

ROLE OF REGULATORY AUTHORITIES IN CONSUMER PROTECTION WITH SPECIAL REFERENCE TO E-COMMERCE AND PRODUCT LIABILITY:- A Critical study

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ABSTRACT

In the midst of cyberspace, this paper traces the imprints of communication and information technology development. In this context, it discusses the importance of E-Commerce in the Indian economy's online sector. It emphasizes the establishment of a new setting for Indian trade, namely, E-Commerce, which has now been swallowed by the Indian economy in the twenty-first century. It then goes on to explain e-Commerce, including its core structure, many forms, classifications, and features, as well as its influence on Indian advertising and consumer entry into a borderless market. The goal of this research is to present a clear and comprehensive image of the new E-Market experience in online purchasing and its influence on customer behaviour. The main goal here is to present an overview of the evolving aspects of Indian trade.

Every businessman's golden rule is that there is only one boss: the customer, who has the power to dismiss everyone in the firm simply by spending his money elsewhere. Customers are the most valuable assets of any firm, whether real or digital. All company actions circle around the consumer, just as the planet has around the Sun. The notion of consumer protection had long connections in Indian civilization's fertile soils. Indian law encompasses a wide range of consumer protection laws in physical economic interactions. The Internet, on the other hand, has ushered in a new 'E-Revolution,' wherein the role of business interactions has evolved into something far more refined and sophisticated.

The focus of this paper shifts from "E-Consumerism to dangers to E-Consumerism in practice". Consumer Protection is sketched in this work. The main point here is to emphasize risks to consumer rights in an internet environment, which might be referred to as "Old Fraudulent activities in Modern Bottles." It represents the challenges in putting the notion of 'E-Consumerism' into practice in online buying. It demonstrates how regulatory agencies handle consumer concerns.

KEY WORDS: *E-Commerce, E-Revolution, E-Consumerism, Consumer Protection*

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INTRODUCTION

The beginning of Information and Communications Technologies (ICT) has had an effect on every aspect of human life, including that of the buying and marketing of products and services. Exchange of data and digital money transfer are examples of information systems financial activities, which have evolved into e-commerce with use of the World wide web. Because of the quick adoption of “internet-enabled facilities”. The “commercialization of online activities” has provided a diverse variety of possibilities for economic and commercial operations throughout the world, as well as a quality option.

To be more explicit, it is proposed that a precise and adequate set of well-defined and well-executed legislative framework for consumer interests in e-commerce exchanges be adopted in order to provide consumers with a sense of trustworthiness and self-confidence in e-commerce trades. This will aid society, particularly consumers, in understanding and appreciating adequate consumer protection legislation from the perspective of customer protection and e-commerce growth.¹

As a result, e-commerce transactions are common. Consumers and enterprises can enter into contracts via the internet for the global exchange of commodities and services without regard for physical borders on a continuous basis Without a doubt, these characteristics are assisting in the massive expansion of at the same time, there are certain restrictions to e-commerce on a worldwide scale too.² On the one hand, e-commerce offers a slew of benefits in the form: reduced cost, economy, larger corporate profits, lower client cost, and fast and comparable shopping, information market, and etc, but it has also presented certain obstacles in the aspect of information exchange, threats to intellectual property, and so on.³ Data privacy, security, and integrity, as well as a lack of consumer loyalty, are all issues that need to be addressed and the prospect of consumer rights being violated in a variety of ways.

¹ Raj Kumar Singh, E-commerce in India: Opportunities and challenges, Proceedings of 10th international conference on digital strategies for organizational success. 2019.

² Khosla, Madhurima, and Harish Kumar, Growth of e-commerce in India: An analytical review of literature, 19.6, JR of Business and Management (IOSR-JBM),91-95, 2017.

³ Aggarwal, Sukhdev, Praveen Aggarwal and Sanjay Lohia, Commentary on the Consumer Protection Act, 1986, The Bright Law House, Delhi, 1999.

While there are various issues with completing e-commerce activities, the protection of consumers is vital. This is because if the issue of consumer protection also isn't adequately addressed through an appropriate system, it might harm genuine competition and the constant flow of right facts in the industry, as well as contribute to consumer fraudulent activity in e-commerce transactions. As nothing more than a consequence, we've decided to look into and assess the legal implications of the junction of consumer protection laws and e-commerce.⁴

E-COMMERCE IS A NEW WAY OF DOING BUSINESS

As a result of increasing electrical, technical, and scientific breakthroughs, innovations have diffused fast in the new global economy during the last two decades.

The internationalization of the marketplace, business, and means of reaching the market via national and international communication superhighways has given the idea of trade or commerce a whole new meaning. Electronic commerce-related technologies have ushered in a difference in the way companies do business.⁵ The E-Commerce blueprint encompasses the entire range of business procedures which are being redefined and improved as a result of trying to leverage the Internet and related technologies to achieve success. The term "e-commerce" refers to the use of the Internet to link key stakeholders.

It might be anything from creating a website to establishing an integrated value stream that markets it operates, sellers, and customers to collaborate in real time.⁶ To put it another way, e-Commerce is the web-enabling of current company processes so that they may conduct transactions on the Internet. It expands opportunities for clients all over the globe, increasing productivity, boosts profitability, and enhances customer service.⁷

“The purchasing and selling of products and services through the Internet is known as e-Commerce”. Because information is the heart of every business, it aids in the operation of

⁴ Nougaraahiya, Shrey, Gaurav Shetty, and Dheeraj Mandloi., 6.03, A review of e-commerce in india: The past, present, and the future." Research Review International Journal of Multidisciplinary, 12-22 (2021)

⁵ Grabner-Krauter, Sonja, “The Role of Consumers’ Trust in Online-Shopping”, Journal of Business Ethics (Springer), Vol. 39, No. ½, pp. 43-50.

⁶ Aggarwal, V.K., Consumer Protection in India, Deep & Deep Publications, New Delhi, 1989.

⁷ Kalia, Prateek, Navdeep Kaur, and Tejinderpal Singh, E-Commerce in India: evolution and revolution of online retail." Mobile commerce: Concepts, methodologies, tools, and applications. IGI Global, 736-758, (2018).

conventional commerce through innovative means of exchanging and possessing information. It's all about using breakthrough new technologies to increase operating performance and retain or expand a competitive edge.

THE IMPORTANCE OF CONSUMER PROTECTION AND THE NEED FOR IT

Consumer protection refers to safeguarding customers from a variety of unfair commercial practices in order to prevent exploitation and to monitor different company operations that may jeopardize their rights and interests in competitive marketplaces. Business organizations, it goes without saying, are more structured, more knowledgeable, and have a stronger hold on customers while performing commercial transactions. Because of their favorable position, they may easily abuse customers.⁸

The Court of Special Appeal of Maryland held in “Consumer Protection Division v. Luskin's, Inc. that the most vulnerable victims of commercial organizations must be protected, and that consumers must be shielded through sufficient consumer protection mechanisms to enforce their rights in commercial transactions and protect them from commercialization at the end of business organizations”.⁹ Many businessmen exploit customers by providing poorer quality items at greater rates in order to maximize profits and revenues. They engage in unfair trading methods including such adulteration, hoarding, black-marketing, and so on in order to make excessive profits. This approach not only deprives customers of obtaining good value for their money, but it also harms the environment.¹⁰

As a result, while consumers are seen as the monarchs of the marketplace in the modern day, consumer trust remains a shaky idea since consumers remain the most disadvantaged part of the population and are at a deficit owing to the lack of protection of their rights. As a result, consumer protection is required for a number of reasons, including:

⁸ Agarwal, Subash, “Applicability of Consumer Protection Act to Banking Sector”, The Chartered Accountant, February, 2005, pp. 991-995.

⁹ Gupta, Aamod, “Year of Electronic Commerce Awaits the e-Laws”, Lawyers Collective, Vol. 14, December, 1999, pp. 22-29.

¹⁰ Belwal, Rakesh, Rahima Al Shibli, and Shweta Belwal, Consumer protection and electronic commerce in the Sultanate of Oman, Journal of Information, Communication and Ethics in Society (2020).

The Maryland Court of Special Appellant argued in “Consumer Protection Division v. Luskin's, Inc.”¹¹ because even the most vulnerable survivors of business corporations should be guarded, and that customers must be sheltered by adequate product liability processes to stand up for their rights in business deals and to defend them from commercial exploitation in the extreme.¹²

Ensuring commercial organizations' social and ethical duty, raising awareness, ensuring customer happiness, guaranteeing social justice, upholding the trusteeship concept, supporting the growth and survival of businesses. As a result, the "Consumer Protection Mechanism" is critical not only in the struggle to safeguard “consumers' rights” in the emerging “global market”, but also in ensuring corporate organizations' social, ethical, and professional responsibilities in the context of healthy company growth and success.

CONSUMER PROTECTION AND E-COMMERCE: A CATCH

The manner society, especially corporate companies and consumers in particular, engages with businesses has been drastically impacted by information and communications technology. Technology has transformed business and trade transactions with the emergence of e-transactions. Computers and e-commerce over the Internet have propelled business transactions to unprecedented heights on a global scale in today's globe.¹³ The effect of advancement in technologies and the humongous assimilation of e-commerce activities has caught the imagination of individual consumers, business owners, government agencies, and international groups not just as a means to facilitate business expansion, and also as an implies of posing a multiplicity of risks and dangers to multiple aspects of personal and society best interest, including such data security and consumer rights.¹⁴

The importance of developing a set of regulations to solve e-commerce concerns in order to appropriately defend consumer protections has been emphasized as a response to the issues raised by e-commerce. It also provided the motivation for a barrier defence and corresponding system to promote the creation of e with a hurdle protection and corresponding

¹¹ Vittal, N., Information Technology: India's Tomorrow, Manas Publications, New Delhi, 2003.

¹² Lee, JH Jennifer, 73, Consumer Protection in the New Economy: Privacy Cases in E-Commerce Transactions or Social Media Activities." CONSUMER FIN. LQ REP, (2019).

¹³ Bhattacharya, Pranab Kumar, “Legal Framework of Electronic Commerce: A Study With Special Reference to Information Technology Act 2000”

¹⁴ Fibrianti, Nurul, Consumer Protection in Electronic Transactions, 12.4, International Journal of Business, Economics and Law, 67-69,(2017).

arrangement for having completed e-commerce financial transactions on the one side, and also to encounter consumer protection requirements on the other, in light of the innovative incidence of e-commerce.¹⁵

CONSUMER PROTECTION AND PRODUCT LIABILITY RISKS IN E-COMMERCE

Without a doubt, e-commerce has given customers remuneration and comfort in the market for purchasing and promoting brands and service providers, but it has also represented a danger to consumers by affecting the probability of flagrant violations of their fundamental rights and liberties through e-commerce gateways.

E-commerce has provided customers with compensation and convenience in the industry for acquiring and encouraging brand products and providers, but it has also posed a risk to consumers by increasing the likelihood of blatant violations of their foundational freedoms and privileges via e-commerce portals.¹⁶

As other activities revolve around him, the consumer is the central focus of the country's economic cycle. In a competitive economy, the customer determines whether a firm succeeds or fails by purchasing or refusing to purchase a product.¹⁷ Consumer focus is a critical component of marketing. Marketing strategies should indeed be based on customer demands and attempt to achieve organizational objectives through consumer happiness and well-being, according to the contemporary marketing idea. The following are the primary benefits and advantages that e-commerce provides to firms and consumers:

- a) increasing international access and selection;
- b) intense competition and customer satisfaction;
- c) order execution and personalized products and services;

¹⁵ Kwilinski, Aleksy, E-Commerce: Concept and Legal Regulation in Modern Economic Conditions, Journal of Legal, 22, Ethical and Regulatory Issues, 1-6, (2019).

¹⁶ Kalia, Prateek, Navdeep Kaur, and Tejinderpal Singh, E-Commerce in India: evolution and revolution of online retail." Mobile commerce: Concepts, methodologies, tools, and applications. IGI Global, 736-758, (2018).

¹⁷ Bahttt, Gopal R., "Consumerism: Concept and its Need in Our Era", Indian Journal of Marketing, Vol. V, June-August, 1985, pp. 3-11.

- d) discarding of intermediaries and inventory levels;
- e) improved performance and reduced prices;
- f) great possibilities and product introductions, and so forth.

However, it has provoked a torrent of consumer concerns about the violation of their fundamental human rights, that have since been recognized internationally.¹⁸

THE NECESSITY FOR LEGAL PROTECTION TO PROTECT CONSUMERS IN E-COMMERCE TRANSACTIONS

In the previous section, we started to look at how, whilst also e-commerce provides significant convenience to the customers in the implementation of contractual arrangements, it also poses a threat to consumer protection. This insufficient e-commerce response to consumer rights may affect the customers desire for and willingness to engage in e-commerce transactions, posing a risk to the effectiveness of e commercial activity. To manage concerns about consumer rights in e-commerce transactions, a distinct and appropriate set of laws and regulations is necessary, which will not only overcome the issue of product safety in e-commerce, but will also strengthen consumer rights.¹⁹

To meet the need for consumer rights in e-commerce, globally recognized consumer rights standards in electronically enabled contractual relationships must be safeguarded by efficient and appropriate regulatory structures and legal principles.²⁰

Consumers' willingness for and tendency to participate in e-commerce activities may well be impacted by this weak e-commerce responding to customer protection, posing a danger to the sustainability of online business.²¹ To address consumer rights issues in e-commerce

¹⁸ Chawla, Neelam, and Basanta Kumar, E-commerce and consumer protection in India: The emerging trend, *Journal of Business Ethics*, 1-24, (2021)

¹⁹ Ayilyath, Manoranjan, Consumer Protection in E-Commerce Transactions in India–Need for Reforms, (2020).

²⁰ Datta, Subhasis, "E –Commerce: An Overview in the Indian Context", *Chartered Secretary*, Vol. 31, December, 2001, pp. 1546-1548.

²¹ Chaudhari, P. T., "E-Commerce-Indian Scenario", *The Indian Journal of Commerce*, Vol. 56, No. 1, January-March, 2003, pp. 113-114.

activities, a different and suitable set of rules and regulations is required, which would not only address the issue of e-commerce quality management, but also boost consumer safety.

Recognized internationally fair-trading standards in technologically facilitated economic transactions must be preserved by efficient and adequate various regulations and constitutional precedents to address the requirement for consumer interests in e-commerce.

For the greater welfare of society, several studies have underlined the significance of combining the benefits and downsides of each system.²²

Consumer protections and other regulatory regimes must not only preserve consumer welfare, but also encourage customers to engage in e-commerce transactions without the prospect of rejecting important consumer rights. As per Sahoo and Chatterjee (2009), unethical or misleading seller marketing tactics and conduct in e-commerce operations (e-commerce) will not only breach basic consumer protection laws, but also stifle the industry's growth. In view of all this, it may be argued that, when examined through the prism of consumer interests and e-commerce development, the regulatory form of the ecommerce industry will encourage the modification of consumer rights legislative requirements for usage in cyberspace.²³

E-COMMERCE AND CONSUMER PROTECTION: AN INDIAN REGULATORY ASPECT

In the framework of legislation, different parts of Indian law addressed consumer protection and e-commerce. However, e-commerce and consumer privacy were considered as two ends of the same face in the realm of marketplace business and finance. Contrary to this we have had the "Consumer Protection Act, 1986", which ensures the protection of essential consumer rights and provides a method for enforcing those rights as well as seeking redress in a specific and dedicated discussion board system, and provides a mechanism for enforcing those rights as well as claiming redress in a specific and focused manner. The "Information Technology Act, 2000, and also elements in other laws and regulations such as the Indian constitution,

²² Mann, Yogendra Nath, and Kavindra Nath Mann, E-Retailing Laws and Regulations in India: E-Commerce in India—Legal Perspectives, Internet Taxation and E-Retailing Law in the Global Context. IGI Global, 8-20, (2018)

²³ Consumer Protection Act, 1986

1950, Article 38, Indian Contract Act 1872, Indian Penal Code, 1860, and Indian Penal Code, 1860”.²⁴

To address the obstacles posed by customers in conducting e-commerce transactions, laws such as the “Consumer Protection Act of 1963 and the Indian Telegraph Act of 1885” were enacted.

CONSUMER PROTECTION ACT: E-COMMERCE AND THE BASIC PRODUCT LAW

Although the Indian Parliament passed the “Consumer Protection Act, 1986” with the intent to "provide for better safeguarding the interests of consumers so for that mission to create provided for the regulation of consumer municipalities and other law enforcement agencies for the settling of consumers' disagreements and for associated with standard therewith," it has been criticized for providing the needed consumer protection to individuals in commercial transactions. To engage and preserve the rights of consumers in India on a par with international standards.²⁵

On the one extreme, the information technology era has made it possible to easy and rapid trade agreements on digital portals; on the other side, it has aspects such as societal challenges to the protection of various customer rights, such as deceptive service and product descriptions in a totally detached contract, privacy and security of customers' data, forms of intellectual property and brand concerns, standard form of contractual difficulties, and so on.²⁶

Despite the fact that the Consumer Protection Act of 1986 established a consumer court system to improve the development and preservation of consumers' rights, the implementation system has the following weaknesses: a) Businesses seldom pay attention to consumer courts, and their findings, judgments, and court orders are usually disregarded. As a consequence, most consumer cases go on endlessly, with no end in sight. b) Companies usually do not implement the decision, and as a result, the processes for carrying out the

²⁴ *Ibid at 22.*

²⁵ Ganesh, S., “Electronic Commerce : Application in India”, in S.B. Verma (edited), Information Technology and Management, Deep and Deep Publications Pvt. Ltd., New Delhi, 2005, p. 110-117

²⁶ Khushalchand, Bora Chandan, A Critical Study of Consumers Protection with Special Reference to E Commerce in India, (2018)

judgment take a very long time than the procedure for addressing the complaint after it is filed. c) Consumer courts, just like every other judicial institution in the country, are not known for their lack of corruption.

Lastly, “the Consumer Protection Act of 1986 lacks provisions that specifically address the consumer protection issues that arise in e-commerce transactions. In its broad as well as all use, it instead provides consumer protection protections”.

A TERSE ANALYSIS OF THE INFORMATION TECHNOLOGY ACT OF 2000 AND CONSUMER PROTECTION

We have seen in earlier interpretation that some aspects in an e-commerce transaction arouse consumer concerns about consumer rights in the execution of business contracts using electronic mechanisms. These e-commerce consumer protection problems and the status of their corresponding legal requirements can be described as follows:

- 1) The Information Technology Act of 2000 (hereafter referred to as the IT Act, 2000) was enacted with the goal of making e-commerce transactions easier.
- 2) “To address and overcome all challenges that may obstruct the practice of e-commerce transactions, but the requirements of the IT Act, 2000 do not primarily provide for consumer rights in e-commerce transactions, though it does have a few provisions that represent a consumer-centric approach to protecting consumers' rights in e-commerce”.²⁷
- 3) Protection from the negative effects of highly competitive markets, such as with the marketing of the identical item at different prices: The IT Act of 2000 contains no provision prohibiting e-commerce businesses from providing the same items at different prices. As a consequence, e-commerce companies may establish their own prices for many of the same products they sell to customers. This might be a severe infringement of consumer protection in the e-commerce industry.²⁸

²⁷ Verma, Swalia Bihari, “The True Picture of E-Commerce”, in S. B. Verma (edited), Information Technology and Management, Deep & Deep Publications Pvt. Ltd., New Delhi, 2005.

²⁸ The Information and Technology Act, 2000

4) Product delivery to the proper spot and also at the right time: This phrase is also absent from the IT Act of 2000, and it will only be enforced through contractual remedies, which are generally in the shape of "contractual terms," which are potentially destructive to consumer protection.

5) Payment methods that are not secure: The IT Act of 2000 has no provisions for compensation for damages arising of unsecure payment methods.

6) Risk of invasions of privacy and lack of privacy (data privacy violation): While the IT Act of 2000 includes special clauses to handle the problem of team losing of personal private information disclosed by clients in e-commerce transactions, the IT Act of 2000 does not contain special clauses to handle the problem of loss of individual protection of personal information divulged by customers in e-commerce exchanges.²⁹

CONCLUSION

One side, "Section 4 of the Consumer Protection Act of 1986 (Consumer Protection Councils), Section 66A of the IT (Amendment) Act of 2008 (Hacking), and Section 72A of the (Privacy and Confidentiality of Information)" start debating and address consumer rights issues in e-commerce exchanges, but these regulations are mildly distributed and nonfigurative.

Consumer protection regulations regulating e-commerce transactions really aren't specifically oriented or geared at guaranteeing efficient customer security in these activities. As a result, Indian clients do not even have adequate protection for their consumers rights and access to e-commerce transactions. Consumers' desire to participate in e-commerce activities may deteriorate if these issues are not adequately addressed.

It has been noticed that abuses of e-consumer rights (consumers who use the Internet), a product of technical advancement in the twentieth century, have grown to pandemic proportions and have become unmanageable in the twenty-first century. One of the features of internet scams is that, unlike traditional crimes, they are global and anonymous. Considering the character of the crime and the lack of an adequate regulatory framework to

²⁹Barkatullah, Abdul Halim, Does self-regulation provide legal protection and security to e-commerce consumers?, 30, *Electronic Commerce Research and Applications*, 94-101, (2018)

tackle it, investigations frequently end in a void. Under the guise of information technology, the exploitation of consumerrights has evolved from a puddle to a massive iceberg. Regrettably, law enactments in India are now drafting tough regulations to address such technical concerns.

“The quickest and fundamental shift in day-to-day existence that the human species has ever encountered is the flame spreading of consumerism over the planet”. Materialism is on the rise, owing to technological advancements. Optical disk recorders, electronic content, desktop computers, and mobile phones have all become part of Indians' ordinary activities. There has been a trend away from society, spirituality, and morality or towards competitiveness, consumerism, and detachment. As a result, cyber-consumer protection is gathering steam across the world. It is past time for legal enactments to recognize the rights of internet customers.

It's possible that this will have a detrimental influence on the expansion of e-commerce operations.

SUGGESTIONS FOR THE FUTURE

In light of the aforementioned findings, the following initiatives are made in order to provide a suitable and effective regulatory framework for consumer rights in e-commerce at both the regional and worldwide levels:

- 1) Novel consumer protection rules and procedures are required in light of internationally recognized consumer protection principles in order to provide effective protection for consumers in e-commerce operations and to stimulate e-commerce activities in our country.
- 2) That simply upholding rights of consumers in legislation is inadequate; in order for them to be meaningful, there is a compelling need to engage in educating consumers and rigorous application at all levels.
- 3) It is proposed that e-commerce exchanges acknowledge a right to a flash of insight ("warming up") before really concluding the agreement (buyers would have to be notified 'a priori' of the contractual terms suggested by the provider, who would have had to maintain these conditions for a time period); this will enable the customers to assess promotional offers and carefully investigate the service contract before giving their authorization.
- 4) A right of withdrawal, which is the right to withdraw from a contract without penalty or explanation during a "cooling-off" period that may exist unless the transaction was signed before the customer has acquired the contract's whole terms of service.