



RIGHTS OF E-CONSUMERS IN INDIA

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Abstract

The word 'E-Commerce' broadly includes activities relating to buying and selling of goods and services through internet. Over the last two decades, gradually rising use of mobile phone and internet has fundamentally changed the way businesses reach to their customers. Not only the traders have been benefitted from going beyond the territorial borders, the consumers of goods and services have also been provided with ample new advantages like getting the quality goods and services at competitive prices at their doorsteps only through the click of a button. Indian traders and consumers are not the exceptions. On one hand online shopping portals like Flipkart, Amazon, Snap deal etc. ensure smooth buying opportunities with quick and effective delivery systems, on the other hand, online services are provided by Indian Railways, different Airlines, banks, insurance companies, cinemas etc. for payment and booking purposes. Thus the feasibility of operations that E-Commerce have brought about to the Indian trade industry deserve mentioning. However, on the other side of the story, the hard reality is that even with such increased scope of E-Commerce, there remains issues relating to the ambiguity in the laws relating to the protection of rights of E-Consumers entering into such online transactions. This paper is an attempt to make an appraisal of the consumer protection laws relating to E-Commerce operational in India and to highlight the ambiguities existing in them.

Keywords: Consumer Protection, E-Commerce, Online Shopping, IT Act.

I. Introduction

An exponential growth in the domain of **online shopping** have been observed in recent years **in India**. Several **retailers** have made a magnanimous array of products and services available at our mouse click. Consumers have increasingly been adapted to this trend as is evident from the growth this sector has witnessed. **Comparing products and services and their prices** were never this convenient before. A new regime brings with it new risks which are needed to be accounted for and addressed in national laws. This raises the question whether **customers of online shopping** in India are adequately protected **under Indian laws**. Misuse of information for marketing purposes, fraudulent activities, information theft are only illustrative of the list of threats that consumers have to face every time they opt for shopping online. Apart from these issues, there are several reported instances where **damaged product**, wrong product or no product at all has been delivered by the retailer.



Online purchases have been given recognition in Information Technology Act, 2000. Reserve Bank of India have also secured online space of a customer by issuing various circulars and directives from time to time regarding online banking and money transfer activities. Although it is true that as a whole there are no specific laws that seek to protect consumers in the online space, but that does not mean that the consumers are left without any recourse. In this regard, a humble attempt is made to examine whether it is possible to use the existing consumer protection laws in India to protect consumer rights in the online environment as well.

II. An Appraisal of the Consumer Protection Laws in India w.r.t. E-Commerce

A consumer enjoys certain rights that are granted to him by the provisions of various consumer protection laws enacted in the country.

Consumer Protection Act, 1986 is the fundamental Act that provides certain rights to consumers' viz. right to safety, right to information, right to choice, right to be heard or right to representation, right to seek redressal and right to consumer education. This Act reckons the three tier redressal system that should exist namely at the district, state and national level to redress any consumer dispute. However, the law until recent times was ambiguous as to whether such provisions would be applicable to online transactions or not. In 2014, **the Government of India** took notice of the growing instances of fraud / cheating in e-commerce and initiated the process of **amending the Consumer Protection Act, 1986** to incorporate provisions addressing the issue. The Minister of State for Consumer Affairs, Food and Public Distribution, made an announcement in Lok Sabha of also including online transactions within the purview of Consumer Protection Act, 1986. Instead of enacting a separate statute to deal with the problems of e-commerce, they have decided on amending the act itself. The new law was intended to include within its domain not only **vendors selling products online** but also **online marketplace providers** such as **Flipkart, Amazon etc.** Appellants can now approach various consumer forum viz. district consumer forum, state commission and national commission for their grievance redressal. This was a vital movement towards safeguarding the rights of the online consumers. However, even this movement neither establishes a separate mechanism for redressal of disputes arising out of online transactions nor that new provisions that specially cater to e-commerce have been introduced. In effect the provisions of the Consumer Protection Act, 1986 are also made applicable to online transactions as well. Prior to this recent express declaration, the Consumer Protection Act, 1986 was impliedly applied to online transactions, in accordance with the definitions provided under the Act. Any person who buys any good or avails or hires any service for any consideration, whether paid or otherwise, except for commercial use is regarded as a consumer under the Consumer Protection Act, 1986. Buyer as per Sale of Goods Act, 1930 is defined as any person who buys or agrees to buy goods. Thus following these two definitions, any person who pays or agrees to pay a price for a particular good can be regarded as a



consumer, irrespective of such a sale being online or physical. Additionally, contract of sale as defined under the Sale of goods Act, 1930 is indicative of the fact that such may apply to online transactions along with regular transactions. Thus, earlier though there was absolutely no express mention of e-commerce falling under the ambit of Consumer Protection Act, 1986 these provisions impliedly provided a right to online consumer to seek redressal under the same. However, Consumer Protection Act, 1986 only provides a narrower picture. The Act does not provide a solution to the various loopholes that are brought about by online transactions due to their impersonal nature, which may be considered their flipside as well. The scope that Consumer Protection Act, 1986 has with respect to e-commerce is thus restricted to providing a redressal mechanism that is applicable to direct transactions as well.

Further, Consumer Protection Act, 1986 becomes applicable when there is a “defect in goods” or “deficiency in services”. Hence only if one of the above two criteria are satisfied Consumer Protection Act, 1986 would come into play. In e-commerce the major concern is about efficient delivery of the goods. However, there is no redressal provided if goods are not delivered in the time specified. Such intricacies create more trouble to the online consumers due to the anonymity of the seller. Many complaints have been filed by online consumers regarding the same in consumer forums, however the unclear laws and the consequent ambiguity has resulted in their grievances not being paid heed to.

Apart from the principal law for consumer protection, many other laws cover online transactions within its ambit. Information Technology Act, 2000 is another functional and comprehensive legislation which provides a legal framework for e-commerce. It essentially involves commercial transactions, specifically between the government through its many functionaries and the citizens. The provisions are focused towards e-governance and are aimed at implementing measures for authentication of the electronic records by use of digital signature certificates for carrying out day to day business transactions like filing and viewing official documents in the electronic format. The IT Act, 2000 is an attempt by the govt. to digitalize its workings by making every piece of information available online and further ensuring that such transactions are secured. Further, it provides for remedial measures like appointment of Controller and setting up a Cyber Regulations Appellate Tribunal for penalizing the cyber offences as laid under Section 43 to 47 of the Act. The most significant characteristic of this Act, however, is that it provides legal recognition to electronic records. In effect it also amends the Evidence Act, Indian Penal Code, Bankers’ Books Evidence Act and the Indian Stamp Act. This legal recognition guarantees effective enforcement of the rights of consumers, if infringed, in all e-commerce transactions undertaken by them.

Yet, this act does not holistically cover all the aspects of e-commerce with respect to consumer rights. It primarily covers commercial transactions between business and government. It provides details about filing, retaining, viewing documents with respect to a business and safeguards and authenticates those documents with the help of digital signatures



, asymmetric crypto system etc. An ordinary Indian man does not, in his daily life enter into such transaction, instead they mostly utilize electronic commerce for online shopping, online banking and money transfer activities etc. No specific provisions for the same have been laid down under the Act even though it is the need of the hour for the enactment of such provisions. The objectives of the Act as stated include facilitation and giving legal sanction to electronic fund transfers between banks and financial institutions in addition to giving legal recognition for keeping of books of accounts by bankers in electronic form. Though nowadays such facilities have been made possible, no legal framework for protection of consumer rights is provided under the IT Act. Thus this significant aspect of e-commerce is not covered.

The essential elements for the formation of a contract as per Section 10 of the Indian Contract Act, 1872 are also applicable to an electronic contract or e-contract as well. Every electronic transaction that is entered into, especially if it is of business to consumer form, is fundamentally and for all effects and purposes an E-contract. Both Consumer Protection Act and Information Technology Act in concurrence provided legal recognition to the concept of e-contracts. Further, Information Technology (Amendment Act), 2008 introduced Section 10A which afforded validity to contracts formed through electronic means. Section 10A states that “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 record, such contract shall not be deemed to be un-enforceable solely on the ground that electronic form or means was used for that purpose.” The amendment, thus, has clearly brought in validity even to e-contracts and lays down the fundamental principles for formation of contract like acceptance, revocation etc. Hence, the validity and legal recognition granted to e-contracts, is a step towards ensuring that rights of the consumers who carry out e-commerce are taken care of. All that being said, it is important to note that though the concept itself is valid, in practice it is difficult to ensure that the essentials of a valid contract are conformed with in case of e-contracts also. It is difficult to assess whether a person is competent to contract or not when transacting online. This often results in minors, lunatics and other incompetent people entering into contracts. As held in the pioneering case of *Mohoribibi v. Dharmodas Ghose*, contracts with minors are void, contracting with such a minor online should also result in the contract becoming void. But no safeguards are provided for online contracts. Existence of the two forms of contracts viz. click wrap contracts and shrink wrap contracts while carrying out e-commerce transactions, makes protection of consumers a difficult task. Click-wrap contracts are those whereby a party after going through the terms and conditions provided in the website or program has to typically indicate his assent to the same, by clicking on an “I agree” icon or decline the same by clicking on an “I disagree” icon. Shrink-wrap agreements have derived their name from the “shrink-wrap” packaging that generally contains the CD Rom of software. The terms and conditions of accessing the particular software are printed on the



shrink-wrap cover of the CD and the purchaser after going through the same tears the cover to access the CD Rom. Sometimes additional terms are also imposed in such licenses which appear on the screen only when the CD is loaded on the computer. The user always has the option of returning the software if the new terms are not to his liking for a full refund. These kinds of contracts are available all over the internet and it is difficult to utilize the facilities that internet offers without having entering into any of such contracts some time or the other. However, the disadvantage of the same is that the customers herein do not have the opportunity to negotiate the terms and conditions due to their impersonal nature. Thus there is no other option, except, to accept the terms of the contract, if the consumer wants to go with the transaction. Many believe that since the service provider is in a position to dominate the will of the consumer, such contracts may even lead to undue influence as laid down under Section 16(3) of the Indian Contract Act, 1872. However, such contracts have been held valid and enforceable in plethora of judgments. Since these contracts are held valid, any consumer right violated due to the breach of these agreements can be brought to court, however the disadvantage still remains that consumers in this case need to follow straight away the terms as laid down.

It is well known fact that stamping of a document is essential to consider it admissible in the eyes of law under the Indian Evidence Act, 1872. However, in common practice only physical instruments are stamped. There were great debates as to whether e-contracts should be liable for stamp duty as well, considering their newly created validity and legality. There exists certain inconsistencies between the central and the state laws in this regard. The Bombay Stamp Act, 1958 by the way of an amendment in the year 2005, introduced Article 51A which levies stamp duty on the record of transactions relating to purchase or sale of gilts, shares, debentures and other securities. On the other hand, Indian Stamp Act, 1899 not only, does not provide any provision with respect to stamp duty on e-contracts but also under Section 8A provides that there should be no stamp duty on securities. Thus, clearly, the amended provisions of Bombay Stamp Act are inconsistent with that of the central stamp duty law. Such inconsistencies, in turn, create uncertainty in the consumer rights. The major rationale behind stamping of documents is to provide admissibility of the transaction in the eyes of law. As the law on stamp duty is unclear, the Indian Evidence Act, 1872 makes provisions for providing admissibility to electronic commerce and the contracts entered into as a consequence of that. Section 65B provides for the admissibility of the electronic records. It states that any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be also a document and shall be admissible in any proceedings, without further proof or production of the original, as evidence. Hence, an e-contract can thus be admissible as an evidence and such a positive step ensures that the contracts if entered by a consumer online for a particular good or service, if breached can be brought under the attention of law. Not only does the laid down laws, but even the Courts believed that it is the need of the hour



to recognize electronic record as evidence. In the case of State of Delhi v. Md. Afzal & Others, the Court held that Electronic records are admissible as evidence and further observed that if someone challenges the accuracy of a computer evidence or electronic record on the grounds of misuse of system or operating failure or interpolation, then the person challenging it must prove the same beyond reasonable doubt. The Courts have thus taken a pro e-commerce and e-governance approach. This can be concluded by the precedents laid down by the Courts in Societe Des Products Nestle S.A. Anr. v. Essar Industries and others, where the Courts recognizing the increasing scope of e-commerce in the recent times, laid down that increased reliance placed upon electronic record by the world at large necessitated the laying down of a law relating to admissibility and proof of electronic record. The Courts keeping in view the large scope brought about by electronic records, has also focused on amendments brought about on other Acts to include in their ambit the scope of growing use of internet and electronic records. The Court, in the case of State of Punjab & Others v. M/S Amritsar Beverages Ltd. & Others, referring to the recent amendments on account of internet and other information technologies observed that Section 464 of the Indian Penal Code deals with the inclusion of the digital signatures. Sections 29, 167, 172, 192 and 463 of the Indian Penal Code have been amended to include electronics documents within the definition of 'documents'. Section 63 of the Evidence Act has been amended to include admissibility of computer outputs in the media, paper, optical or magnetic form. Section 73A prescribes procedures for verification of digital signatures. Sections 85A and 85B of the Evidence Act raise a presumption as regards electronic contracts, electronic records, digital signature certificates and electronic messages.

Thus amendments and new introductions brought about in the ancillary Acts with respect to electronic records guarantee that consumer rights are being protected by legally recognizing the contracts and further making them admissible as evidence. The irony, however, is that, even with the application of such laws, consumer rights in e-commerce are still infringed. This is due to the fact that one of the frequent setbacks with trade conducted with the use of internet is data protection. Protection of data that is made available online by the consumers is misused and this is one of the major concerns that have emerged in the recent times. Generally the terms of data protection are dependent on the contract that the parties have entered into. The disclosure and non-disclosure of the same would thus depend on that contractual relationship. If there is any disclosure of information in breach of lawful contract, knowingly and intentionally, without the consent of the person concerned, under Section 72A of the (Indian) Information Technology Act, 2000, such an act is punishable with imprisonment for a term extending to three years and fine extending to INR 5,00,000. Nonetheless, there is no express legislation that contains provisions for data protection in the country. The Information Technology Act covers some aspects. Section 43A of Information Technology Act, 2000, provides that a body corporate who is possessing, dealing or handling any sensitive personal data or information, and is negligent in implementing and maintaining



reasonable security practices resulting in wrongful loss or wrongful gain to any person, then such body corporate may be held liable to pay damages to the person so affected. These are the only provisions that act as a legal framework for data protection in the country. Apart from the legal safeguards available, it is also essential for each entity collecting information, to have a privacy policy in place, should always obtain consent from the provider of sensitive information and maintain reasonable security practices and procedures. Unauthorized access to personal information and any misuse of such personal information should be checked by the online goods / service providers.

Another one of the major concerns of a person dealing online is the jurisdiction of cases in case of disputes. Though it is a well-known fact that consumers can approach the District, the state and the National consumer protection forums, still the question as to which of these Courts has the jurisdiction is an ambiguous issue. In general civil cases, suits are filed following the provisions of Section 20 of the Code of Civil Procedure, 1908, which states that suits can be filed in the courts in the local limits of whose jurisdiction the defendants voluntarily resides, or carries on business, or personally works for gain, or the cause of action, wholly or in part, arises. Whether this law would be applicable to online transactions is the area of confusion. Essentially, the consumer courts itself state that jurisdiction for purchases made online exists where the company has its main or branch office and if this is not possible, the complaint may be filed where the events took place i.e. where the cause of action arose. However, things may become very complicated or impractical in case of online transactions as the website can be accessed from anywhere in the country. Consumer courts, in practice, sometimes treat online and offline transactions in a similar manner. In such a case, Section 20 of Code of Civil Procedure, 1908 would come into picture and as stated above, cases could be filed where the registered office of the company is or where the cause of action arose. The difficulty, however, arises as none of the above said is a laid down law and thus the questions regarding jurisdiction arise again and again. That being said, cases where the online good or service provider is based in another country poses more problems with regard to jurisdiction. In such cases Courts exercise “long arm jurisdiction” whereby the operation of local laws have extra territorial application. Section 1(2) of the Information Technology Act, 2000 read along with Section 75 of the Act provides that the Act shall apply also to any offence or contravention committed outside India by any person if the act or conduct constituting the offence or contravention involves a computer, computer system or computer network located in India. In addition, Section 3 of the Indian Penal Code, 1860 provides that any person who is liable, by any Indian law, to be tried for an offence committed beyond India shall be dealt with according to the provisions of the IPC for any act committed beyond India in the same manner as if such act had been committed within India. As a result, though minute uncertainty exists here and there with respect to jurisdiction, whether national or international, such provisions guarantee that consumer rights should be



redressed and cannot be rejected on account of not having jurisdiction to file such a consumer suit.

When dealing with the question of e-commerce, online shopping portals cannot be forgotten and the violation of consumer rights in this regard also forms an important aspect. Online shopping portals provide various reliefs in case of defective products, considering the shopping portal is notified within the prescribed and mandated time. Consumer rights can be violated in cases where the online shopping portal itself is fraud. In the recent times the case of Timtara.com was brought into limelight, where the customers were duped of their money, after the goods for which advance money was paid were not delivered. Goods were promised to be delivered within 21 days but were never delivered. At the end, the directors of Timtara.com were arrested after the consumers created a hue and cry in social media platforms. This served as a lesson to all the consumers who earlier did not make any effort to get acquainted with the rights offered to them. Consumer should be well aware of their rights and should take such measures that will ensure their safety and the protection of their rights as consumers. One of the best methods that one can apply while shopping online is by paying cash on delivery. In such a scenario, the credit and debit card information and other personal information is not provided. Additional safety measures should be adopted by consumers to ensure safeguards.

A majority of the banking transactions are now conducted online. This is an area where a lot of safeguard should be provided and the Reserve Bank of India has been carrying out various measures for the same. A number of circulars have been issued by the RBI to mitigate the risk caused by online transactions like, requirement for additional authentication / validation based on information not visible on the cards for all on-line “card not present” transactions, providing online alerts to the cardholder for all “card not present” transactions of the value of INR 5,000 and above etc. To protect the rights of consumers and their interest, the RBI has directed the banks to secure both card payment transactions and electronic payment transactions. These range from converting all existing magnetic strip cards to EMV chip card for the customers who have used their cards internationally at least once for / through e-commerce to framing rules based on the transaction pattern or the usage of cards by the customers in coordination with the authorized card payment networks for arresting fraud. In addition, banks should provide easier methods (like SMS) for the customer to block his card and get a confirmation to that effect after blocking the card. The electronic modes of payment / fund transfer like RTGS, NEFT and IMPS have emerged. These have picked up to a large extent through the internet banking channel and hence it is imperative that such delivery channels are also safe and secure as these are frequently used by customers for e-commerce purposes. Thus, any setback caused in these would lead to a violation of customer rights both for the bank and for the online service provider.



Apart from electronic and card payment, mobile banking is one of the other constructive facilities provided by banks for facilitating transfer of funds through mobiles. Safeguards need to be taken in this arena as well and thus RBI has introduced master circular that provides operative guidelines for banks. Information security is most critical to the business of mobile banking services and its underlying operations. Therefore, technology used for mobile banking must be secure and should ensure confidentiality, integrity and authenticity. In this regard consumer complaints and consumer protection issues have been dealt with by the bank. In cases where the customer files a complaint with the bank disputing a transaction, it becomes the responsibility of the service providing bank, to expeditiously redress the complaint. Customers' complaints / grievances arising out of mobile banking facility is covered under the banking ombudsman scheme.

III. Conclusion

Discussions are ongoing in the country to allow FDI in e-commerce transactions in India. This illustrates the level of importance that e-commerce has achieved in the Indian trade industry. It has not only made lives of consumers simple but has also ensured that the traders are able to sell their products worldwide, without any hassles. It is evident from the above discussion that, it can be rightly stated that a number of laws act towards prevention of consumer rights in the country. However, without questioning their utility and worth, it is the need of the hour to formulate a comprehensive legislation which would cover all the aspects that relate to e-commerce and provide for express declaration of laws that would make e-commerce hassle free and this would in turn encourage more people to resort to commerce through the internet. In addition, the consumers should also become aware of the rights offered to them and the appropriate redressal mechanism in case they are violated.

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