

**“Contemporary Challenges in Consumer Protection”
Consumer Protection in E - Commerce**

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Abstract

Protect the consumer by owning the product all the way from the soil to the table

-Henry J. Heinz

The concept of Consumer Protection is very deep rooted. In India, until the advent of Independence there were hardly any laws which were directed to the protection of consumer's interest. The contemporary era is marked as the era of consumers. No country can knowingly or unknowingly disregard the interest of the consumers. Consumer Protection Act, 1986 is AN Act of the Parliament of Republic of India enacted in 1986 to shield the interests of customers in India.

Spring Meadows Hospital & Anr vs Harjol Ahluwalia¹ The court held that the definition of services in the CPA is wide enough to include both the parents who pay for the services and the child who is the beneficiary of the services. The National Commission was found correct in its approach as it granted compensation to the child for the cost of equipments and recurring expenses that he would have to bear owing to his vegetative state, whereas the compensation provided to the parents was for the agony caused and the lifetime care that the parents would have to provide.

Despite of all the legal safeguard consumer is the most neglected being in the present scarcity ridden society despite various laws being enforced consumer is vulnerable to mal practices like illiteracy, attractive packaging, disorganized customers, false and misleading advertisement and many more. A business unit cannot dare to ignore its consumers, if it wants to flourish. From past few decades sale and purchase in only a click away, the e-commerce business in India has multiplied in the past few years and changed the way consumers shop. People are relying more on online discount sales and schemes, with major companies launching their products exclusively on online shopping websites like Amazon, Flipkart, Shopclues, etc. However, with an increase in a number of e-commerce websites and with more consumers purchasing from these portals, the problems faced by consumers in e-commerce in purchasing their favourite watch, or the latest phone have also increased. The Indian government enacted the Information Technology Act 2000 (the IT Act) in June 2000 to address a need for legislation to accord legal recognition to transactions carried out by means of electronic communication. The challenges to e-commerce are vast which need to be dealt heedfully, this can be accomplished through effective legislation and better awareness

¹ Spring Meadows Hospital & Anr vs Harjol Ahluwalia Civil Appeals no. 7708 of 1997 With No. 7858 of 1997 (Supreme Court of India)

among consumers. As the digital economy is expanding rapidly and affecting more enterprises activities, it is important to take into consideration.

INTRODUCTION

1.1 Who is a consumer?

A consumer is one who is the decision maker whether or not to buy an item at the store, or someone who is influenced by advertisement and marketing. Every time someone goes to a store and buys a shirt, toy, beverage or anything else, they make a decision as a consumer. Consumer refers to any person who purchases some goods for a consideration that has been either paid or promised to pay or partly paid and partly promised.

Section 2(d) of the CPA defines "consumer" as a person who:

"(a) Buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for a consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose;

Or

(b) Hires or avails of any services for consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for a consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose. It may, however, be noted that "commercial purpose" does not include use by a person of goods bought and services exclusively for the purposes of earning his livelihood by means of self-employment."

1.2 REGULATORY LAWS

With changing times the economic and business environment of India also went through a change. In the 1980s and 1990s, India opened its economy and truly became a global trading partner with the world, this exposed customers to new products but also new problems. Unlike the law of torts which is not codified in India, there are certain legislations that have been formulated for the protection of interests of consumers. Some of the significant enactments that are aimed at protection of such interests of the consumers include

- The Sale of Goods Act, 1930,
- The Agricultural Produce (Grading and Marketing) Act, 1937,

- The Drugs and Cosmetics Act, 1940,
- The Indian Standards Institution (Certification Marks) Act, 1952,
- The Food Safety and Standards Act, 2006,
- The Essential Commodities Act, 1955,
- The legal Metrology Act, 2009, etc.

These legislations contain regulatory provisions contravention of which, in most cases, attract civil liability. Earlier, the aggrieved consumer had no remedy but to initiate action by way of a civil suit, a lengthy and expensive process which caused undue harassment to the consumers. As a consequence, the cost and time involved was disproportionate to the compensation claimed and granted to the aggrieved consumer.

1.3 CONSUMER PROTECTION ACT

The CPA provides for quick and easy remedy to consumers under a three-tier quasi-judicial redressal agency at the District, State and National levels. The CPA has been amended from time to time to extend its coverage and scope and to enhance the powers of the redressal machinery.

Broadly speaking, the CPA seeks to protect the following basic rights of consumers:

- Right against the marketing of goods and services which are hazardous to life and property;
- Right to be informed about the quality, quantity, potency, purity, standard and price of goods or services;
- Right to choice, wherever possible through access, to a variety of goods and services at competitive prices;
- Right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums;
- Right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers;
- Right to consumer education; and
- Right to clean and healthy environment.

2.What is E-Commerce ?

Ecommerce is a shortened version of the phrase “electronic commerce” which essentially describes any type of exchange of currency for goods or services online. Since the definition of ecommerce is so open-ended there are so many different types of ecommerce businesses that exist. There are various types of goods and services that can be sold via e-commerce. The millennial era is majorly dependent on online facility for their needs and wants, since it is convenient, cheaper and comforting as it is a vast growing industry. E-commerce (Electronic commerce) is a paradigm shift influencing both marketers and the customers. Rather e-commerce is more than just another way to boost the existing business practices. It is leading

a complete change in traditional way of doing business. This significant change in business model is witnessing a tremendous growth around the globe and India is not an exception. A massive internet penetration has added to growth of E-commerce and more particularly start-ups have been increasingly using this option as a differentiating business model.

The Indian e-commerce industry has been on an upward growth trajectory and is expected to surpass the US to become the second largest e-commerce market in the world by 2034. The e-commerce market is expected to reach Rs 13,97,800 crore (US\$ 200 billion) by 2027 from Rs 2,69,076.5 crore (US\$ 38.5 billion) in 2017. India's e-commerce market has the potential to grow more than four folds to Rs 10,48,350 crore (US\$ 150 billion) by 2022 supported by rising incomes and surge in internet users. Online shoppers in India are expected to reach 120 million in 2018 and eventually 220 million by 2025. Online retailers now deliver to 15,000-20,000 pin codes out of nearly 100,000 pin codes in the country.

E-Commerce and consumer internet companies in India received more than Rs 48,923 crore (US\$ 7 billion) in private equity and venture capital in 2018. Online retail sales in India are expected to grow by 31 per cent to touch Rs 2,28,540.3 crore (US\$ 32.70 billion) in 2018, led by Flipkart, Amazon India and Paytm Mall. Online retail is expected to contribute 2.9 per cent of retail market in 2018.²

2.1 Plights pertaining to E – commerce from seller's end

I Hassle of product return and refund

A major challenge faced by online sellers is the problem of refunding and returning from which a seller cannot run away. To attract large numbers of customers business houses provide the facilities of product and refund, which adds a toll to their cost and might land the business into losses.

II Old school approach of selling

Many businesses do not want to enter the field of online selling because of certain technicalities of online trading, so they resort to old method of physical trading .Provided if traders have sound know how of online trading it can their businesses

III Data security

Security issues can lead to nightmare scenarios. Fraudsters post spam and attack the web host server, infecting the websites with viruses. They can potentially gain access to confidential data about your customer's phone numbers, card details, etc.

² <https://www.ibef.org/industry>

IV Cost of price and shipping

Online business involves a lot of cost of on various steps that cuts profit as compared to offline trading.

V Large number of competitors

Since starting up business online is not pricy, it has become a new mode of launching business ideas. E-commerce offers similar type of products and services which makes cut throat competition.

2.2 Plights pertaining to E – commerce from buyer’s end

I Authentication and Identification

Though the Internet eliminates the need for physical contact, it does not do away with the fact that any form of contract or transaction would have to be authenticated and in certain instances recorded.

II Scarce Information of the product

E- commerce websites are not as sufficient as offline trading because of absence of tangibility. Consumers have to rely on the pictures and some information provided on the e – commerce websites.

III Nonsensical Requirements for completing a purchase

Did you know that 3 out of 10 online consumers (34%) abandon their shopping cart when they are forced to create an account? This is just one of many requirements that should not be imposed on first-time customers. Amazon, for example, reports the advantages of registering on its platform, but in no case imposes registration on its customers

IV Poor Logistics and Long Delivery Times

Another major challenge faced by shoppers while shopping online is logistics. Compared to the physical store collection of traditional retailers, e-commerce must invest in delivery to reduce this disadvantage. However, 23% of shoppers abandon their shopping carts for shipping reasons, proving that they are not doing too well. Long delivery times are a serious problem for B2C trade, although in business-to-business it can be offset by the price or volume of products. While certain e-commerce offer same day delivery, most remain stuck in deliveries in 2-3 days. Consumers don’t like waiting. The situation worsens when shipping costs exceed the final price of the shopping cart.

V Insecurity

Investment in e – commerce is growing , due to the increasing number of threats to governments, companies, and businesses internationally. The processing of purchases requires the sending of sensitive consumer information, which must be protected. Online customers are increasingly aware of the importance of security, and therefore demand guarantees. Unfortunately, a part of the ecommerces fails in this sense. Sometimes they even violate users’ rights.

3 LEGISLATION ON E–COMMERCE IN INDIA

There are no specific e commerce laws and regulations in India and they are still evolving . The Information Technology Act 2000 (IT ACT) governs the online issues of e commerce in India . IT act 2000 is the sole cyber law on India . The cyber law on India mandates that the e commerce entrepreneurs and owners must ensure the cyber law due diligence in India. E commerce entrepreneurs and owners in India must understand that legal issues of e commerce in India are different for different categories of e commerce . The legal requirements for undertaking e commerce in India also involves compliance with other laws like contract law , Indian Penal Code etc . Further online shopping in India also involves compliance with banking and financial norms applicable in India.

3.1 Information Technology Act , 2000 – Objectives and Features

Objectives of the Act

- i. The Information Technology Act, 2000 provides legal recognition to the transaction done via electronic exchange of data and other electronic means of communication or electronic commerce transactions.
- ii. This also involves the use of alternatives to a paper-based method of communication and information storage to facilitate the electronic filing of documents with the Government agencies.
- iii. Further, this act amended the Indian Penal Code 1860, the Indian Evidence Act 1872, the Bankers’ Books Evidence Act 1891, and the Reserve Bank of India Act 1934. The objectives of the Act are as follows:
- iv. Grant legal recognition to all transactions done via electronic exchange of data or other electronic means of communication or e-commerce, in place of the earlier paper-based method of communication.
- v. Give legal recognition to digital signatures for the authentication of any information or matters requiring legal authentication
- vi. Facilitate the electronic filing of documents with Government agencies and also departments
- vii. Facilitate the electronic storage of data
- viii. Give legal sanction and also facilitate the electronic transfer of funds between banks and financial institutions

- ix. Grant legal recognition to bankers under the Evidence Act, 1891 and the Reserve Bank of India Act, 1934, for keeping the books of accounts in electronic form.

Features of the Information Technology Act, 2000

- i. All electronic contracts made through secure electronic channels are legally valid.
- ii. Legal recognition for digital signatures.
- iii. Security measures for electronic records and also digital signatures are in place
- iv. A procedure for the appointment of adjudicating officers for holding inquiries under the Act is finalized
- v. Provision for establishing a Cyber Regulatory Appellant Tribunal under the Act. Further, this tribunal will handle all appeals made against the order of the Controller or Adjudicating Officer.
- vi. An appeal against the order of the Cyber Appellant Tribunal is possible only in the High Court
- vii. Digital Signatures will use an asymmetric cryptosystem and also a hash function
- viii. Provision for the appointment of the Controller of Certifying Authorities (CCA) to license and regulate the working of Certifying Authorities. The Controller to act as a repository of all digital signatures.
- ix. The Act applies to offences or contraventions committed outside India
- x. Senior police officers and other officers can enter any public place and search and arrest without warrant
- xi. Provisions for the constitution of a Cyber Regulations Advisory Committee to advise the Central Government and Controller.

In **Asifuddin And Ors. vs The State Of Andhra Pradesh**³, Reliance model handsets were to be exclusively used by Reliance India Mobile Limited but the TATA Indicom staff members who were figured as an accused tampered with pre-programmed CDMA digital handsets belonging to Reliance Infocom and activated with TATA Indicom network with all dubious means. Offence was held to be made out under Section 65 of IT Act.

Conclusion

In spite of continuous efforts made by the government of this country, many inventiveness are being taken by different organisations and people at their corresponding levels, consumer are still being exploited, taken for granted and misused. As this shopping sphere has gone-online, with one click as you can buy whatever you feel like, big MNC's go on lengths for their own profits. As this whole undemanding shopping experience seems alluring, but the actual reality is that it brings a big question on the security of people which is absurd. Not only this the laws made for consumers are not up to mark, which makes the legislation process weary and lengthy, which questions the existence of a consumer as an individual. There are so many scam incidents which take place on daily basis which are not even

³ Asifuddin and ors v the state of Andhra Pradesh [2005 CriLJ 4314] (Andhra High Court)

reported. But as the time is changing as our global market is expanding, with more people being educated, with technological advancement people are becoming vigilant and smart day-by-day due to this there is a considerable amount of fall in cases. But there is still a long way to go.