



CONSUMER PROTECTION ACT, 2019: TACKLING COMPLEXITIES OF E- COMMERCE CONSUMERS

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Abstract

“Information Technology and Business are becoming inextricably interwoven. I don't think anybody can talk meaningfully about one without talking about the other³.” Amid globalisation, digitalisation has emerged, that has eventually dawned the concept of digital economy. Digital economy has fetched in various online platforms with opulent boon. Inevitably, every trade, business and profession have diversified its horizons via e-commerce platforms. Online commercial transactions have precipitated remarkable reverberation on economy and but lacked regulations and governance. As e-commerce ultimately is progeny of technology and globalisation; reputedly the talking point entail technicalities and for that reason up and running of trade, business and profession by online mode has brought legal vacuity and bewilderment. Prior to, enforcement of the act⁴, the erstwhile act⁵ was prevailing since 1986, but surfacing the E-commerce, the erstwhile act⁶ disoriented the apposition of de nos jours⁷ circumstances. Beyond any doubt, E-Commerce has given a convenient platform to the consumers, but some complexities has also transpired that need to be regulated and tackled. This paper addresses the areas that came out bereft of substantive law due to digital and technological changes in commercial transactions apropos consumers, further paper examines whether recently enforced act⁸ tackles the complexities that occurred because of shortcomings ensued by the technological emergence.

Keywords: - E- commerce, consumer, technology, digitalization etc.

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⁴ Consumer Protection Act, 2019 (Act No. 35 of 2019).

⁵ The Consumer Protection Act, 1986 (68 of 1986).

⁶ *supra*.

⁷ contemporary.

⁸ *supra*.

INTRODUCTION

A conspicuous revolution inundated worldwide under the aegis of information and communication technology. E-commerce is applying the technology persuasively and persistently, that allow any business transactions to be conducted electronically and essentially chip in to attain the business goals. Any single event in any business done electronically is also appraised as transaction of e-commerce. To the letter, E-commerce is managing, administering and enforcing the business through internet and technology. It is innovated portal for business transactions with direct or indirect nexus with networking and technology. "E" in e-commerce is authentication of technological ability and "commerce" bums shoots all business or commercial transactions, hence collaboratively it approbates online business transactions. It is buying or selling of goods or services including digital products over digital or electronic network.⁹ Any dealing, transaction, negotiation which is business intercourse that requires channel of information technology and networking is E-Commerce. It is not limited to buying and selling of goods or services only, rather all the allied pursuits that can be vouchsafed by the ICT¹⁰ swayed under e-commerce.

The online portals for business and trading has created enormous consumers for their products and services, indeed it is required; as consumer has always been a pivotal element to thrive the economy. Similarly, the consumer is intrinsic for e-commerce and digital economy as well. No business can sustain in an economy without the consumer, this is why he is considered as the king of the economy. Digital economy in form of E-commerce has brought radical change by repositioning the target audience towards online platforms or portals for commercial transactions. This revolution has conferred various variations like cyber marketing, online marketing, tele-marketing, online shopping, kiosks, that are similar in nature yet the fons et origo¹¹ is same i.e information and communication technology. The advent of e-commerce has revolutionised the commercial paradigm and has lead the economical status to different footing. The avant-garde mode of trading practice has eventually hatched and outdistanced the traditional business usages. Additionally the e-commerce, transactions carried out, and the services provided in the name of e-commerce or under e-commerce platforms acquires the sufficient recognition under the IT Act¹². The induction of e-commerce has escorted convenience with easy reach to the consumers. E-commerce has unique features, consumers have benefit of; that are summed up as 3V's, i.e Virtuality, Vastness and Versatility. Virtuality is dealings in cyber world that has ushered convenience and feasibility to the consumer by substituting hassling foot work to relaxing fingertip clicks. Vastness represents crossing the geographical boundaries that has enabled the consumer to transact or shop around the globe. Versatility offers multiplicity of products and services with around the clock availability with use of the same device. In essence, E-commerce has uphold the lifestyle of consumers by providing a convenient gateway to them.

⁹sec 2 (16) The Consumer Protection Act, 2019.

¹⁰information and communication technology.

¹¹ the source and origin of something.

¹² The Information Technology Act, 2000 (also known as ITA-2000, or the IT Act) is an Act of the Indian Parliament (No 21 of 2000) notified on 17 October 2000. It is the primary law in India dealing with cybercrime and electronic commerce.

REVIEW OF LITERATURE:

- Pavan Krishna reddy and Shri Lakshmi Rekha “E-Commerce And Consumer Rights- In The Perspective Of Consumer Protection Act, 1986”¹³ has looked over the 1986 law on consumer protection and deduced though the internet and technology is vital for growth and development of business and economy, therefore its vitality cannot be ignored, but simultaneously there is requisition of rigour legislation that shall provide a shield and protection to the consumers.
- George Cheriyan and Simi T.B., in their paper “Protecting The Digital Consumers: Challenges And Possible Solution” (2019)¹⁴; has analysed the data of potential consumers online, challenges they face in routine and existing legislations on e-commerce and online protection of consumers. The authors have suggested that there need to be consumer empowerment.
- HinaKausar in “E-Commerce and rights of E-Consumers”¹⁵ has concluded solution to technological issues is technology itself, therefore, help of technology innovations are required to protect the consumers as well. The researchers emphasised on requirement of risk management strategies.

STATEMENT OF RESEARCH PROBLEM

Advancement of technology has enhanced the reliance over technology and internet. Where the nation is progressed towards building the nation digitally equipped and its people tech savvy. Developing the arena of E-commerce is also a product of Digitalisation, which has certainly established a eminence in nation's economy. Prominent market has been captured by the e-commerce which has brought socio-economic change radically. Every change in economic and social conditions of a country need to be regulated. Online transactions or online business is regulated by Information and technology act¹⁶ and the erstwhile act¹⁷ on consumer protection was inefficacious with respect to protection to e-consumers. The new act¹⁸ enforced in 2020 was drafted with wider scope of protecting the e-consumers as well. This paper is intense study on new law¹⁹ and to deduce whether the law is apt with requirement.

OBJECTIVES:

1. To apprehend the purpose and objectives of newly enacted law with respect e-commerce intercourse.
2. To analyse and research the complexities faced by the consumers while e-commerce transactions.
3. To contemplate the proficiency of newly enacted law in tackling the complexities of consumer while e-commerce transactions.

¹³ International Journal Of Legal Developments And Allied Issues [Volume 2 Issue 6]

¹⁴ International Journal On Consumer Law And Practice Vol. 7; 2019.

¹⁵Hina Kausar, Assistant Professor (Law), Aligarh Muslim University, Murshidabad Centre (W.B.); published in Articles section of www.manupatra.com (last visited 16 August 2022)

¹⁶ The Information Technology Act, 2000 (No. 21 of 2000)

¹⁷The Consumer Protection Act, 1986 (68 of 1986).

¹⁸ The Consumer Protection Act, 2019.

¹⁹ibid.

RESEARCH QUESTION:

1. What are different complexities, online consumers encounter while E-commerce intercourse?
2. Are provisions of Consumer Protection Act, 2019 sufficient in tackling the complexities of e-commerce consumers?
3. Is Consumer Protection Act, 2019 exhaustive in itself or requires further modifications?

CONSUMER PROTECTION ACT, 2019 TACKLING THE COMPLEXITIES ENCOUNTERED BY CONSUMERS:

Every novel innovation takes time for adaptation in lives of the targeted audience, the journey of this novel idea of e-commerce was indeed challenging and has gone through a roller coaster for setting foot in the business world. Consequently, the efforts have induced the high yielding fruits. But not every boon come without bane. Online commercial transactions, undoubtedly have a enormous benefits but ensues some challenges that turns to be complexities while online intercourse. This research paper further identifies the complexities encountered by the consumers and then examines the capability of existing law in tackling the complexities of e commerce intercourse.

1. Irresolution of Originality or Genuineness in E-commerce Intercourse:

Consumers are sceptical while online intercourse, as online shopping is comparatively complex to the traditional mode of shopping. Buyer has to buy by going through the product or service virtually only either by seeing the graphics or perusal of description and reviews only. Physical contact of product is possible once it is delivered after buying only. The intercourse mode creates dubiety in consumer psyche regarding authenticity and genuineness of the product. The dubious hunch arises because of lack of reliability and trust in the product as the product is superficially popped up. The extent of parliament to provide sense of security is even more than seller, trader or any manufacture. In e-commerce intercourse, it is imperative for the vendor to create a trust by offering and catering genuine and original products, yet its legislature corresponding obligation to make a check on vendors, traders and manufactures, additionally to furnish cogent legal provisions that can help the target audiences in relying and trust²⁰ building.

The newly enacted legislation on consumer protection furnishes the provision for spurious goods²¹. The legislature has strived to enact an exclusive provision²² to shield the consumer against the spurious goods. The penal provision provided in the legislation is inhibitory as it has deterrent effect on the vendor. The law provides punishment even for injury to consumer, the injury²³ in the act isn't limited to mere physical harm²⁴ rather it covers a broader purview by comprehending any illegal harm to body, mind and property. Moreover manufacturing or selling of spurious goods are considered as unfair trade practice²⁵.

²⁰an often mentioned for consumers not purchasing from internet vendors is lack of trust. (Petrovic et al. 2003)

²¹as per sec.2(43) The Consumer Protection Act, 2019, means such goods that are falsely claimed to be genuine.

²²sec.91 The Consumer Protection Act, 2019: Punishment for Manufacturing for sale or for storing or selling or distributing or importing spurious goods.

²³sec.2(23) "injury" means any harm whatever illegally caused to any person, in body, mind or property;

²⁴sec. 2(22) "harm", in relation to a product liability, includes—

(i) damage to any property, other than the product itself;

(ii) personal injury, illness or death;

(iii) mental agony or emotional distress attendant to personal injury or illness or damage to property; or

2. Lack of Certitude Element In E-Commerce:

Certitude in literal sense means assurance and absolute conviction that something is the case. It is inhibited for consumers to rest assured and get convinced for buying products on e-commerce portals. Inhibitions whether the described and displayed product virtually shall be the same in reality or will that match the expectations of consumer that has been created by the vendor. As the medium of e-commerce transactions is virtual via internet and technology, neither the seller nor the actual product is in the proximity of buyer. There are always doubts regarding the correspondence between virtual and the real product. Majority of new online buyers stick to the conjecture that the appearance of the good may vary, the nature of product may to be as requirement, the quality may be inferior and it might not be able to solve the purpose etc.

The corresponding rules²⁶ creates liability on “marketplace e-commerce entities” according to which, an entity has to take undertaking from the seller to sell on entity’s; so that it can be ensured that what is described, shown in form of image or any other content pertained to the product on entity’s platform, is accurate and corresponds to what is depicted by the seller.²⁷ Further the entities are bound to disclose the every information furnished by the seller in clear manner with accessibility to it. It need to be displayed in way that it shall be notable by the users on the platform. The legislature has imparted the substantial provisions that regulates the operation of entities and sellers by augmenting their responsibilities and liabilities towards the consumers. The imparted regulation conveys a sense of satisfaction among the consumers as setting rules may rest the consumer assured and bring out the element of certitude.

3. Coax with Hoax:

Number of population relies on pictorial representations or what is shown to them. Marketing is strong tool to persuade the consumer while buying. Netizens, while using the purposeful sites dragged towards another online links that initially seems attractive which persuades the user to invest in the product but intrinsically that may be a deception to trap the consumer. In e-commerce transactions, the consumers has no accessibility with the seller, entities and the product moreover enormous number of products surface in while exploring on online platforms, it becomes impossible for buyer to be selective and eventually relies on the attractive advertisements without going through the credibility of the product. This creates dearth of trust in e commerce intercourse as deceiving by one or two advertisements lead in trust failure.

The act patently provide definitions of advertisement²⁸ and misleading advertisements²⁹ both, that enables to discern how and what should be advertised. Defining misleading advertisements in exhaustive manner and

(iv) any loss of consortium or services or other loss resulting from a harm referred to in sub-clause (i) or sub-clause (ii) or sub-clause (iii), but shall not include any harm caused to a product itself or any damage to the property on account of breach of warranty conditions or any commercial or economic loss, including any direct, incidental or consequential loss relating thereto;

²⁵ref. Sec. 2(47)(vi) The Consumer Protection Act, 2019.

²⁶The consumer protection (E-Commerce) Rules, 2020.

In exercise of the powers conferred by sub-clause (zg) of sub-section (1) of section 101 of the Consumer Protection Act, 2019 (35 of 2019), the Central Government on 23 July 2020 had notified the Consumer Protection (E-Commerce) Rules, 2020.

²⁷rule 5 (2), The consumer protection (E-Commerce) Rules, 2020.

²⁸sec.2(1) The consumer Protection Act, 2019;

"advertisement" means any audio or visual publicity, representation, endorsement or pronouncement made by means of light, sound, smoke, gas, print, electronic media, internet or website and includes any notice, circular, label, wrapper, invoice or such other documents;

²⁹sec2.(28) The consumer Protection Act, 2019.

setting forth it as an offence has inhibitive course that will aid in curbing misleading advertisements. Moreover, the act has imparted a penal provision³⁰ for false and misleading advertisements. This provision is savior for the consumers as it prevents interests of consumers by misleading or false advertisements published or broadcasted either by any manufacture or service provider.

4. Trepidation of flaws, defects and inferiority:

In traditional shopping, the buyer has physical mode of buying by checking the actual product or ordering the bulk of product by checking the samples. In either ways the consumer buys with confidence that he shall get what he has ordered. The traditional buying has a recourse of immediate rejecting, returning, exchanging the product, because the mode of dealing is physical, and consumer is usually familiar with the buyer or aware about the credibility of the seller. But in case on online trading a consumer has no tete-a-tete with the seller, moreover there are huge amount of seller offering their products with same intermediary that raises apprehension and consternation about the quantity, quality, potency, standard, any other shortcoming, imperfection or fault in relation to goods and products. To propitiate the credence triggered by the trepidation, the course of action is required that creates assurance of reliability and credibility in online intercourse.

The legislation has clearly defined defect³¹ and deficiency³² with wide ambit to cover the faults, imperfections, shortcomings or inadequacy in any product delivered or any service performed. The legislation has used the word “defect” for goods or product whereas the term “deficiency” is used for performance of services. Both the terms in real sense, has shifted paradigm of “caveat emptor” to “caveat venditor” in a substantiated manner and has given a comprehensible and robust elucidation that has transposed the responsibility on seller or business. Defect or deficiency in product or service makes the seller, business or service provider liable, under the new legislation, it becomes the responsibility, accountability and liability to provide the consumer product or service without defect and deficiency. In case, any product with any defect is delivered or any service with any deficiency is performed, that is construed as unfair trade practice³³. The law imposes strict adherence on seller or service provider to countenance the return policy and pay the amount back to the consumer, this is called product liability.

"misleading advertisement" in relation to any product or service, means an advertisement, which—

- (i) falsely describes such product or service; or
- (ii) gives a false guarantee to, or is likely to mislead the consumers as to the nature, substance, quantity or quality of such product or service; or
- (iii) conveys an express or implied representation which, if made by the manufacturer or seller or service provider thereof, would constitute an unfair trade practice; or
- (iv) deliberately conceals important information;

³⁰sec. 89 The consumer Protection Act, 2019.

³¹sec. 2(10) The consumer Protection Act, 2019 : “defect” means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods or product and the expression "defective" shall be construed accordingly

³² sec.2(11) The consumer Protection Act, 2019; "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service and includes—

- (i) any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and
- (ii) deliberate withholding of relevant information by such person to the consumer;

³³sec. 2(47)(viii) The consumer Protection Act, 2019:(viii) refusing, after selling goods or rendering services, to take back or withdraw defective goods or to withdraw or discontinue deficient services and to refund the consideration thereof, if paid, within the period stipulated in the bill or cash memo or receipt or in the absence of such stipulation, within a period of thirty days.

5. Fear of unfair trade practices:

Unfair trade practices, if summed up as a definition in dilettante language, when companies or sellers; in order to enhance the supplies and to promote the sales or services; use unethical measures, adopts unfair methods or follow the deceptive practices. Such kind of practices are followed usually, but in regular mode of commercial activities, it get traced easily and prevention or precautions are taken as per rationality of the consumer, but in online intercourse unfair trade practices are extreme in nature to deal with, that became a real complexity to cope.

The law has given elaborative definition of unfair trade practice³⁴ in 9 points. Definition has covered almost every kind of concern faced by consumer and upheld by the businesses. The aim to give enhanced definition is utmost protection of consumers and their interest in toto. The law has provided a redressal mechanism to trailed by the consumer if the rights or interests of them get infringed by the unfair trade practices. A provision³⁵ of filing complaint offline and online is given to consumer under the law. Moreover, the law casts obligation³⁶ on central government to take measures in order to prevent unfair trade practices in e-commerce intercourse.

CONCLUSION:

Contemplating the consumer from panoramic view is the nostrum for the growth of one's business and to be a maestro in economy. Every aspect in field of business or trade that touches consumer either directly or indirectly; instantly or lately; on buying product or after buying, need to be taken care of, as upswing in economic status of any country is credited to consumer. The commercial organisations, therefore, need to be considerate with respect to consumers. Apparently, the consumer responds only when economy of a country is consumer centric. Consumer is focal for both for companies and countries and bearing that in mind it becomes indispensable to fortify the consumers' interest.

Interdependency of business and customer is a socio-economic phenomenon that creates a legal nexus as well. The moment, consumer buys a good or service, his rights establish with respect to good or service against the business. His rights need to be protected from the evil, unfair trade, restrictive or malpractices by the businesses. Interplay between Economy being financial state of a country and consumer being major integrant of economy are thereby regulated. In process of legislation or regulation a parity and reasonableness is required. Since, Companies or businesses are high powered and formidable sharks of the economy that are not easily assailable but the consumer is one who is assailable and vulnerable, on that account requires a strong protective regulation. Before surfacing of the 2019 act on consumer protection, 1986 act prevailed, but because of radical and extreme transformation in business practices because of technology, the previous act became non viable and defunct. And to shield from impact of every bane, robust legislation was called for, hence, the Consumer Protection Act, 2019 enforced. The fact of the matter, as trading found another modus operandi in virtual world to impart and extend the Product and services, the legislature was obliged to empower and protect the consumer by providing pragmatic, judicious and

³⁴sec.2(47) The consumer Protection Act, 2019

³⁵sec. 35 The consumer Protection Act, 2019.

³⁶sec. 94 The consumer Protection Act, 2019.

coherent legislation. Parliamentary Legislation and Judicial precedents have looked over the technicalities and have certainly brought constructive developments. Considering the vulnerability of a consumer, concept of Caveat Emptor (i.e let the buyer beware) has transposed to Caveat Venditor (i.e let the seller beware). Where in the concept of caveat emptor, only consumer was held responsible for his choice of buying that had effect of meager liability on seller, but the Caveat Venditor has given ample room of protection to consumer as this concept held a seller, manufacture or trader accountable, liable and responsible against the product or services they provide. The concept of Caveat Venditor has steered the level of consumers' protection to better position. Adaptation of law as per newfangled situations was the need of the hour, which brought the new consumer protection law.

Consumer protection law is a special and exclusive law on consumers that has been enacted with purpose to confer preferable and effective immunity for the interests of consumers. The law not only talks about the rights of consumers, but it is undertaking to impart the safeguarding measures that function as a bulwark. Further, it is an endeavour to strengthen the redressal mechanism by establishing councils and other authorities so that the disputes of consumers will be settled conveniently.

SUGGESTIONS:

The law though has widened its scope and has given wings to consumers by touching almost every aspect of issues and tackling almost every complexity faced by the e-commerce consumers, yet the law is not thorough going. The law still encompasses some lacuna that need to fill. The law does not control or regulate the service providers that lead to emergence of anonymous and un established ventures in abundance. These online businesses create a chaotic situation as it leaves the consumer in state of confusion whether to trust the authentic service provider or not. The paper, henceforth suggests having a strengthened regulatory mechanism to permit, to scrutinize and to control the events, activities and occurrences of the seller or service providers in e commerce intercourse.