

An Assessment Of Consumer Protection In The Area Of Indian E-Commerce- Reference To Online Shopping

Llm (Business And Corporate Law)

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I. INTRODUCTION:

"A Consumer is the most important visitor on our premises. He is not dependent on us we are on him. He is not an interruption to our work; he is the purpose of it. We are not doing a favour to a consumer by giving him an opportunity. He is doing us a favour by giving an opportunity to serve him." – Mahatma Gandhi

"I dream of a Digital India where access to Information knows no barriers. I dream of a Digital India where the netizen is an Empowered Citizen" – Prime Minister Narendra Modi at the launch of Digital India.

Electronic commerce (e-commerce) has grown by leaps and bounds. Interestingly, globalization and e-commerce emerged at about the same time making it convenient to overcome spatial barriers in the global market. With its ubiquitous reach, the architecture of electronic commerce provides a dynamic and collaborative platform to business and consumers. This has resulted in increased competition and lower prices. Consumers get to choose from a whole range of goods and services across the world, from anywhere and at any time. Businesses are constantly innovating new technologies in order to adapt to new and evolving challenges in the area of e-commerce. One of the main drivers underlying ecommerce growth is the rise in number of individuals using the Information and Communication Technology (ICT) as a platform to trade.

From an economic perspective, both organizations and individuals benefit from e-commerce. Businesses choose to sell their products and services through electronic mode because they gain access to the global market without much

intervention of traditional market intermediaries. This in turn enables consumer to reach out to a variety of goods and services at competitive prices. Even during financial hardship, businesses get to provide visibility of their goods and services in the international market at relatively low costs. Customers can inquire about their order status around the clock at the click of a mouse. E-commerce also provides better access to information, which allows the consumer to discriminate among diverse goods and services available.

Consumer protection within domestic markets is no doubt a well-established concept. But the same does not hold in the international realm. The Organisation for Economic Co-operation and Development (OECD) in its recommendations concerning Guidelines for Consumer Protection in the Context of Electronic Commerce adopted in 1999, rightly identified ecommerce as being 'inherently international in nature'. This being the scenario, the global network environment challenges the capability of each country to address impediments relating to consumer protection appropriately. The ubiquitous reach of information technology has expanded business operations and the volume of trade has increased very easily, leading to a proportional increase in the number of consumer frauds.

electronic commerce involves buying and selling of goods and services through electronic means. Black's Law Dictionary defines Electronic Commerce as "business conducted without the exchange of paper-based documents through the use of electronic and/or online devices. It includes activities such as procurement, order entry, transaction processing, payment, authentication and

nonrepudiation, inventory control, order fulfilment, and customer support. The general public participates in e-commerce, almost unknowingly these days. Ecommerce devices include computers, telephones, fax machines, barcode readers, credit cards, automated teller machines (ATM) or other electronic appliances, whether or not using the internet.”

The WTO Work Programme on Electronic Commerce defined “electronic commerce” to mean “the production, distribution, marketing, sale or delivery of goods and services by electronic means”. The Committee further stated that “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”.¹

II. STATEMENT OF PROBLEM

The Internet, born and first used as means to exchange knowledge and information between institutions and research centres, or between cultural and research centres, has now metamorphosed into a powerful business media. The advent of satellite and electronic media has given limitless opportunities to manufacturers of goods and service providers to sell their products and services. At the receiving end of this media blitz is still the poor consumer. The Internet has raised a variety of legal issues since it first became widely used in the mid 1990s, most in the area of consumer rights and protection. Legislations affecting consumer and business rights in areas such as privacy, cybersquatting, and electronic signatures have been passed. These legislations are only the first attempts to regulate the Internet marketplace. Since the Internet is far changing and developing, these new laws are certainly not the last in terms of Internet regulation.

Consumer confidence primarily involves two convictions – that the consumer will get what he expects and that if things go wrong, the consumer can seek a remedy. The most significant reason for lack of consumer confidence in electronic transactions lies in anonymity of parties to the consumer contract. For instance, a consumer may purchase goods (such as books or CDs) through a website – where the contract is concluded in cyberspace and the payment obligation is also affected online. Though the performance of the characteristic obligation of the contract (delivery of good) occurs in the real world in exactly the same way as offline contracts, the parties to the online transaction do not encounter each other during the

transaction, unlike in a ‘brick and mortar’ model. This in turn results in greater risks of fraud, problems relating to delivery, return of goods etc. The Consumer Protection law recognizes several unfair trade practices such as false and misleading representation of goods and services in terms of standard, quality, grade etc., materially misleading the public as regard the price at which the goods are ordinarily sold, disparaging of goods, misrepresentations as to warranty or guarantee etc. An important challenge in e-commerce is that internet companies are often difficult to locate. E-mail domains, designation of websites, electronic addresses or home pages do not necessarily relate to the place of business of the supplier. The supplier may hide behind the business seat of the provider. Hence, lack of information or low quality or obscure information provided by the seller/intermediary is a key issue which remains unanswered in traditional consumer protection law.

Objectives:

1. To ascertain the need for further government action on regulating consumer’s access to adequate and authentic information in online shopping.
2. To identify the extent of consumer awareness and suggest further steps to strengthen consumer education and awareness about the new market phenomenon.
3. To examine the administration and enforcement of consumer cases in online shopping brought before the dispute Redressal agencies and suggest measures, if any, for a meaningful access to fair and timely grievance Redressal.

Research Questions:

1. What are the international guidelines and standards confronting information deficiencies in online consumer contracts?
2. Is there a need to upgrade the legal/regulatory framework governing consumer protection in bringing about uniform information disclosures in online shopping?
3. Are the consumers shopping online sufficiently educated and aware about their rights and responsibilities while purchasing goods or services through the platform?
4. What are the various modes of grievance redressal available under the Consumer Protection Law in India?

Hypothesis:

The factors on Importance of Consumer rights are perceived same by consumers who are aware of their consumer rights and who are not.

III. REVIEW OF LITERATURE:

Research on the concept of consumer protection in the online space has been vast and varied in the recent years. Several themes such as privacy and security, jurisdiction and enforcement issues, consumer redressal, consumer awareness, information asymmetry, net neutrality have been subject-matters of extensive research.

Understanding consumer issues in online shopping is the first step to consumer welfare in the online environment. Aslihan Nasir² brought out research outlining (a) distribution of complaints according to the business type, (b) distribution of complaint according to onlinestore type, (c) the major complaint themes and (d) the categorisation of complaint themes. Addressing some of the cross-cutting regulatory questions that should be addressed as a matter of priority to ensure that digital consumers are fully empowered, the GSR Discussion Paper on Consumer Protection in the Online world brings forth the role of policy makers, regulators and market operators in targeting initiatives to control the largely non-regulated ecosystem³.

Global Network Initiative commissioned a first in the series report on Indian Online Intermediaries and their Liability System. The study brought out the key characteristics and challenges in The Indian liability regime for online intermediaries and Ways to improve the rules for intermediaries⁴.

Information Asymmetries in B2C E-commerce hinders the development of electronic commerce. Many fraudulent small and medium-sized businesses use their information advantage to defraud consumers to obtain high profits, thereby making consumers lose confidence in e-commerce. QIN Dezhi, ZOU Lifang⁵ analysed the causes of information asymmetry in three aspects: the virtual of e-commerce, one-time transaction of businesses, as well as the imperfection of information disclosure system and the impact of information asymmetry on e-commerce development from three dimensions: e-commerce market, the honest merchant, as well as consumer. The paper also put forward some measures such as establishing third-party to audit business information published to curb the information asymmetry.

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. Dr. Rama Sharma, Ms. Vibha Srivastava, Ms. Gargi Bhadoria⁶ explored the Indian legal system on consumer protection in

electronic commerce and suggested possible measures for effective e-commerce transactions such as stronger intellectual property rights, online privacy & security and appropriate information about e-retailers, product, sales process, applicable dispute resolution process.

United Nations Conference on Trade and Development (UNCTAD) undertook the revision of the United Nations Guidelines on Consumer Protection. This task was mandated by the first ad hoc Expert Meeting on Consumer Protection, held in Geneva in 2012. Consumer International's work on this is an essential part of the task, wherein a number of the key provisions of the Guidelines are provided in a proposed new section titled "Ecommerce and digital products and services".⁷

Technology generates problems that impact individuals, legal entities and legal communities. These problems necessitate time-accurate legal solutions. Pedro Less Andrade⁸ analysed the legal and technological challenges that transnational electronic commerce carried out over open computer mediated networks presents to legal systems based on territorial principles in order to delineate global and systematic solutions to this new non-territorial commercial environment. A possible global, systematic and technologically oriented legal solution will create a new commercial environment safer for consumers, more predictable for businesses and with equal opportunities of access and growth for all countries.

Internet being a powerful communications medium, allows data exchanges between a wide range of different users situated in distant locations. This virtual nature of internet has the potential to lead to cross-border disputes. Application of private international law in resolving disputes arising cross-border transactions make litigation and enforcement costly and lengthy. Julia Hornle⁹ explores the use of mediation and arbitration, using online technology obviating the need for the parties and lawyers to meet face-to-face and leading to more efficient information processing, and thereby reducing cost and delay in dispute resolution.

A study titled 'Consumer Rights in the New Economy: Amending the Consumer Protection Act, 1986' conducted by Professor Akhileshwar Pathak of Indian Institute of Management Ahmedabad (IIM-A) highlighted the problems faced by consumers in E-Commerce. The study has stressed on a need for a separate law for e-commerce with a view to protect rights of web consumers in India. "In e-commerce, numerous problems arise due to the buyer and seller being at a distance. The buyer is not able to inspect or sample the goods or services. The buyer

necessarily pays through a card. This brings in the problem of fraudulence in card payment," it said.¹⁰

IV. SCOPE AND LIMITATIONS:

This study covers consumer grievance in online shopping intermediaries/platforms only where products are bought and sold and services rendered. The study excludes complaints from other forms of e-commerce such as teleshopping, telemarketing etc. Besides this, study used questionnaire method to collect the data. Apparently, social desirability bias cannot be avoided, which is considered as a limitation in terms of respondents' bias. In terms of theory, study tested very narrow scope of the theory unlike other social science subjects, however the limitations is very much compensated with help of doctrinal research effort from the researcher.

Research Methodology:

The research methodology applied to conduct this research is of online shopping intermediaries/platforms only where products are bought and sold and services rendered. The study excludes complaints from other forms of e-commerce such as teleshopping, telemarketing etc. Besides this, study used questionnaire method to collect the data. Apparently, social desirability bias cannot be avoided, which is considered as a limitation in terms of respondents' bias. In terms of theory, study tested very narrow scope of the theory unlike other social science subjects, however the limitations is very much compensated with help of doctrinal research effort from the researcher.

V. CONCLUSION & SUGGESTIONS:

The architecture of electronic commerce provides a dynamic and collaborative platform to business and consumers. Rise in the number of individuals using the Information and Communication Technology (ICT) as a platform to trade has been the driving force underlying e-commerce. Among the various electronic modes, online shopping has been a popular mode of purchase of a wide variety of goods and services in India. Time-efficiency and ample range of products and services to choose from makes online shopping a viable option for the consumer. Customers can inquire about their order status around the clock at the click of a mouse. Businesses are constantly innovating new technologies in order to adapt to new and evolving challenges in the area of online shopping. The ease with which electronic transactions take place attracts consumers to

actively participate both in the domestic and global markets. Apart from new opportunities, it has also created numerous concerns and challenges in protecting the consumers, who embark on this new course of business.

The concept of consumer protection has existed in every social order, primitive to modern, drawing support from several religious ordainments and commands of kings to various customary norms, with varying dimensions. During the initial legislative phase, provisions regarding protection of consumers constituted only a small part of the legislations relating to contract, sale of goods, prohibition on sale and purchase of certain commodities etc. Consumers had to depend on the ordinary remedies for defective products under laws governing implied conditions and warranties, guarantees of after sale service and advertisements in the form of contractual promises. The modern legislation has initiated an era of clear distinction of consumer rights and their protection with a formal system of enforcement. In other words, protection of consumer rights has been a continuous process from the primitive times to the modern digital age. The recent amendments to Consumer Protection law, provided under the Consumer Protection Bill, 2015 has recognised the need to step up the consumer law to meet the present-day digital challenges.

Apart from the Consumer Protection Law, Information Technology Act, as amended in 2008, includes online market place within the definition of 'Intermediaries'. Section 79 of the Act explicitly provides for exemption from liability of intermediaries only if such intermediaries prove due diligence beyond reasonable doubt. Information Technology (Intermediaries Guidelines) Rules, 2011 was introduced, which requires intermediaries to publish rules and regulations, privacy policy and user agreement for access or usage. The Rules also requires the intermediary to publish on its website the name of the Grievance Officer and his contact details by which users who suffer as a result of access to the computer resource can notify their complaints. Hence, it may be said that the provisions relating to intermediaries under the Information Technology Act, 2008 and the provisions under Information Technology (Intermediaries Guidelines) Rules, 2011 indirectly protect the interest of consumers by bringing in guidelines on information disclosures on the websites.

Despite existence of a legal framework that covers consumer protection in the online marketplace, there exist some specific challenges that create detriment to consumer welfare in online

shopping as compared to the traditional brick and mortar. When a dispute arises in a face-to-face transaction, consumers have a wide variety of options available to help them resolve the issue. The buyer usually takes the item back to the store where he purchased it, demonstrate the problem and get remedy directly from the seller. If the seller does not respond well, the buyer approaches the conventional law enforcement body to report the problem or approach the consumer court to sue the seller. Societies around the world have developed these institutions for quick and speedy redressal. But what about problems that arise in purchases using distance communication? A buyer cannot immediately walk back to the store where he purchased to get a refund. More so, if the seller is non-responsive to the buyer's queries, it is very difficult for a consumer to rely upon local law enforcement to handle the matter. This gets even more complicated when the consumer has purchased the goods from a region outside India. Hence, the virtual aspect of online shopping throws up newer confronts to consumer trust and confidence.

In a recent move towards addressing such issues in the e-commerce business, members of the All-India Online Vendors' Association, a group of retailers selling on ecommerce platforms, raised the issue during a meeting with Union Commerce and Industries Minister Nirmala Sitharaman, requesting for establishment of a regulator for the ecommerce sector to prevent issues such as the pending payments from troubled ecommerce platform. Setting up of one such regulatory body to regulate the ecommerce industry is the need of the hour.

Chapterization:

Chapter I Introduction

Chapter II Developments of consumer protection in online shopping

Chapter III Consumer protection in online shopping an international perspective

Chapter IV A critical analysis on consumer information and awareness

Chapter V Empirical Study on consumer information and awareness

Chapter VI Conclusion & Suggestions

Chapter VII Bibliography

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