

● CONSUMERS IN E-COMMERCE: A NEW CHALLENGE FOR CONSUMER PROTECTION JURISPRUDENCE IN INDIA



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"When you put yourself in the customer's shoes and begin your dialog from there, an immediate connection develops that stems beyond basic commerce and encourages loyalty"

Steve Maraboli

Abstract

E-commerce, today has become an essential feature of social life. As it has become an integral part of social marketing behaviour, it has resulted into various hopes and problems as well. E-commerce has brought a revolution in the sphere of Cyber jurisprudence. Consumers are the backbone of global economy. As the economy has changed, therefore, the nature, choice, behaviour and mode of shopping have also changed in the online environment. The article attempts to examine the prospects of innovative trends in the concept of consumer protection jurisprudence. It is note-worthy to point out that a strong consumer protection policy is needed in India in order to facilitate consumer transactions and to respond to the increased ambiguity and risk in online transactions.

Introduction

The footprints of Indian- economic history depict that the trade or commerce has been one of the most prominent factor of Indian economy. Commerce has played a leading role in making India as a universal center of wealth throughout ancient civilizations. In the new millennium global economy has witnessed a new revolution- The Entrance of World from Physical World to Cyber World. The present universe is surrounded by the power of new mantra namely 'Information Technology'. By chanting this mantra the whole world has become a 'global village' and the economy has become 'global -economy'. With the appearance of Information Technology (IT) most of the countries have switched over from paper based commerce to e-commerce and from paper based governance to e-governance. The momentous development in the economy has witnessed the geometric expansion of trade, commerce and marketing in the commercial world in the lap of cyber space. The philosophy behind the Indian economy has transformed into a new concept that is digital economy. The digital economy is also sometimes called the Internet Economy, the new economy or the Web economy. In this new economy digital networking and communication infrastructures provide a global platform over which people and organizations devise strategies, interact, communicate, collaborate and search for information. The digital economy has helped to create an economic revolution, which is evidenced by unprecedented economic performance and the longest period of uninterrupted

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economic expansion in history. Consumers constitute the largest public body in the country. Every person is a consumer in one transaction or the other. A consumer can also be a producer and a producer or manufacturer cannot exist without himself being a consumer. Consumers are backbone of global economy. As the economy has changed, therefore, the nature, choice, behavior and mode of shopping has also changed in the online environment.

E- Commerce: A New Marketing Orientation

E-Commerce is a new gateway of technological success of the Indian business scenario in the era of information explosion. E-Commerce has revolutionized business activities globally through the use of information and digital technology in the new millennium. Digital technology provides effective communication platform to communicate to the consumers directly or through on-line marketing. It means conducting business through network technology. E-Commerce means application of electronics in commerce. 'e' is a question of technical capability and commerce is the way in which that capability is applicable. E-Commerce is a gateway of technological success of the Indian business scenario in the era of information explosion. With E-Commerce, shopping can be done at any time by using our "fingertips" instead of our "feet". The geographical barriers have become a blur. A shop located in another country and a shop next to your home is both on "one finger-click" away. In the context of E-Commerce, the relationship is not just selling through the web but managing customer relationship in general. Electronic commerce is all about commercial transactions, whether between private individuals or commercial entities, which take place in or over electronic networks. The only important factor is that the commercial transactions take place over an electronic medium.

Consumers create markets through demand of goods, services and ideas. Marketing is not a fixed system of concepts. Marketing is one of the most dynamic fields. During the last thirty years, multidimensional developments have been taken place in the field of marketing. Traditionally, a 'market' is a physical place where buyers and sellers gather to exchange their goods. In the recent years, marketing operations have undergone tremendous transformation in India due to emergence of Internet, Computer, Telephones, Mobile, Fax machine and other electronic gadgets. A new era of information technology has launched new marketing terminology like e-marketing, tele-marketing, kiosk marketing, e-shopping, on-line marketing, e-commerce marketing, e-business, cyber space marketing. E-Marketing facilitates quick and convenient shopping to consumers. Now instead of physical market place, cyber market provides tremendous speed of exposing amazing products at an amazing speed.

Entrance of Consumers in New Borderless Dimensions of E-Commerce: E- Consumers and Online Shopping

Traditionally, a 'market' is a physical place where buyers and sellers gather to exchange their goods and services. Presently, E-marketing in more general terms is buying and selling process that is supported by electronic means. The core focus of the Internet-business or e-marketing is on the creation of a new on-line market, customer satisfaction, opening new vistas for consumers and so on. Commerce in the on-line world has created the promise of 'anything, anyway, anytime.' Customers can have their own version of virtually any product. Therefore, customer-driven customization is becoming crucial because of too many choices they have. E-consumers are consumers who are buying, consuming or purchasing goods or services using digital medium (Internet or any other electronic platform). The e-



consumers are consuming both tangible (physical goods) as well as intangible (digital) goods. The digital medium helps e-consumers to place orders for physical goods using e-commerce business models, like Business-to-Consumer (B2C), Consumer-to-Consumer (C2C). It helps to download digital goods in the form of mp3 music files, data, content and software etc. The foundation of E-Commerce has been strengthened by service-oriented products like: Hotel Booking, Travel Tickets, E-Mails and other modes of communication, On-line Advertisement of Matrimonial and Sale and Purchase of Goods.

With E-Commerce, shopping can be done at any time by using our "fingertips" instead of our "feet". The geographical barriers have become a blur. A shop located in another country and a shop next to your home is both on "one finger-click" away. In the global world, consumer is not a KING. A customer will have to satisfy himself before paying for any product and in this process, he uses his five sense organs like: Eyes, Ears, Skin (Feel), Nose and Tongue. Internet is now capable of satisfying only two senses: Eyes, Hearing. However due to lack of privacy, trust and security, this type of E-Commerce has chances of premature death survived by bankrupt companies and jobless computer professionals. In the real world, a consumer goes into shop, selects commodity and hands over cash in return for the goods which he carries away. The risks are very small, and even if things go wrong, consumer can usually exchange the faulty goods. Consumers know where to go back to shop because bricks and mortar rarely move overnights. However, when trading over the Internet, things are not simple: The dream of virtual trader can suddenly become a nightmare.

Threats to Consumers in Online Shopping or E-Commerce

Violations of rights of e-consumers (consumers using Internet), a 20th century foetus of technological development has grown to an epidemic and has become uncontrollable in the 21st century. Online shopping has already stepped into people's lives, and many people enjoy the convenience and benefits from it. But this new model of business transactions also exerts great impact on the traditional civil and commercial law. Cyber crime refers to all the activities done with criminal intent in cyberspace by using the medium of Internet. These could be either the criminal activities in the conventional sense or activities newly evolved with the growth of the new medium. Any activity, which basically offends human sensibilities, can be included in the ambit of cyber crimes. In online shopping most of the fundamental rights of consumers have been violated. The violations of these rights are not protected in any of Indian legislation. To adjust this new phenomenon, the existing legal norms cannot reach a lot of places and also have a lot of controversy. Some of threats to consumers in online shopping are highlighted as under:

- Since the cyber-consumer does not come face to face with the seller in an online purchase of goods, therefore, quality of delivered goods, non-delivery, deficiency in services and other frauds to consumers increases. Goods are purchased online from the cyber market and delivered later. The cyber-consumer does not get the opportunity to examine them. In case of defected ones, the process to repair is not trustworthy.
- In online shopping the identity of seller as well as buyers is virtual, therefore transaction process model is filled with uncertainty. In the traditional contract of sale, due to face to face transaction, the seller has corresponding business places. It is easy to determine the identity of the seller. However, in online shopping, especially in the trading system and third party cases, the

seller is only exhibited by electronic identity and network outlets.

- Electronic Contract is a valid contract under Chapter III of the Information Technology (Amendment) Act, 2008. Most of legal questions on the validity of sale in online contracts are still unanswered like an online contract entered by one party under Mistake, Misrepresentation and Fraud innocently.
- Retail web-shops can also disappear easily after booking orders and receiving payments through credit orders.
- Internet is a golden thread which runs throughout the fiber of e-commerce. Internet facilitates e-commerce; it is also a medium which can be misused by unscrupulous retailers and traders to exploit consumers. Since the Internet is an effective and very cost-friendly medium of communication, fraudulent schemes with fictitious promises of multiplying the consumers' money by several times in a short period, are also on the rise.
- With the growth of advertising on the Internet, other unfair trade practices such as misleading advertisements, false information and fraudulent seller are also likely to become rampant.
- The applicability of the laws which are applicable on consumers in traditional commerce and cross-border e-commerce also raises issue of jurisdiction of consumer courts in India.
- Legal issues relating to taxation, copyright and trademark in e-commerce are yet to be resolved.
- E-bay (C to C) is a new stream in e-commerce. It is not clear that does it cover under the definition of 'Consumer' under the Consumer Protection Act, 1986.
- Privacy issues like hacking of password, ATM account numbers and misuse of personal information through Phishing and Pharming are yet to be resolved. An ordinary citizen who is not computer expert can easily be entangled within the complexity of network protection.
- The Internet has improvement transparency in prices and brand selection, but not so much transparency in quality of products and services. The e-consumer is also more manipulated as a result of polished marketing strategies and less in control of what exactly happens with data, information and communication processes.
- Consumers usually lack the opportunity to obtain sufficient information about the identity of the supplier; the terms and conditions of any transaction (including the price of the goods and services); details of delivery costs; the quality of the goods or services; and fair, timely and affordable dispute resolution.

Plethora of Legislations for Consumer Protection : A Reflection of Indian Consumer Protection Jurisprudence

Under Indian Consumer Protection Jurisprudence the legal shield to consumers from the protection of malpractices has been provided since the time of Manusmriti and Kautilya. In the Medieval period Muslim ruler Ala-ud-Din Khalji had introduced strict price-control measures. In British period and Independent India several laws for the protection of consumers has been enacted namely: (1) The Indian Penal Code, 1860;



(2) The Indian Contract Act, 1872; (3) The Sales of Goods Act, 1930; (4) The Agriculture Produce (Grading & Marking) Act, 1937; (5) Drugs and Cosmetics Act, 1940; (6) Forward Market (Regulation) Act, 1952 (7) Prevention of Food Adulteration Act, 1954 (8) Essential Commodities Act, 1955 (9) Trade and Merchandise Act, 1958 (10) Hire Purchase Act, 1972; (11) The Standards of Weights & Measures Act, 1976; (12) Monopolistic and Restrictive Trade Practices Act, 1969, 1984; (13) The Bureau of Indian Standards Act 1986 (14) Textile (Consumer Protection) Regulation, 1988 (15) The Consumer Protection Act, 1986 and many other legislations. In order to pave the way for the development of e-commerce and Internationally acceptable level of legal uniformity and compatibility of rules and practices, the United Nations Commission on International Trade Law (UNCITRAL) established by the United Nations General Assembly in 1996, adopted the Model Law of Electronic Commerce in 1996. On the foundation of UNCITRAL Model Law, India has enacted the Information Technology Act, 2000; which has been amended in 2008. Unfortunately in India, we are just thinking of touching the tip of the iceberg through ad-hoc measures. In India, the Information Technology Act, 2000 is silent on cyber consumers. The Guidelines for Consumer Protection in the Context of Electronic Commerce, approved on 9 December 1999 by the OECD Council, are designed to ensure that consumers are no less protected when shopping online than they are when they buy from their local store or order from a catalogue. The aim of these guidelines is to encourage: fair business, advertising and marketing practices; clear information about an online business's identity, the goods or services it offers and the terms and conditions of any transaction; a transparent process for the confirmation of transactions; secure payment mechanisms; fair, timely and affordable dispute resolution and redress; privacy protection; and consumer and business education. However the implementation of these guidelines is yet to be applicable in India. Moreover, people are not aware about these guidelines for their protection in e-shopping. The Bible on cyber crime is The Information Technology Act, 2000. However, not even a single provision has been enacted for the protection of consumers in online shopping. It is concluded that this is the greatest grey area which must be tackled for growth of online shipping in India.

Conclusion

With this 'e'-revolution electronic commerce has emerged as the potential emblem of a new worldwide virtual economy. With the development of an invisible world, in which consumers from all corners of the globe do business, difficulties in implementing traditional law are exacerbated. Traditional policies of consumer protection are not suitable for the Internet age and it is need of the time to make suitable amendments in Indian legal regime. The applicability and effectiveness of traditional rules of consumer protection in the online environment is limited. In this online shopping, on one hand, Consumers are tendered convenience, quicken and global choice in services, goods and, more importantly, prices. However, on the other hand, the Internet implies new hazards for consumers in the environment of e-marketing. The consequences of shopping in the borderless world of the Internet function differently from the offline world in various ways. The position of the consumer in an electronic environment is primarily weaker when it comes to issues concerning privacy, payments and transactions. Consumers usually lack the opportunity to obtain sufficient information about the identity of the supplier; the terms and conditions of any transaction (including the price of the goods and services); details of delivery costs; the quality of the goods or services; and fair, timely and affordable dispute resolution. Consumers using the Internet are usually obliged to pay entire purchase amounts in advance. In India the concept of 'E-Consumerism'

is an ignored phenomenon. It is need of the time to adhere to the concept of e-Consumerism. e- Consumerism is a movement of the consumer, by the consumer and for the consumers for the protection of their rights in on-line market. In India a strong consumer protection policy is needed in electronic commerce in order to facilitate consumer transactions, to respond to the increased ambiguity and risk in online transactions, to deal with violation of right of consumers in on-line market and to protect consumer interests in the formulation of legislation regarding Internet transactions.