

Consumer Protection in the Era of E-Commerce

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ABSTRACT

The number of electronic commerce transactions has grown extraordinarily with widespread Internet usage. The right to privacy is particularly important in e-commerce. Recently, the privacy protection for consumer transactions has become more and more important in e-commerce. This paper aims to develop the study on the legislation of e-commerce consumer rights protection. Continuous growth and development of electronic transactions includes both e-commerce and e-consumers. Lack of proper policy standard and specific laws regulating electronic transactions of consumer and numerous cases reported through print media as well as electronic media necessitated the measures for the protection of electronic consumers. In the process of e-commerce e-consumers are looking forward for appropriate consumer protective regulations for the protection of their rights on e-transactions. In this article endeavor has been made to assess and

device or improve the existing laws or policies for the protection of consumer' rights and keeping in view of Consumer Protection Act, 1987 ,Contract Act, 1872 ,Companies Act ,2013 and Information Technology ,2000 in India. The article attempts to find out the possible ways for the protection of e-consumers' rights in general and rights of Indian e-consumers in particular. This paper also suggests possible measures to protect the right of consumers during transactions in the virtual world called electronic world, which demonstrates the need for a model that uncompromisingly protect the needs of consumers for their safe electronic transactions.

Keywords: E-commerce; E-consumer protection; e-Privacy; Dispute resolution; Consumer contracts, E-jurisdiction

INTRODUCTION

Economists of the age indicates that we are moving from the traditional economy that

emphasized on physical manufacturing of goods to the new economy where institutions concentrate more on knowledge and information than anything. Electronic commerce, commonly known as e-commerce, is a type of industry where the buying and selling of products or services is conducted over electronic systems such as the Internet and other computer networks. Electronic commerce draws on technologies such as mobile commerce, electronic funds transfer, supply chain management, Internet marketing, online transaction processing, electronic data interchange (EDI), inventory management systems, and automated data collection systems. Modern electronic commerce typically uses the World Wide Web at least at one point in the transaction's life-cycle, although it may encompass a wider range of technologies such as e-mail, mobile devices, social media, and telephones as well. Electronic commerce is generally considered to be the sales aspect of e-business. It also consists of the exchange of data to facilitate the financing and payment aspects of business transactions. This is an effective and efficient way of communicating within an organization and one of the most effective and useful ways of conducting business.

In view of the new models of business in e-commerce, it is important to keep in mind consumer protection issues. In India the Consumer Protection Act 1986 governs the relationship between consumers and service / goods providers. There is no separate consumer protection law that is specific to and regulates online transactions. Liability under the Consumer Protection Act arises when there is “deficiency in service” or “defect in goods” or occurrence of “unfair trade practice”. The Consumer Protection Act specifically excludes from its ambit the E-commerce, one of the fastest emerging trends in shopping is an unconventional method; this is a very recent development in India and poses a lot of problems to consumers shopping online. CAG felt the need to actually focus on this issue to see if the websites were consumer friendly and also to see if there were adequate laws and redressal mechanisms in India to protect consumers shopping online. ‘E-Commerce and Consumer Protection in India’ in 2002, to look at e-trading websites and how consumer friendly they were. In 2006, CAG conducted a follow up study ‘Protecting consumer rights in e-commerce transactions’ to look at laws and redressal mechanisms available to consumers. India in the recent

years has been experiencing an exponential growth in e-commerce and there are new companies springing up at a rapid rate. About the only things accelerating faster than the use of the internet are the new risks that are associated with the medium's commercial applications.

Although internet transaction have increased efficiency in transactions and increased accessibility for consumers, there exist many pitfalls that have not yet been satisfactorily dealt with. While growth in the e-commerce industry is sweeping across the country, there appears to be inadequate supervision both governmental and non-governmental and laws dealing with quality control for these new companies and this are what makes the rapid growth alarming. While there appears to be some discussion on a legal framework, there are virtually no watchdogs in the form of consumer NGOs or otherwise. As a result, it is unlikely that this new form of business will deal effectively with the issue of consumer welfare, which includes issues such as trust, privacy and sovereignty of consumers. It is important to elaborate on the definitions of e-commerce as that will help determine the scope and perspective of the policy agenda

in this connection. E-commerce has been simply defined as conducting business on-line. The Organization for Economic Cooperation and Development (OECD) defines electronic commerce as a new way of conducting business, qualifying it as business occurring over networks which use non-proprietary protocols that are established through an open standard setting process such as the Internet.

This definition distinguishes it from the earlier EDI type proprietary based networks or Intranets that were not based on an open (and, therefore, not cost effective infrastructure) like the Internet. In the WTO Work Programme on Electronic Commerce, it is understood to mean the production, distribution, marketing, sale or delivery of goods and services by electronic means. A commercial transaction can be divided into three main stages: the advertising and searching stage, the ordering and payment stage and the delivery stage. Any or all of these may be carried out electronically and may, therefore, be covered by the concept of 'electronic commerce'. Broadly defined, electronic commerce encompasses all kinds of commercial transactions that are concluded over an electronic medium or

network, essentially, the Internet. E-commerce covers three main types of transactions, business-to-consumer business-to-business (B2B), and business-to-government.

PURPOSE OF STUDY:

- To Study the Overview of E-commerce
- To Discuss the current advantages and disadvantages of E-commerce
- To Study of Security Issues in Online marketing
- Legal aspects involved in E-Commerce

RESEARCH METHODOLOGY:

In the present study doctrinal method of research is used and secondary data from various Text books, journals, newspapers and web sites is collected.

HYPOTHESIS:

The present litigation for the protection of e- consumers in India is not sufficient.

E-COMMERCE

E-commerce is as modern business methodology that addresses the needs of the organization, merchants and consumers to cut costs while improving the quality of goods and services and speed of service delivery. The main vehicle of e-commerce remains the Internet and the World Wide Web, but use of e-mail, fax and telephone orders is also prevalent. Electronic commerce is the application communication and information sharing technology among trading partners to the pursuit of business objectives .A key element of e-commerce is information processing. Ecommerce (or e-commerce) consists of buying and selling products and services over the Internet, as opposed to the standard commerce practices. It is a subset of a company's e-business strategy. Often e-commerce is used to add revenue streams to a standard business. Many businesses have become extremely profitable through online sales. Dell Computers is a prime example. Small companies and even Individuals can also market their products or services on a worldwide basis through ecommerce. Large companies can reduce sales and stocking costs by selling online.

DEVELOPMENT OF E-COMMERCE:

Today, the market place is flooded with several e-commerce options for shoppers to choose from. A variety of innovative products and services are being offered spoiling customers for choice. Online shopping is no more a privilege enjoyed by your friends and family living in the US or UK. Today, it is a reality in India. In the last couple of years, the growth of e-commerce industry in India has been phenomenal as more shoppers have started discovering the benefits of using this platform. There is enough scope for online businesses in the future if they understand the Indian shoppers psyche and cater to their needs. Changing the game Indian e-commerce industry has evolved over a period of time with innovations that have changed the rules of the game globally.

ADVANTAGES:

E-commerce is beneficial for several reasons. For example, it provides convenient access to products that may otherwise not be accessible, which is particularly important in

rural areas. It is an efficient way of entering into Transactions, both for consumers and e-retailers. Further, e-commerce has made possible low-value cross-border transactions on a scale that previously was unimaginable. To a large extent, e-consumers have the same requirements and needs as traditional consumers. However, in many ways, e-consumers are more vulnerable as they typically cannot examine the product prior to purchasing it and may not know from whom they are buying. In light of this, it could be suggested that the need for “trust” is even greater in e-commerce than in offline trade. Yet businesses have been poor at creating trust in e-commerce, and in many jurisdictions consumer protection laws continue to be weak. With e-retailers failing to create the necessary trust, the law plays a crucial role in creating consumer trust in e-commerce-trust that will benefit businesses, consumers and society. As a result better e-consumer protection will increase consumer confidence leading to greater e-consumerism, which benefits the trio partners i.e. businesses, consumers and society.

The reception of e-commerce was immediate as it offered automation of e-commerce for instance, displaying products

on the web, taking orders, processing payments online and co-coordinating inventory and delivery departments. The e-commerce industry is likely to evidence an upsurge in online consumer base new product categories and online retailer to optimize the online shopping experience. It has been predicted that e-commerce sales will increase at a steady rate of 19 percent year to year. E-Commerce is an evolution that helped our traditional economy adapt to the new digital world, using electronic technology through the internet, resulting in more competitions, more marketplaces, faster transactions, and more advanced technologies to make activities between customers and producers more active. Internet has changed economy so much that most of the business activities today are made in the web. Therefore, beside government's responsibility to protect e-consumers, we being consumers/customers and internet users are also responsible to keep our e-commerce healthy and safe so that e-business can be more reliable in the future so that every single person in the world will be able to take advantage of e-commerce.

E-CONSUMER:

In general the rights of a consumer as provided by the domestic legislations like Sec. 6 of Consumer Protection Act, 1986 in India, are also available to electronic consumer because no special stipulation has been framed in most of the Consumer laws regarding applicability or non-applicability of electronic transactions. But due to difference in the nature and place of business or medium of business few unique practical problems like place of business, jurisdictional issues, non-availability of common dispute resolution system, as there is every possibility of cross border transaction in electronic system (e-shopping), i.e. the buyer of one nation purchase from seller of another nation or vice-versa etc., are indispensable in case of electronic transactions or e-commerce, which certainly requires special measures that are not provided in the existing consumer legislations. The right of consumers and e-consumers though equal in theory but different in operation or enjoyment. Thus, in case of act of buying and selling of products or services on the virtual electronic world the buyer is known as e-buyer, seller is known as e-seller, retailer is known as e-retailer, consumer is known as e-consumer and the transaction is

known as e-transaction. Due to ease in transaction the number of e-consumer is growing at high rate and within a very short period it will defeat physical consumers. Considering these aspects strong protective mechanisms are required to be set up and stringent measures in form of laws needed to be framed otherwise it will not only affect the e-consumers but respective Government shall also lose their state revenues.

REASONS OF GROWTH OF E-CONSUMERISM:

E-consumer is nowadays, working as essential parts of day to day life due to its acceptability by a huge number of people throughout the globe. India is also not out of reach of this electronic fever. There are several keys drivers for the growth and acceptability of e-consumers and electronic transactions which are discussed in brief hereunder:

- **Affordability:**

Normally shifting from one type of activity to another involves high costs in case of physical businesses but in case of electronic businesses the picture is certainly

opposite one. The internet is a flexible platform that provides a greater value than offering alternative.

- **Convenience:**

Today internet is common to most of the people over the globe as **Laura Rush** stated that e-commerce sale will increase at the rate of 19 percent per year thus within a short period it will catch considerable number of family because of its user friendliness. Easy to use interface of the internet provide an additional incentive to change existing habits

- **Availability:**

The all-pervasive nature of the technological platform makes it popular. The Internet is a platform that is not restricted by geographical or time periods. One can purchase/avail any products or services from any corner of the globe simply by few clicks of mouse.

- **Wider Choice:**

In traditional market to choose one goods or products one has to move from one shop to another shop or one place to another place and some time have to take unwilling products due to scarcity of the product in particular area because in traditional market

options are lesser than the options available in electronic world.

- **Better Bargain:**

Due to lack of numerous varieties of products or numerous service providers in locality one has to opt for below quality products or services by paying a higher price sometimes as it is not possible to visit different places to have a good quality product or service but in case of electronic market the options are wide and thus one can not only choose as per their desire moreover can have more bargaining option.

E-COMMERCE, LAW AND CONSUMER PROTECTION

Legal issues encompass two basic areas—those of regulation, and those of making legal systems compatible to and for e-commerce. The latter, though perceived as being facilitatory in content, requires the former for it to be effectual. There are in fact many things that governments might reasonably want to regulate on the Internet. These include not just serious affronts to human values such as child pornography and incitement to racial hatred, but also consumer protection, the defense of intellectual property rights, and taxation.

These are all issues on which countries legislate already. The existing rules and laws would and should apply to the Internet and e-commerce. The problem is not whether the Internet should be regulated, but how. This entirely new sort of communication poses several entirely new sorts of problem for regulators.

A legal framework for e-commerce has been provided by the Information Technology Act, 2001, making India only the twelfth country worldwide which has such a comprehensive legislation for e-commerce in place. This Act also effects consequential amendments in the Indian Penal Code, the Indian Evidence Act, 1872, and the RBI Act, 1934 to bring them in line with the requirements of digital transactions. (Similar amendments are being done in the Companies Act, 2013 to facilitate e-commerce and e-governance.)

The IT Act essentially seeks to address three areas or perceived requirements for the digital era:

- To make possible e-commerce transactions—both business to business and business to consumer

- To make possible e-governance transactions—both government to citizen and citizen to government
- To curb cyber crime and regulate the Internet.

The Information Technology (Amended) Act, ITAA, was amended in 2008 to increase security of e-commerce transactions, with special provisions for legal recognition of digital signatures and electronic documents. Section 43A of ITAA holds ecommerce companies accountable for protection of personal data.

When an ecommerce company fails to protect personal data of its customers or is negligent in maintaining and implementing reasonable security practices, and if this result in wrongful loss of an online buyer, the laws are clear that its body corporate is wholly liable to pay the damages by means of monetary compensation.

Rules under the IT Act have been formulated and a national controller for enforcing the Act appointed. This controller will regulate the certifying authorities that will issue the digital signatures and the systems for authentication. These steps need to be matched by sorting out the issues of

security and payments. Security and authentication arrangements need to be recognized and accepted globally. On the first, though governments (such as the US government) have taken several steps, countries like India are yet to develop reliable technologies. (US companies developing them are presently restricted by their Government from the export of such technologies and that is an issue that needs to be addressed at the international level.)

The Government needs to be extremely careful in this area as attempts at controlling pornography should not be seen as, or result in, creating hindrances to the growth of the Internet in India. One of the criticisms leveled against the IT Act is that it does not have any clause ensuring security and protection of the on-line consumer. Legal opinion is divided on this point, with some experts arguing that the existing Consumer Protection Act, 1986 is quite comprehensive and can be extended to cover on-line consumers also, as, after all, on-line shopping is just another way of transacting business. However, even if this be the case there are several aspects peculiar to digital transactions such as electronic payments, confidentiality, transaction data, etc. that

lead to problems arising in cyberspace. An international consensus on privacy protection is developing around the OECD guidelines on the protection of privacy and trans-border flows of personal data, which embodies well-established principles of fair information practices.

In light of the above negatives associated with e-commerce (specially with buying on the Internet) and taking into consideration the rapid growth of this industry, it is important that consumer groups in India take this problem seriously and come up with guidelines that can be used to make shopping on the Internet a safe experience. It is with this role in mind that CAG in 2001 began looking at the experience of shopping on the Internet using available interactive Indian websites that allow consumers to shop on the Internet and identified possible avenues of trade abuse by such e-commerce providers. The 2001 study brought to light a number of issues such as privacy of information, provision of contract terms such as guarantees/warranties, refunds, dispute settlement, hidden costs and misleading information and other problems because this sector has been free from any kind of regulation.

In 2006, CAG undertook a follow up study to look at consumer responses to online shopping and problems they have faced in shopping online. A detailed analysis of the laws prevailing in different countries showed that Indian laws are grossly inadequate to deal with problems in online shopping, issues such as phishing, spamming etc.

Our paper proposes that in addition to known factors of trust such as a vendor's reputation, consumers' perception of privacy and security influence their trust in online transactions. Our research shows that consumers exhibit variability in their perceptions of privacy, security and trust between online and offline transactions even if it is conducted with the same store. We build upon this finding to develop and validate measures of consumers' *perceived privacy* and *perceived security* of their online transactions which are then theorized to influence their trust in EC transactions.

MEASURES FOR EFFECTIVE E-TRANSACTIONS:

- **Strong intellectual property protection:**

Innovation drives e-commerce technology, and rewarding creativity fosters innovation. Thus, a strong copyright, patent, and other form of intellectual property protection is key to invigorating the information economy.

- **Online trust security and privacy:**

Without consumer confidence in the safety, security, and privacy of information in cyberspace, there will be no e-commerce and no growth. Protecting information and communications on the Internet is an absolute prerequisite to the continued success of the Internet and the information economy.

- **Free and open international trade:**

Closed markets and discriminatory treatment will stifle e-business. The Internet is a global medium, and the rules of the information economy must reflect that fact. Only in an open, free market will the Internet's potential be realized.

- **E-privacy**

Despite rapid growth in e-commerce, many of the privacy and trust issues concerns remain unaddressed. We report a qualitative study on customers' concerns over privacy and trust in online purchasing. A number of issues such as data privacy, data security and safety, data disclosure and sharing by the seller with third parties have been explored with regular internet shoppers. The findings suggest that trusted/branded websites, secured websites, websites with clearly stated data protection/privacy policies makes people more comfortable in online shopping and decreases their data privacy concern. While unsecured websites, vague data protection/privacy policy, disclosure of data to the third parties; in turn discourage the users from releasing their personal data while shopping online.

- **Appropriate Information:**

It has been said that an informed consumer is the asset of the nation and considerably better equipped to look after her/his own interests than is an uninformed consumer. Businesses must be required to make all relevant information available that can help the consumers to assess the benefits and risks of entering into a particular

transaction. Having access to such information equips the consumer to decide whether to contract or not, and ensures that the consumer knows what to expect. Hence unnecessary disappointments, with subsequent disputes, are avoided. E-consumers are particularly dependent on appropriate information being provided, because such information acts as a substitute for the real-life 'touch-and-feel' that occurs during offline transactions. The type of information that e-retailers should be required to provide can be broken down into six categories;

- i. Information about the E-Retailer
- ii. Information about the Product
- iii. Information about the Sales Process
- iv. Information about the use of Consumers' Personal Data
- v. Information about Applicable Dispute Resolution Processes
- vi. Information about Applicable Dispute Resolution Processes

CONCLUSION:

Today's world is the generation of internet. The whole work whether it is small or big is done through the internet, online education to shopping everything is now a

day's easily accessible via internet. This internet is growing day by day. E-commerce is an inseparable part of internet. Growing of internet has also led to the growth of e-commerce. It has entered in the stage of its rapid development. Almost every kind of business is being conducted via the modes of e-commerce. By the help of e-commerce we can have every kind of business without having any infrastructure, large number of employees, etc. But it is also a bitter truth that everything which is having a good part also has a bad part. E-commerce is very useful but it has also some worst or negative side. There are various cases of fraud, misrepresentation, etc through the use of internet. These kinds of cases are common now a day's throughout the world. Hence various legislations are made to control these frauds. In India we are having a specific provision namely Information Technology Act 2001 which provides the enactments mainly regarding the e-commerce. Apart from the technical (e.g., fast and reliable networks) and regulatory (e.g., legal frameworks and standardization) challenges that need to be tackled, there are a number of social concerns that also need consideration. It is important for policy makers to see Internet use and electronic

commerce as a social as well as a technical phenomenon. National governments need to develop policy, regulatory and legislative frameworks which are adaptable, enforceable, to the use of E-Commerce.

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