general public and consumers at large. According to the provisions, a rigorous assessment is necessary for endorsing advertisements to ensure that endorsements genuinely reflect the current opinion of the individual, group, or organisation endorsing them and are based on substantial knowledge or experience with the specified goods, products, or services, without misleading the audience. Moreover, these guidelines provide that any significant connection between the endorser and the trader, manufacturer, or advertiser of the endorsed product, which could impact the endorsement's value or credibility and is not anticipated by the audience, must be fully disclosed during the endorsement process.

The CCPA has promulgated the Guidelines for the Prevention of Misleading Advertisements and Endorsements in 2022, which were announced on the 9th of June, 2022. Within the ambit of this authority, the CCPA has issued recommendations to e-commerce entities to refrain from engaging in the production, sale, or promotion of products or services that pose a threat to the safety of consumers.³² Additionally, the CCPA has released two safety advisories urging consumers to exercise caution when purchasing items that lack a valid ISI Mark and

Where in a contract formation, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptances, as the case may be, are expressed in electronic form or by means of an electronic records, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose.

³² Department of Consumer Affairs, The Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022 available at <https://pib.gov.in/PressReleasePage.aspx?PRID=1945167#:~:text=The%20Consumer%20Protection%20Act,over%20digital%20or%20electronic%20network> (last visited on 16 Dec. 2023)

are in violation of mandatory BIS standards. Examples of such products include helmets, pressure cookers, cooking gas cylinders, as well as various household items like electric immersion water heaters, sewing machines, microwave ovens, and domestic gas stoves utilizing LPG.³³

Safeguarding Consumers from Unfair Trade Practices in E-commerce

The Consumer Protection (E-commerce) Rules, 2020 outline the responsibilities of e-commerce entities and specify the liabilities of marketplace and inventory e-commerce entities, including provisions for customer grievance redressal. The Department has noticed emergence of unfair trade practices known as “dark patterns” which involve using design and choice architecture to deceive, coerce, or influence consumers into making choices that are not in their best interest. It is advised to the e-commerce companies, industry associations to refrain from indulging in any design or pattern in the online interfaces of their platform that may deceive or manipulate consumer choices and fall into the category of dark patterns.³⁴

Duties of E-commerce Companies

Consumer protection (E-Commerce) Rules 2020 have been passed by the central government to regulate e-commerce entities to guarantee adherence to the terms of the Consumer Protection in E-Commerce. The e-commerce entities must nominate a senior designated functionary or a nodal officer who resides in India³⁵ It must disclose to its consumers on its platform the information regarding company's name, address, headquarter, its branches, website, contact information and customer service. It is also the duty of a company not to engage in unfair trade practices.³⁶

It is the duty of e-commerce entities to set up a grievance redressal mechanism as per the complaints usually from India. It is also required to establish an office for consumer grievance redressal and publish the officer's name, contact information, and designation on its platform for the convenience of consumers. Furthermore, e-commerce entities have to ensure that the grievance officer promptly acknowledges receipt of any consumer complaints and takes action within a month of the complaint's date of receipt of complaint.³⁷ Every e-commerce entity is required to document the authorization from a customer for the acquisition of any product or service provided on its platform only when such authorization is demonstrated through a clear and positive action, and no such entity is allowed to document such authorization automatically. E-commerce entities are also obligated to process all

³³ *Id.*

³⁴ *Id.*

³⁵ Rule 4, *Consumer Protection (E-Commerce) Rules, 2020.*

³⁶ *Ibid.*

³⁷ Rule 4, *Consumer Protection (E-Commerce) Rules, 2020.*

payments for approved refund requests from customers according to the guidelines set by the Reserve Bank of India or any other competent body authorized by current legislation, within a reasonable timeframe, or as stipulated in relevant statutes.

When an e-commerce company deals with selling of imported goods or services, it must provide the name and contact information of the importer. Every online retailer must make every effort to join the Central Government's National Consumer Helpline as a partner in this process of convergence. If a customer cancels after confirming their purchase, the e-commerce company cannot charge them for it unless it also bears the associated costs. The E-commerce entity is prohibited from engaging in price manipulation of the goods or services available on its platform with the aim of generating excessive profits through the imposition of unjustified prices on consumers. Furthermore, it is required not to display discrimination among consumers within the same category or establish arbitrary categories that could potentially infringe upon their rights as given in the Consumer Protection Act, 2019.³⁸

Duties of Sellers on Digital Marketplace

The vendor involved in providing goods or services via a marketplace e-commerce platform must avoid any unfair trade practices during transactions on the platform or elsewhere. It is imperative that the seller does not misrepresent themselves as a consumer, fabricate reviews on products or services, or distort the quality and features of said products or services. In cases where the goods or services offered by a seller through a marketplace e-commerce platform are flawed, substandard, or counterfeit, and do not align with the advertised specifications or agreements, the seller is prohibited from refusing to accept returns, or discontinuing services despite receiving payment from the consumer. Even in situations where there is a delay in the delivery of goods or services beyond the stipulated schedule, the consumer reserves the right to request a refund.³⁹

Every seller who provides their goods or services via a marketplace e-commerce platform must enter into an official written agreement with the corresponding e-commerce entity before commencing any sales transactions. Furthermore, the seller is required to assign a grievance officer to promptly handle consumer complaints, ensuring that complaints are acknowledged within forty-eight hours and resolved within one month of receipt. To facilitate this process, the seller must provide the e-commerce entity with essential details such as legal entity name, primary headquarters address, branch locations, website information, contact details, including phone numbers and email addresses, and relevant tax identification details. The seller must verify that the promotional materials for goods or services

³⁸ Rule 5, *Consumer Protection (E-Commerce) Rules, 2020*.

³⁹ Rule 6, *Consumer Protection (E-Commerce) Rules 2020*.

accurately reflect the actual attributes, accessibility, and terms of use of such products or services. They are also obliged to divulge the identity of the importer and give assurances concerning the genuineness of imported items to consumers. Any seller conducting transactions of goods or services through a marketplace e-commerce platform is obligated to furnish necessary information to the platform for public display. This information includes all legally mandated contractual details, a comprehensive total price for each product or service, a detailed price breakdown, encompassing all mandatory and voluntary fees like delivery charges, postage fees, handling costs, transportation charges, and applicable taxes. Moreover, the seller must specify the expiry date of goods, applicable guarantees or warranties, and other pertinent information such as the country of origin to empower consumers to make well-informed decisions prior to purchasing.

Liabilities of Marketplace E-commerce Entities

A marketplace e-commerce entity that aims to seek exemption from liability as an intermediary will not be held accountable for any third-party information, data, or communication link provided or hosted by them under section 79 of the Information Technology Act, 2000. Adherence to the specified subsections and regulations is obligatory for such entities. All marketplace e-commerce entities must ensure that sellers commit to provide accurate descriptions, images, and other content related to goods or services on their platform. This content should directly align with the characteristics, quality, purpose, and other features of the products or services.

It is imperative for every marketplace e-commerce entity to present information clearly and prominently to customers on their platform. Details of sellers, such as business name, address, customer support contact, ratings, and other relevant information, who offering goods and services should be easily accessible. Furthermore, upon request, the entity must provide consumers with seller information post-purchase and enable tracking of any lodged complaints. Marketplace e-commerce entities bear the responsibility of offering information on returns, refunds, exchanges, warranties, delivery, payment methods, and grievance redressal mechanisms to consumers. Furthermore, they are required to furnish detailed information regarding payment modes, security protocols, applicable charges, cancellation procedures, options for charge-backs, and pertinent contacts for payment service providers. Every marketplace e-commerce entity should outline terms and conditions governing their relationship with sellers. Additionally, they are expected to exert reasonable endeavours in preserving records that identify sellers who consistently offer products or services that have previously been taken down or deactivated under applicable legislations like the Copyright Act of 1957, the Trade Marks Act of 1999, or the Information Technology Act, 2000.

VII

Conclusion

The digital marketing platform is evident across various income brackets and societal strata. Despite traditional platforms reaching saturation, digital marketing is experiencing accelerated growth. The proliferation of platforms and their turnover annually underscores the sector's exponential growth of this sector in the last decade. The internet is revolutionising consumer shopping habits globally and has swiftly transcended borders. Digital marketing has notably slashed intermediary costs, facilitating direct connections with end-users. The advent of online shopping has profoundly influenced societal norms. Contemporary living is marked by enhanced convenience owing to the myriad technological opportunities available. The evolving factors impacting consumer behaviour towards digitally promoted products are perceptible in consumer feedback. Addressing consumer challenges necessitates significant introspection by digital marketers and regulatory frameworks safeguarding consumer interests in online transactions. The trajectory of digital marketing hinges on companies' expansion strategies geared towards offering consumers compelling promotions, robust after-sales support, and ensuring the security of consumers' financial data in online transactions. Unfortunately, there are many areas which need immediate attention to address various consumer concerns in digital marketplace and ecommerce.