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**"CONSUMER PROTECTION AND E-COMMERCE IN INDIA"**

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**Abstract**

In the words of Hillary Clinton, *"Instead of gutting consumer protection, we should be expanding it."* The need for the expansion of consumer protection is felt higher with the increase of e-commerce. With the advent of technology, there is a striking change in the scene of commerce and consumers in India. Consumers are the main components of a commercial world who create the demand for goods on which the supply chain depends. This technology has induced a habit with the consumers to get comfortable and convenient shopping options at the click of a mouse without having to deal with congested stores or obnoxious saleswomen with their arrogant attitude. Online prices are even more convenient. In this era of information technology, protection of consumer rights has become a need. This rise in e-commerce has brought on a slew of legal and consumer issues. The financial sector has been impacted by the new technology and liberalisation policy in India. This present paper focuses on the concept of consumer protection taking into mind the laws which existed before the technological era and the latest amendments to the act which embrace the change and transformation in the field of consumer law as a result of the emerging trends in e-commerce.

**Introduction**

Consumers are critical components of the corporate system. Consumers are those who buy and use the goods and services that businesses provide. The protection of consumer rights is also critical for the advancement of the commercial world. With the advancement of technology, physical commerce gave way to E-Commerce, which is also known as online commerce. E-commercial activities have risen to the top of the list of the most important and popular activities taking place in cyberspace. Indian shoppers were allowed to shop across state lines and enjoy the products of their choice thanks to the e-commerce platform.<sup>1</sup> The growing number of e-commerce operations raises concerns regarding the protection of online

consumers and their interests. Consumers are sometimes left with little recourse because the legislation is static. E-commerce raises a number of challenges, including data protection concerns, dispute resolution jurisdictional issues, and deceptive advertising. Consumer rights are being challenged by the growth of electronic commerce.<sup>ii</sup> Customers should expect a welcoming and appealing environment from online E-Commerce, as well as thorough and courteous responses to their questions if the business is well-established. The rise of electronic commerce has brought with it a slew of legal and consumer issues. We are seeing a convergence of new technology and financial sector liberalisation in India. Consumers need to be protected in this period of rapid change, and the law is trying to keep up.<sup>iii</sup>

### **History of Consumer Protection in India**

We can trace back Consumer Protection law in India to 3200 B.C. Ethical practices had great importance at that time. Primary concern of the rulers was welfare of their peoples. Rulers at that time were not only interested in the social conditions but also in the economic life of the people. And for the protection of interest of buyers the rulers had established many trade restrictions. In ancient India people followed Dharma Shastra i.e., Dharma which included social rules and norms and it laid down guiding principles governing public relations.<sup>iv</sup> Dharma got all the principles from Vedas. Vedas were considered as actual words of God itself. In Manu Smriti we can find that, Manu had discussed about adulteration in goods i.e., “one commodity (goods of whatever nature) mixed with another (similar kind) must not be sold as it is of pure origin. He also stated punishments for unfair trade practices, for example, least harsh punishment for adulteration, mutilation for fraud in selling fake items as original. He also mentioned that contract with minor, very aged man, or any unauthorized party is invalid i.e., he at that time have spoken about competency of the parties to the contract. After Manu, in Kautilya’s Arthshastra we can find tremendous amount of material regarding fair trade practices, contracts etc. that too in 400 to 300 B.C.<sup>v</sup>

Consumer protection in telecommunications markets has traditionally been related to competition, with a focus on supply-side policies to create a vibrant market. In recent years, however, there has been a growing realisation that informed and empowered customers may drive enterprises to innovate, enhance quality, and compete in pricing through demand-side options. Consumers not only profit from competition, but also drive and sustain it, by making well-informed decisions between vendors<sup>vi</sup>. As the use of communication services has grown and converged, greater attention is being focused on examining the policies governing communications services' customer relationships.

### **Indian Consumer Protection Act of 1986**

For the protection of consumer interest in 1986 Indian parliament have enacted Consumer Protect Act, it was designed in a specific way to protect the interest of buyers. Indian legal system has experienced a new revolution due to enactment of Consumer Protection Act. The main objective or intention of this Act was to provide justice, justice which is less formal (not like traditional civil, land matters), justice which involve less paper work, justice which consumes less time and money.

Soon after enactment people have welcomed this act as a poor man's legislation meaning easy access to justice. This Act did not do anything different but it gave recognition and new dimension to the rights of consumers or buyers which were already there in ancient India, well recognized and well protected.

Because of its user friendliness and easy access to justice, people have supported this Act and got their remedies through it. Consumer Protection Act have spread sense of legal awareness among the general public i.e., among lay man. But because of speedy justice, low paperwork, people showed disinterest in traditional courts specially in the matters of consumer rights.

Consumer Protection Act has its nicety in more liberal view to give justice, like, it does not stick to strict procedures, have wider scope than other ordinary laws etc. it gives power to consumer to file case or defend himself, government agencies can also file complaints against deficient service providers.<sup>vii</sup> While drafting this Act, legislatures have taken care of weak, illiterate consumers by empowering governments to take action on behalf of these peoples. The most important and nicest thing in this Act is that it covers both goods and services. A person/ individual can sue for defect in goods or as well as deficiency in service provided by the other company or individual. Another feature of this Act is that Consumer need not stick to rigid procedures which are followed in other courts, he does not need to pay a huge amount of court fees, court fees is very nominal in the consumer forums. Consumer need not to send notice to the other party, only a simple letter of complaint written to the chairman or forum of consumer court is sufficient to start the legal action<sup>viii</sup>.

Consumer forum at district level, State Commission and National Commission are working in harmony to achieve the goal of unexpensive and speedy justice to the consumer and this objective is challenging the traditional justice delivery system.<sup>ix</sup> And because of its another objective that is easy access to courts which is guaranteed by Consumer Protection Act, litigants/consumers are fearless to wage a legal war against unfair trade practitioners, inefficient service providers without any hesitation or having any doubt about getting justice.

Consumer forum, which is the creation of this Consumer Protection Act have, set an example of rigid base for consumer protection jurisprudence in India by way of disposing thousands of cases with a minimal interreference of legal formalities.<sup>x</sup>

Though the Consumer Protection Act of 1986 have created well founded base for the consumer protection jurisprudence in India, but it had some lacunas in new technological era. Every law must change with the changing society to eradicate the loopholes, lacunas appeared due to advancement of technology and its uses in society. For this purpose, some new amendments were made in the old Consumer Protection Act, that we will discuss in next chapter.

### **Consumer Protection Act, 2019**

*“An Act to provide for protection of the interests of consumers and for the said purpose, to establish authorities for timely and effective administration and settlement of consumers' disputes and for matters connected therewith or incidental thereto”*

*The title of new Consumer Protection Act looks like a little bit long title, but it explains the whole and sole purpose of this Act. Consumer Protection Act of 1986*

*had the similar long title but it was nearly 30 years old and did not had the useful things that will solve the problems arising in modern technological era, that's why legislatures found it necessary to replace old Act with the new one.*

*On 06-08-2019 Parliament have passed Consumer Protection Bill,2019. And on 09-08-2019 President gave assent to the same and this Act came into force on 20-07-2020. This Act of 2019 had the same intention as of Act of 1986, that is, to provide timely and effective administration of justice and speedy settlement of consumer disputes and matters in relation with consumer disputes.*

Following are certain key features of Consumer Protection Act, 2019:

- While drafting this Act, law makers kept in mind needs of the modern consumers and incorporated new terminologies in this Act which were not present in old one. For example, in the definition of “advertisement” they have incorporated words such as – any audio, visual publicity, representation, endorsement, pronouncement made by means of light, smoke, gas, print, electronic media, internet or website and includes any notice, circular, label, wrapper, invoice or such other documents; this means that any person i.e., consumer can go to the court, aggrieved by any kind of misrepresentation or misleading advertisement, for seeking relief.
- Law makers have incorporated new clauses as well in the new Act, for example, clause about “Product liability action”<sup>xii</sup> and with definition of “Complaint”<sup>xiii</sup>, that complaint lies against the manufacturer, seller or service provider according to the facts of the case.
- While drafting this Act, it was kept in mind that if any minor buys any product, then he shall not restrain from complaining against the manufacturer or seller, for that, there is provision of parents or guardians can seek relief through minor.<sup>xiii</sup>
- Under this new Act, consumer is defined under Section 2(16), by the definition an e-commerce means Buying or selling goods or services, including digital items, over a digital or electronic network<sup>xiv</sup>.
- By this new Act, new consumer rights have been added in Section 2(9), these are:
  - a) Consumer have right to be protected from such sellers and marketing agencies who sell products or services which are dangerous or hazardous to the life of the consumer or property of the consumer.
  - b) Consumer have right to ask seller about the quality of product he is selling, quantity of product, standard and purity of the goods, for the purpose of protection from unfair trade practices.
  - c) Consumer have right, that, whenever it is possible, he can enquire about other products or services as the case may be which have similar pricing or in competition with this product or service.
- The new addition which is most important in this era is inclusion of “E-Commerce” in the ambit of consumer protection. Section 2(16) talks about e-commerce, and Section 2(17) talks about electronic service provider and if there is also provision for liabilities in case of internet frauds. This provision has enlarged the scope of this Act with the objective of better protection of e-consumer’s rights. And because of this, consumers can now file a suit against e-commerce websites when they infringe consumer rights.

- Law makers have incorporated new technological concepts in new Act, for example: “Product Liability” which means if a consumer buys any goods or any kind of services and if he suffers any damage due to product itself or inefficiency of service, to him or his property then the manufacturer or the services provider whichever the case may be, have to compensate the consumer.<sup>xv</sup> And concepts like “product liability action” and “product manufacturer” are also included in this Act.
- Central Consumer Protection Authority, a new authority has been added in this new Act for the purpose of protection of consumers from misleading advertisements, unfair trade practices which are injurious to the public interest at large. And with objective of promoting, protecting and enforcing consumer rights as a class. Provision for Central Consumer Protection Authority has been dealt in Chapter III of 2019 Act. Provision relating to grievances of consumers were not present in old Act, so law makers have incorporated such provisions like to whom to address grievance, what is the status of the grievance made earlier etc. and to resolve such grievance in speedy manner.

### **Consumer Protection (E-Commerce) Rules, 2020**

- Rules and Regulations under Consumer Protection (E-Commerce) Rules, 2020 are made in accordance with protection of consumer rights, and incorporated such important information relating to the e-commerce handlers keeping in mind both Consumer and Product or service provider. Most importantly these rules are not advisories but are mandatory. These are:
  - a) First important rule is that, whoever the e-commerce entity is, it has to provide information to the consumer/buyer about return, refund, exchange of product or goods which he is going to buy. Furthermore, they have to provide information relating to warranty and guarantee of the product, when they will deliver the product, how they will take payment of such product, by which security method they will take the payment, what will be the redressal mechanism in the case of default, and moreover country of origin of that product.<sup>xvi</sup>
  - b) If a consumer has made any complaint regarding the product or service then these platforms have to address such complaint within 48 hours and have to redress such complaint within one month from the receipt date of the complaint. And such e-commerce entities have to appoint a grievance officer for the purpose of consumer grievance redressal.
  - c) If consumer had purchased some product online and if the product delivered is damaged or defective or has been delivered late than time mentioned, or if the product does not match with the description which is made on the website, then consumer have the right to return such product and no seller can refuse to take back the goods or cannot refuse to withdraw services or has not right to withhold the refunds.
  - d) E-commerce companies cannot manipulate the prices of the goods or services they are offering to gain profit from it, the rules prohibit the e-commerce companies to do it so.

### **E-commerce and the consumer protection**

Electronic commerce refers to the sale of various products and services using a computer network, such as the internet. As a result, it mostly deals with business

transactions that take place through the internet. The e-commerce platform enables consumers to buy and sell goods and services without regard for time or geography. E-commerce is more than just using networked technologies to do business. It entails changing work methods, reengineering business processes, and interacting with business partners beyond traditional boundaries to move organisations to a fully electronic environment. E-commerce has ushered in a sea change in the way businesses are done<sup>xvii</sup>. From paper-based transactions to totally computerised organisations, there is a paradigm change underway. The key to the new paradigm of globalisation of organisations and markets is networking and communicating over networks. Information and communication technology (ICT) has ushered in a new era of manufacturing. The Internet has facilitated market globalisation in a smooth manner. Electronic commerce has grown at a remarkable pace over the last five years, and this trend is expected to continue, if not accelerate. As more businesses shift parts of their operations onto the Internet, the lines between "traditional" and "electronic" trade will become increasingly blurred in the near future.

Consumers are becoming more vulnerable to new types of unfair commercial practises as ecommerce grows<sup>xviii</sup>. Because the transactions are conducted over the internet, the consumer is able to inspect the goods and its quality. There have been cases where customers have received products that were not what they had ordered. The delivery of goods and the return of products if they do not match the one presented, as well as misleading ads, are some of the challenges in internet commerce, particularly in online shopping. As a result, it is past time to safeguard consumers' interests against technological threats. A person who buys things or receives services in any manner, including electronic mode, teleshopping, direct marketing, or multilevel marketing, is now considered a consumer under the new definition<sup>xix</sup>. As a result, anyone who buys a product or uses or hires services online falls under the definition of a consumer.

The Ministry of Consumer Affairs, Food & Public Distribution of the Government of India has notified The (New) Consumer Protection Act, 2019 ('Act') and the Consumer Protection (E-Commerce) Rules, 2020 ('Rules') to increase consumer protection on e-commerce and direct market area. On July 20, 2020, and July 24, 2020, respectively, these legislative modifications took effect. The Rules, in particular, require e-commerce businesses to give all product and seller information, as well as the establishment of a grievance officer to handle consumer complaints and the acknowledgement of customer complaints within 48 hours. In addition to clear provisions that empower consumers, the Act and Rules give enforcement authorities the authority to act quickly and effectively.

### **Conclusion**

Technology advances at a quicker rate than legislation, and it will continue to do so. As Charles Clark famously said, "the solution to the machine lies in the machine" in order to keep up with technological advancements, we must rely on technology. In other words, the use of technical innovation is the ideal answer to technical abuses<sup>xx</sup>. Consumers are also facing numerous issues as a result of the lack of an appropriate redress mechanism for the e-commerce business, particularly in the online retail industry. For better security, e-market users should be more

cautious and apply the maxim caveat emptor while entering the e-commerce market. They must use greater caution when making online purchases and doing online financial transactions.

The journey of Consumer Protection in India has led to the path of effective provisions for regulating the e-commerce and protection of consumers rights with respect to it. Therefore, the goal of E-commerce Rules of 2020 aims to increase openness in the supply of information and disclosure to consumers through e-commerce platforms. The rules also aim to put a stop to the practise of giving some dealers special treatment. This gives individual and small sellers a place on such platforms and ensures that they are treated fairly. It also eliminates the potential of major sellers engaging in unfair trade practises. The E-commerce Rules, in addition to regulating Indian-based e-commerce platforms, also regulate foreign-based e-commerce platforms. Overall, with the rise in e-commerce activity, E-Commerce Rules are a step toward resolving consumer complaints against e-commerce platforms and prescribing some best practises for e-commerce platforms to follow for the benefit of customers.

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- <sup>xix</sup> Section 2(7) CONSUMER PROTECTION ACT, 2019 : "consumer" means any person who— (i) 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 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 (ii) hires or avails of any services 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 beneficiary of such services other than the person who hires or avails of the services for 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 of any commercial purpose). Explanation—For the purposes of this clause— (a) the expression "commercial purpose" does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment; (b) the expression "buys any goods" and "hires or avails any services" include the transactions made through any mode, inclusive of but not limited to, offline, online through electronic means, teleshopping or direct selling or multi-level marketing;
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