
E-CONSUMER PROTECTION IN INDIA: TRENDS AND CHALLENGES

Prof. (Dr.) Ashok R. PATIL¹
Dr. Pratima NARAYAN²

Resumen: Las plataformas de comercio electrónico permiten el intercambio comercial vía internet de un modo nunca antes visto. Uno de los mayores promotores del crecimiento del comercio electrónico está dado por el aumento en el uso de las Tecnologías de la Información y las Comunicaciones (ICT) como base para el intercambio. El comercio virtual implica nuevas problemáticas en términos de confianza y seguridad del consumidor al momento de negociar. Este artículo analiza las tendencias actuales en derecho de consumo en India y los desafíos que se presentan al momento de proteger a los consumidores en las compras realizadas *on line*.

Palabras Clave: comercio electrónico, protección al consumidor, intermediarios, información al consumidor

Abstract: *Electronic commerce platforms allow for Internet-enabled trade in unprecedented ways. One of the main drivers underlying e-commerce growth is the rise in number of individuals using the Information and Communication Technology (ICT) as a platform to trade. The virtual aspect of e-commerce sale throws up newer confronts to consumer trust and confidence. This article analyses the present trends in consumer law in e-commerce in India and the challenges faced in protecting the consumers in the virtual online space.*

Keywords: electronic commerce, consumer protection, intermediaries, consumer information

¹ Prof. Dr. Ashok R. Patil is a Professor in Law at National Law School of India University, Bengaluru. He is the Chair Professor of Chair on Consumer Law and Practice and Director of Online Consumer Mediation Centre, both established under the aegis of Ministry of Consumer Affairs, Government of India.

² Dr. Pratima Narayan is an Independent Legal Consultant and Mediator. She holds a Doctorate of Philosophy (Ph.D) in Law from National Law School of India University, Bengaluru.

Introduction

Electronic commerce platforms allow for Internet-enabled trade in unprecedented ways. With its ubiquitous reach, the architecture of electronic commerce provides a dynamic and collaborative platform to business and consumers. 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 e-commerce growth is the rise in number of individuals using the Information and Communication Technology (ICT) as a platform to trade.

The UNCITRAL Model law on E-commerce refers e-commerce to transactions carried out by means of electronic data interchange and other means of electronic communication, which involve the use of alternatives to paper-based methods of communication and storage of information. 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”*.³

The Department of Industrial Policy and Promotion (DIPP) in its Guidelines for Foreign Direct Investment (FDI) on E-commerce defines E-commerce as *“E-commerce means buying and selling of goods and services including digital products over digital and electronic network”*.⁴

E-commerce has indeed emerged as a major opportunity for India. With the phenomenal spread of mobile telephony and the advent of 4G in the country, buyers from small towns and cities are also buying online in large numbers. It is a fact that internet has dissolved the discrimination factor between the small and the big cities enabling buyers from small towns to have access to the same branded goods, and quality products which earlier was a privilege of large city buyers. Internet Live Stats show that there were 462 million internet users in India. A 2016 report from the Internet and Mobile Association of India (IAMAI) stated that the overall Internet penetration in India is currently around 36.5%. The ‘Digital India’ Programme is transforming the country into a digitally empowered society and knowledge economy.

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 virtual aspect of e-commerce sale throws up newer confronts to consumer trust and confidence. The Consumer Protection law recognises 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. But,

³ World Trade Organization: Declaration on Global Electronic Commerce, 199, WT/MIN (98)/DEC/2

⁴ Department of Industrial Policy and Promotion, Ministry of Commerce and Industry: Guidelines for Foreign Direct Investment (FDI) on E-commerce, Press Note 3 (2016 Series).

what about failure on the part of the business in providing adequate disclosure of information regarding the address of the supplier, characteristics of goods and services, delivery costs, withdrawal etc. in case of such distance selling? This article analyses the present trends in consumer law in e-commerce in India and the challenges faced in protecting the consumers in the virtual online space.

Trends in e-consumer protection in india

E-commerce has become a bustling business in India today. It is the cutting edge in all areas of business today. As early as 2014, Internet and Mobile Association of India (IAMAI) had come up with a report that IAMA has estimated that nearly 1 million large and small retailers make use of online marketplaces to reach out to their customers. These online retailers represent a very wide range of categories including electronics, books, apparel, accessories, footwear, jewelry, etc.⁵

The need to ensure basic rights to consumer welfare has long been recognized by legislations world over and so with India. In line with the United Nations Guidelines on Consumer Protection (UNGCP), India enacted the Consumer Protection Act in 1986 to protect consumer interests. The popularity of the enactment lies in its avowed objectives of identifying consumer rights and providing cost-effective and speedy redressal. Though there are no specific laws governing e-commerce in India, in terms of Business-to-Consumer E-commerce, the existing provisions of Consumer Protection Act, 1986, is being applied to disputes in online transactions mostly under the provisions of 'Deficiency in Service' under Section 2(1)(g) of the Consumer Protection Act, 1986 or 'Unfair Trade Practices' under Section 2(1)(r) of the Consumer Protection Act, 1986.

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 effected 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. (Hill, 2008).

A predominant feature of consumer law is to promote good business practices, such that the consumer is well-informed about the transaction. The anonymous character of the online market demands a greater need for clear information on matters at every technical step for conclusion of the contract and also effective means to identify and correct input errors prior to the completion of the contract.

The Consumer Protection law recognises 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

⁵ Internet And Mobile Association of India: 1 Million Retailers Sell Online: IAMA, March 27, 2014 [Press Release] Retrieved from http://www.iamai.in/PRRelease_detail.aspx?nid=3313&NMonth=3&NYear=2014

the goods are ordinarily sold, disparaging of goods, misrepresentations as to warranty or guarantee etc. But, what about failure on the part of the business in providing adequate disclosure of information regarding the address of the supplier, characteristics of goods and services, delivery costs, withdrawal etc. in case of such distance selling? 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. (Reich, 2000). 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.

One such issue that came up before the consumer court is the case of *Rediff.com India Ltd. v/s Urmil Munjal*⁶, wherein the consumer was dissatisfied with the goods delivered by the online shopping website. While the consumer wanted to return the product and claim refund, he did not find a Return Policy, which provided details of the address to which the products were to be returned. Since the online portal was facilitator between the sellers and buyers as mentioned in the terms and conditions, it was the duty of the facilitator to inform the consumer as to how the goods are to be returned to the seller. The Court held the online portal liable on the grounds of 'Deficiency in Service' for not providing sufficient information.

Some of the common issues that arise due to lack of or obscure information are:

- a. Is the company doing business a legitimate one and where is it located?
- b. Does the business organization/individual offering product / service provide appropriate information on terms and conditions of the purchase such as instructions for use of products, warranties, cancellation, flexibility in return/ refund policies, availability of after-sale service etc.
- c. Is the browser secure and does it encrypt personal and financial information during online transmission?
- d. Does the browser provide comprehensive 'Privacy Policy Statement' addressing the manner in which the personal information of the customer would be used?
- e. Is the business committed to customer satisfaction? What recourse is available for a quick and fair resolution in case of consumer dispute?

In the Indian context, e-commerce companies adopting inventory-based model fall within the meaning of "Intermediary" within the provision of Section 2(1)(w) of Information Technology Act, 2008. Section 79 of the Act deals with limitation of liability of these intermediaries, in so far as they exercise due diligence as provided under Rule (3) of the Information Technology (Intermediary Guidelines) Rules, 2011. The Rules require the Intermediaries to publish user agreement, privacy statement for access or usage of intermediary's computer resource.

⁶ RPN0.4656 of 2012

On obtaining knowledge of any information being grossly harmful, harassing, defamatory, obscene or otherwise unlawful in any manner or violate any law for the time being in force, the Guidelines requires the intermediary to act within 36 hours to disable such information. The Rules also require 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.

Jurisdiction of courts posed a great challenge in the early years when e-commerce cases were brought before consumer forums. Many cases were struck down due to lack of jurisdiction which the consumers had to run helter-skelter identifying the right jurisdiction, given the virtual nature of e-commerce. One such instance was the case of *Rajinder Singh Chawla v. makemytrip.com*⁷ where the Consumer Court rejected a consumer complaint for lack of jurisdiction. The reason was that the online transaction was spread across various geographical areas. The Court could not make out a reason for entertaining the complaint.

Online shopping portals continue to provide unfair and unreasonable terms in their User Agreement, especially with respect to jurisdiction. Such clauses are irrelevant and arbitrary considering the fact that consumers in online shops are spread over very large geographical areas.

To remove the arbitrariness in Jurisdiction clause, a recent judgement of the National Commission in *Marwar Engineering College and Research Centre v. Hanwant Singh, IV (2014) CPJ 582 (NC)* has made it clear that Consumer's place of e-commerce transaction is the jurisdiction to file a complaint.

The new UN Guidelines on Consumer Protection of 2015 lays special emphasis on transactions taking place through Electronic Commerce, which include fair and equitable treatment, ethical commercial behaviour, disclosure and transparency and education and awareness raising. The UN Guidelines also lays emphasis on Member States to work towards establishing consumer protection policies that encourage good business practices, ease of access to information, secure payment mechanisms, fair, affordable and speedy dispute resolution and redress, consumer privacy and data security.

With increase in internet penetration and companies pushing for more online sale of their products through discount sales and festival sales, the number of complaints has also increased. In the recent times, Indian consumer courts have seen an increase in consumer cases in the context of e-commerce, mostly on the grounds of deficiency in services and unfair trade practices. Taking into

⁷ First Appeal 355/2013, SCDRC Chandigarh

consideration the concerns of consumers' right to information in e-commerce, the Consumer Protection Bill, 2015 has made some significant provisions to address the concerns of adequacy in information and jurisdiction issues in e-commerce such as:

1. The definition of "Consumer" is amended to include an explanation to the expressions 'buys any goods" and "hires or avails any services" to include transactions made through any mode, offline, online through electronic means, teleshopping or direct selling or multi-level marketing.

2. 'Deficiency in service' to include "...*any act of omission or commission on the part of service provider in withholding 'relevant information' which may cause damage to the consumer.*"

3. Failure on the part of business to allocate a 30 days cooling-off period for purchase of goods or services is also being considered to be included as 'unfair trade practice' under Section 2(41) of Consumer Protection Bill, 2015. The same provision also attempts to provide data security on consumers' personal information disseminated on the online shopping portals.

4. In the context of territorial jurisdiction of consumer redressal agencies, the Amendment has included a new provision, which states that a complaint may be instituted in territorial jurisdiction, where the complainant resides or personally works for gain. This is an important step towards ease of access to justice in complaints arising out of online shopping, where in most circumstances, the online store is located away from the place of consumer and provides unreasonable terms for dispute resolution.

5. Dispute resolution through mediation is introduced under the Consumer Protection law. The Bill provides for establishment of court-annexed mediation cells for the purpose of redressing consumer grievance through mediation.

Challenges

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 (Coteanu, 2005).

Consumer complaints in e-commerce continue to be on the rise each year. In May 2017, the National Consumer Helpline reported that E-commerce received the highest number of complaints, of the total complaints received by the Helpline. Most complaints against e-commerce companies related to non-delivery of product, delivery of defective product, delivery of wrong product, paid amount not refunded after cancellation, deficiency in service, wrong promises, promised/offered gift not given, overcharged amount not refunded, delay in

delivery, no after sale services, defective products etc. (Dipak and Sarkar, 2017).

Despite several changes being brought out in e-consumer protection, some challenges still pose to be a threat to consumer confidence and trust in the e-commerce transactions. For instance, filing a complaint against an electronic retailer based overseas can be challenging, expensive, time consuming and it might not be clear from the website where the supplier is based. The conventional approach to jurisdiction of courts lies in territorial, pecuniary or subject-matter jurisdictions. But with the e-commerce, the question of jurisdiction gets complex.

Another challenge in cross-border consumer complaints is that the contract may be governed by the laws of the country from where the goods were supplied, rather than where it was bought. Legal action could include having to start court proceedings in the retailer's country, thus inconveniencing the consumer to a great extent. In this regard, the new UN Guidelines on Consumer Protection lays down recommendations on dispute redressal and resolution among others. The Guidelines states that the Member States should encourage development of fair, effective and transparent mechanisms to address consumer complaints, through administrative, judicial and alternative dispute resolution, including for cross-border cases.

The Supreme Court of India in *M/s Afcons Infra Ltd. v. M/s Cherian Varkey Construction Company Ltd. and Other*⁸, while enumerating matters that are suitable for Alternate Dispute Resolution (ADR), held that all consumer disputes including disputes where a trader/supplier/manufacturer/service provider is keen to maintain his business/professional reputation and credibility or product popularity can be referred to ADR. In view of the above, the need for mediation in the consumer context in India has been recognised under the proposed Consumer Protection Bill, 2015. The Bill has introduced mediation in consumer cases, where disputes can be referred to mediation either at the commencement of proceeding before the Consumer Forum or at any time during the proceeding.

Furthermore, Ministry of Consumer Affairs, Government of India has established 'Online Consumer Mediation Centre' (OCMC) at National Law School of India University in 2016 to cater the E-Consumers and E-Commerce companies. This Innovative step is taken by the Government of India to achieve the objects of

⁸ Civil Appeal No.6000 OF 2010

the constitution of India. The Ministry of Consumer Affairs is also following the recent Constitutional Bench (5 judges') decision of the Supreme Court of India i.e., *Anita Kushwaha v. Pushap Suda* [(2016) 8 SCC 509] . In this case Supreme Court held that 'Access to Justice' is a fundamental right and laid down four main facets of the essence of access to justice i.e., (i) The State must provide an *effective adjudicatory mechanism*; (ii) The mechanism so provided must be *reasonably accessible in terms of distance*; (iii) The process of adjudication *must be speedy*; and (iv) The litigant's access to the adjudicatory process must be *affordable*.

The mission of the OCMC is to provide innovative technology for E-consumers and E-commerce companies to manage and resolve conflicts and to propel online mediation as a first choice to resolving consumer disputes. The Centre runs with a vision to provide for an innovative online mediation tool that affords consumers better access to justice through quick and easy redressal mechanism and at the same time provide opportunity for businesses to maintain good customer relations. The core Values of the Centre include Easy accessibility, Security, Confidentiality, Cost-effective, Neutrality and Integrity⁹. The online platform is compatible for the mobile phones also.

Consumers have become an integral part of the growing community of traders in the electronic market. Electronic commerce can be achieved to its fullest potential in the electronic civilization only when consumers who purchase through online markets are afforded the same level of protection as conventional consumers. Misinformation or non-information about business, goods and services and about the transactions causes a huge detriment to consumer information in the online markets.

Website information still remains poor on a significant proportion of sites and the number of fully compliant websites in terms of information is also low. Thus, the virtual nature of e-commerce has given rise to information asymmetry, which is a great hindrance to consumer trust and confidence. Effective measures to provide adequate and uniform disclosures in online shopping is the first step to bringing a brick and mortar system. Accessibility of business information can be better enhanced by developing quality assurance tools such as Trustmark that provide quality standards and information checks of the online stores.

Consumer empowerment is an important component of consumer protection. Lack of awareness about the choice of portals, privacy and dissemination of personal sensitive information, nature and modes of consumer redressal etc. are some of the significant reasons why a consumer ends up in a fraudulent trap. Greater emphasis should be laid on timely education and awareness of the use of the e-commerce platform to appraise consumers about the consumer rights available to them and the mechanisms through which these rights, if violated can be redressed.

Conclusion

The extraordinary growth of Electronic Commerce has greatly influenced the way business is being carried in the present generation. Unlike in the past, consumers have become an integral part of the growing community of global traders in the electronic market. Apart from new opportunities, it has also created numerous concerns and challenges on businesses and consumers who embark on this new course of business. E-commerce can be achieved to its fullest potential in the electronic civilization only when online consumers are afforded the same level of protection as conventional consumers.

Consumers involving in electronic commerce should be afforded adequate and transparent information about the business, products being sold and the entire transaction details. Consumer education and awareness about the use of the e-commerce platforms should be enhanced through wide media publications. Consumers will not engage in the impersonal click-and-mortar system unless they are either familiar with the business they are transacting or have the confidence that if something goes wrong they will have recourse to a quick and easy redressal of their grievance. In order to build this trust, businesses carrying out e-commerce should provide for internal mechanisms that can guarantee cheap and effective enforcement of consumer rights.

Further Consumer Protection Bill, 2015 will be presented this year in the name 'Consumer Protection Bill, 2017' before the parliament. Once new legislation comes into force then there will be a better protections for E-consumers in India.

Bibliography

1. Coteanu Cristina (2005), *Cyber Consumer Law and Unfair Trading Practices*, Ashgate Publishing Company, United States of America.
2. Dash, Dipak K and Sarkar, John (2017) *Complaints against E-commerce Companies Top List at National Consumer Helpline*, *The Times of India*, available at <https://timesofindia.indiatimes.com/india/complaints-against-e-commerce-companies-top-list-at-national-consumer-helpline/articleshow/58781723.cms>
3. Hill, Jonathan (2008), *Cross-border Consumer Contracts*, Oxford, Oxford University Press.
4. Reich, Norbert (2000) *Consumerism and Citizenship in the Information Society in Consumer Law in the Information Society*, Thomas Wilhelmsson, Salla Tuominen and Heil Tuomola(ed.), The Hague/London/Boston: Kluwer Law International.

⁹ <http://onlinemediationcenter.ac.in>