

THE NEED TO PROTECT CONSUMER RIGHTS IN E-COMMERCE

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Abstract: In the present time, the consumer is the focal point of business and commercial activities. All economic activities start with the consumer and end with the consumer. In a globalized world, the world is converted into a global village and the size of market has become very large including electronic consumers in the field of E-Commerce. In India, the consumer has faced a rapid increase in the supply of consumer goods, and there has been an increase in the provisions of consumer services as well as new methods of distribution of consumer goods and products. Electronic Consumer exploitation is increasing rapidly and the concept of consumerism has changed over past many years. The market is found influenced by false, misleading advertisements, poor quality of goods and services. Therefore, keeping in view the interest of the consumers, the Consumer Protection Act, 1986 is one of the most important and comprehensive legislation dealing with the protection of electronic consumers. The present study focuses on the challenges and opportunities of e-commerce and the protection of electronic consumers as provided under the Consumer Protection Act, 1986.

Key words: Consumer, e-commerce, law, protection, goods.

I. INTRODUCTION:

In India, electronic consumers have faced a rapid increase in the supply of consumer goods, and there has been an increase in the provisions of consumer services as well as new methods of distribution of consumer goods and products. Consumer exploitation is increasing rapidly and the concept of consumerism has changed over past many years especially in E-commerce. Growing industrialization, digitization and mass production of a variety of consumer goods has confused the consumers in their choice in the market place and there is a need to ensure that the consumer has to be supplied with good qualities of products and services. Internet users rapidly increased day by day and there is an enormous growth of online consumers or shoppers in global market through electronic transactions. The transaction mode is very easy and simple like a single click or through click wrap agreement. The home delivery by the e-sellers and free shipping attracts the consumers in large scale. On the other hand, there are wide possibilities for hackers to easily interfere in the transactions and misuse the debit or credit cards of the e-consumers. Due to digitization, there is a sharp rise in e-consumers, and it also brought a new problem especially in the legal field of protection of consumers. The Consumer Protection Act, 1986 is a territorial jurisdiction in nature whereas electronic commerce, a product of digitization involves cross border disputes. Business are constantly innovating new technologies and increase new challenges in the area of e-consumers. Although the issues arising out of e-contract are many, very few cases have been brought to the Court. This demands new challenges in the protection of consumer's rights and proper regulations in a digital world.

II. CONCEPT OF E- CONSUMERS AND MODES OF E-COMMERCE:

There is no exact definition of e-consumer. In general term a person buying goods or services over the internet which involves cash on delivery or online transactions through card is called e-consumer. According to

section 2 (d)(i) Consumer means any person who 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.¹

MODES OF E COMMERCE

According to Roger Clarke E-commerce means the conduct of commerce in goods and services, with the assistance of telecommunications and telecommunications based tools. Consumer contract in e-commerce may take place in one the following ways:²

1. Communication via e-mail: in this scenario, the customer and supplier simply exchange messages through e-mail, or through computers which they have access.
2. Communication via World Wide Web: it may take place either through a common server or through intermediate/multiple servers.

III.INTERNATIONAL SCENERIO:

The United Nations General Assembly passed a resolution in 1985 emphasizing the need for consumer education. The resolution lays down certain guidelines for better protection of consumers. These guidelines which were unanimously adopted in the General assembly on 9th April, 1985 are also described as “Chapter of Human Rights”.³ These guidelines represent an initial attempt to create a global framework for consumer protection policy and measures. They act as a stimulating factor for such legislation framed in many countries. The Consumer Protection Act, 1986 is one of such legislation in India. The popularity of the enactment lies in its objectives of identifying consumers’ rights and providing cost-effective and speedy redressal. In the US case of *Escola v. Coca Cola Bottling Co* ⁴, a waitress was injured when a soda bottle exploded in her hand. Justice Traynor asserted that public policy demanded recovery for the plaintiff even if negligence could not be proven because the manufacturer was in the best position to insure against the damage. This position was based on the theory that the consumer does not have the same opportunity to inspect products, the same knowledge to recognize dangers, or the ability to bear the cost of such dangers. This idea of liability imposed without fault became known as “strict liability”.

1. Position in UK:

In UK electronic consumers are protected by traditional laws, which are common to buyers purchasing over the counter as well as over the internet and regulations exclusively designed to deal with online transactions. The traditional includes the Sale of Goods Act, 1979, Consumer Protection Act, 1987 etc. the unfair terms in Consumer Contract Regulations, 1999 is a UK statutory instrument, which implements the EU Unfair Consumer Contracts Terms Directive 93/13/EC into domestic law, that protects consumer rights where they enter into agreements with retailers who try to impose unfair terms in the agreement. There are also numerous other pieces of legislation, many of which is dealing to different contract and product types. Online regulations are largely derived from the European Union Directives, which include the 2002 Electronic commerce Regulations, the Consumer Protection (Distance Selling) Regulations 2000 and the Electronic Signatures Regulations 2002, the Data Protection Act, 1998 among others.⁵

¹ Section 2(d)(i) of The Consumer Protection Act, 1986.

² Ashok.R.Patel, (ed.). (2014). Jurisdiction concern in E-Consumer Contracts quoted in *25 years of consumer protection Act: Challenges and the way Forward*, NLSU, Bangalore, 90.

³Reddy, Gb. (2009). *Law of Consumer Protection*. Hyderabad, Gogia Law Agency, 4th Edition,2.

⁴ 24 cal.2d.453

⁵ Supra note 1at page 100

2. Position in Singapore:

In Singapore, Consumer Protection in general are governed by a spate legislation such as Consumer Protection(fair Trading) Act, Consumer Protection(Trade description and Safety Requirements) Act,1975, the Commodity Trading Act, and the multi level Marketing and Pyramid Selling (Prohibition) Act prohibits the registration of business that are designed to promote multi level marketing schemes or pyramid selling schemes in relation to the distribution and sale of commodities and makes it unlawful for any person to promote such schemes. In the e commerce context, Electronic transactions Act, 1998 which is based on the UNCITRAL Model law, deals with the issues of certainty of electronic records and transactions.

3. Position in United States:

Being a developed country, United States had lot of experience in online consumer disputes. The Federal Trade Commission protects American Consumers through the Bureau of consumer protection. It is the only federal agency with both consumer protection and competition jurisdiction. It creates a fully operated 24x7 dedicated website for registering online consumer complaints.

IV. NEW CHALLENGES OF DIGITISATION IN CONSUMER LAWS:

The doctrine of 'caveat emptor' or 'let the buyer beware' remains a powerful cornerstone of consumer protection, and a familiar advice. Caveat emptor has providing the consumer is well-informed and products are properly described and disclosed, then the service provider has honoured the necessary obligations. The limitations of this approach placed on consumers to inform themselves of the terms and conditions of each transaction i.e. the burden of responsibility is such that it is able to fall more heavily on consumers. A concern is already raised in the condition that the growing prevalence of Internet connections could have the potential to exacerbate existing consumer problems in digital marketplaces, such as lock in to particular vendors' systems, or unexpected use of personal data.⁶ Caveat emptor and its chief delivery mechanism of 'disclosure and consent' face even more strain in the market for digital products. It is now well understood that hardly anyone reads the small print before they click agree. A global consumer survey found 63% of people admit they don't read terms and conditions in full - behavioral metrics put the figure at closer to 1% for the proportion of consumers who actually read them in the global business.⁷

Having dealt with the limitations of the cross-border solutions and other non-adjudicatory dispute resolution system, consumer protection in e-commerce with the growth of cross border transactions is no longer a domestic issues and subjects like extraterrestrial application of domestic consumer protections and enforcement of judgments of foreign courts have emerged. Existing consumer protection legislations are built on certain outdated presumptions which do not apply in the virtual market place, where majority of the sellers and buyers are located in different jurisdictions. It is therefore very difficult to apply the existing elements of domestic consumer protection laws over online cross-border exchanges. The important point dealing with jurisdiction over e-contract is with respect to the location of parties who in majority of the cases are anonymous, with email domains, websites, and electronic addresses not necessarily relating to the place of the business. Jurisdiction becomes a challenge due to the complexity of e-commerce transactions wherein the seller, buyer, server, internet service provider are located in different countries.

V. THE CONSUMER PROTECTION ACT, 1986 AND REDRESSAL FORUM:

The Consumer Protection Act, 1986, (herein after referred as the "Act") is the most important legislation in the area of consumer protection. The Parliament of India enacted Consumer Protection Act on 24th

⁶ Retrieved November 10th, 2017 from https://www.ipsos-mori.com/DownloadPublication/1687_sri-understa.html

⁷ Retrieved November 15th, 2017 from <http://www.ipsosglobaltrends.com/personalisation-vsprivacy.html>

December 1986 to provide a mechanism for cheaper and speedy redressal of the grievances of the consumers.⁸ The Act aims to protect consumer interests. The Consumer Protection Act also imposes strict liability on manufacture/producers of goods, in case of supply of defective goods, and service provider, in case of deficiency in rendering service. The Act applies to all goods and services unless specifically exempted by the Central Government. In *Laxmi Engineering works v. PSG Industries*⁹ it was held that it is not the value of the goods but the purpose for which it was purchased that matters. The Act is applicable to government as well as corporative and other sectors and involves in the process all institutions administrative, business, judicial and the society at large. It provides for the adoption of various possible measures for the promotion and protection of the interest of consumers, mainly on protection against marketing of hazardous goods, whether affecting life or property. The most important feature of the Act is the recognition of consumers' right to be informed about the quality, purity, standard and price of goods and services, which is an important device to prevent exploitation. India has been observing since 15th March, 1989 as the National Consumer's Day. This day has a historic importance as it was on this day in 1962, when the Bill for Consumer rights was moved in the US Congress. During his speech President John F. Kennedy had remarked:

"If a consumer is offered inferior products, if prices are exorbitant, if drugs are unsafe or worthless, if the consumer is unable to choose on an informed basis, then his dollar is wasted, his health and safety may be threatened, and national interest suffers".

He equated the rights of the ordinary American consumer with national interest and gave the American Consumer four basic rights¹⁰:

1. The Right to safety
2. The Right to choose
3. The Right to Information
4. The Right to be heard.

Central Consumer Protection Council

Section 4 of the Act empowers the central government to establish the Central Consumer Protection Council with the Minister-in-Charge of Consumer Affairs in the central government as its chairman. There have to be other official or non-official members, as may be prescribed in this behalf, keeping in view the diverse interests which need to be represented in the Central Council.

The Central Council should meet at least once in a year. The date and place for the meeting of the Central Council is to be fixed by the chairman. According to section 6 of the Act, the objects of the Central Council are to promote and protect the following rights of the consumers:¹¹

- a. the right to be protected against the marketing of goods and services which are hazardous to life and property;
- b. the right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, so as to protect the consumers against unfair trade practices;
- c. the right to be assured, wherever possible, access to a variety of goods and services at competitive prices;
- d. the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate forums;
- e. the right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and
- f. the right to consumer education.

⁸ Ashok.R.Patel, (ed.) .(2014). Inaugural Speech of Hon'ble Mr. Justice Ashok Bhan quoted in *25 years of consumer protection Act: Challenges and the way Forward*, NLSU, Bangalore, 4.

⁹ AIR 1995 SC 1428

¹⁰ Kuljit Kaur, (2007). *Consumerism-Rights and Responsibilities*.M.D.U.Law Journal, Vol XII, Part II , 117.

¹¹ Sec 6 of the Consumer Protection Act, 1986.

State Consumer Protection Councils

Section 7 makes provision for the establishment of consumer protection councils in states with the same objects, within the states as have been laid down in section 6 of the Act for the Central Council. The chairman of a state consumer protection council would be the Minister-in-charge of the Consumer Affairs in the state government who would have the power to call the meetings of the council and decide the time and venue for the meetings. The central government may also nominate certain official or non-official members to the state council, not exceeding ten. The state consumer council should meet at least twice in a year.

District Consumer Protection Councils

In 2002, two new sections, sections 8A and 8B have been inserted in the Act which empowers the state government to establish for every district a consumer protection council. The collector of the district concerned should be the chairman of the council. The state government concerned is authorized to appoint the other members, official and non-official, keeping in view various interests which need to be represented at the council. Each district council is supposed to meet at least twice in a year. The time and venue of the meetings is to be fixed by the chairperson.

Consumer Disputes Redressal Machinery

Section 9 of the Act provides for the establishment of a three-tier consumer dispute redressal system: (a) the Consumer Disputes Redressal Forum (District Forum) to be established in each district by the state government, (b) the Consumer Disputes Redressal Commission (State Commission) to be established in each state by the state government, and (c) the National Consumer Dispute Redressal Commission (NCDRC) to be established by the central government as follows:

District Forum

Each district forum is to consist of a president and two other members. The president should be a person who has been or is qualified to be a district judge. Out of the other two members, one member must be women. Each member should be a person of not less than thirty-five years of age, possessing a bachelor's degree from a recognized university, and be a person of ability, integrity and standing, having adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.¹²

A member of the district forum can hold office for a term of five years or up to the age of sixty-five years, whichever is earlier. A member can be re-appointed if he fulfills the qualifications and other conditions for appointment. The appointments to the district forum are made by the state government on the recommendation of a selection committee. On the resignation of a member, any person having the qualifications required for the membership of his/her category in the forum may be appointed as a member in place of the outgoing member.

The pecuniary as well as territorial jurisdiction of a district forum is specified in section 11 of the Act. As per enhancement of the pecuniary jurisdiction of the forum by the Consumer Protection (Amendment) Act, 2002, a complaint can be instituted in a district forum when the value of the goods or services and the compensation is up to rupees twenty lakhs. Earlier this limit of jurisdiction was rupees five lakhs.

As regards the territorial jurisdiction of the district forum, a complaint can be filed before a district forum within whose jurisdiction the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint actually and voluntarily resides or carries on business. If there are more than one opposite parties, the complaint can be filed in a district forum on the basis of residence or place of business of any of them, after the district forum has given permission for that or the other opposite parties have agreed to that. A complaint can also be instituted in a district forum within the local limits of whose jurisdiction the cause of action has, wholly or in part, arisen.

Earlier, a complaint could be made without paying any fee. By the amendment Act of 2002, provision regarding payment of fee has been inserted in the Act. The amount of fee for each complaint would be as may be prescribed by the central government. On receipt of a complaint, the district forum may allow the complaint

¹² Section 11 of the Consumer Protection Act, 1986.

to be proceeded or may reject it. But a complaint can be rejected only after giving the complainant an opportunity of being heard. To avoid delay in proceedings, the admissibility of the complaint should be decided within twenty-one days from the date of receiving the complaint. The proceedings before a district forum are deemed as judicial proceedings. In case the complainant or the opposite party dies during the pendency of the proceedings, his/her legal representatives can be impeded in his/her place as parties. To conduct the proceedings, the district forum has the same powers as that of a civil court while trying a suit.

Appeal

Any person aggrieved by an order of the district forum can prefer an appeal against such order before the state commission within a period of thirty days from the date of order. The state commission may, however, entertain an appeal after the given period of thirty days on the ground of sufficient cause. According to the amendment Act of 2002 an appeal against an order of the district forum can be entertained by the state commission only after the appellant has deposited fifty percent of the amount payable under that order or twenty five thousand rupees, whichever is less.

State Commission

Above the district forum, in the hierarchy of consumer redressal agencies, is the state commission established in each state by the state government consisting of a president and at least two other members, one of them should be a woman. The president of the state commission must be a person who has been a judge of a High court. The Chief justice of the concerned High court must be consulted on making such appointment.¹³The qualifications as well as the disqualifications for the members of a state commission are the same as those prescribed for a member of the district forum. They are appointed by the state government on the recommendation of a selection committee consisting of the president of the state commission and secretaries of the law department and the department of consumer affairs in the state. If the president of the state commission is by reason of absence or otherwise, unable to act as chairman of the selection committee, the state government may refer the matter to the chief justice of the concerned high court for nominating a sitting judge of that high court to act as chairman. The members having a judicial background should not exceed half of the total strength of a state commission.

Every member of the state commission can hold office for a term of five years or upto the age of sixty-seven years, whichever is earlier. Each state commission has three types of jurisdiction: (i) original jurisdiction, (ii) appellate jurisdiction, and (iii) revisional jurisdiction. The original jurisdiction of the state commission refers to the power of entertaining complaints directly. This depends upon the pecuniary and territorial limits of each commission. As per the latest amendment of 2002, a state commission can entertain complaints directly on matters in which the value of goods or services and the compensation exceeds rupees twenty lakhs but does not exceed rupees one crore. As regards the territorial jurisdiction, a complaint can be instituted in a State commission within the limits of whose jurisdiction the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business. In case there are more than one opposite parties who, at the time of the institution of the complaint, the complaint can be filed in any of these commissions with the permission of that commission or after there has been acquiescence of the other parties. Complaint can also be filed in a commission within the limits of whose jurisdiction the cause of action, wholly or in part, has arisen.

Appeal against an order of the state commission may be preferred to the National Commission within a period of thirty days from the date of the order. The National Commission may, however, entertain an appeal even after the expiry of that period on the ground of 'sufficient cause'. An appeal may not be entertained by the National Commission unless the appellant has deposited fifty per cent of the ordered amount or rupees thirty five thousand, whichever is less. Furthermore, it has been made mandatory for a state commission and the National Commission that they should record in writing the reasons for delay in disposal of an appeal beyond a period of ninety days.

¹³ Section 16 of the Consumer Protection Act, 1986.

The state commissions may call the records of any consumer dispute pending before or decided by any district forum within its limits of jurisdiction if it appears to the commission that the district forum has exercised a jurisdiction not vested in it by law or has failed to exercise jurisdiction so vested in it. The revisional jurisdiction may be exercised by a state commission, either suo motu or on the application of a party.

National Commission

The National Consumer Disputes Redressal Commission is established by the central government. It consists of a president and four other members. One of the members has to be a woman. The president of the National Commission can be a person who has been a judge of the Supreme Court. He is to be appointed by the central government in consultation with the Chief Justice of India. The qualifications and disqualifications prescribed for the members are the same as those for the members of a state commission. A member of the National Commission can hold office for a term of five years or upto the age of seventy years, whichever is earlier. ¹⁴The appointment of the members takes place on the recommendation of a selection committee consisting of a judge of the Supreme Court nominated by the Chief Justice of India (as Chairman of the selection committee) and the secretaries in the department of legal affairs and the department of consumer affairs, government of India (as members).

The jurisdiction, powers and authority of the National Commission may be exercised by its Benches. The president may constitute the Benches of the National Commission with one or more members. The National Commission is vested with original, appellate and revisional jurisdictions. Under the original jurisdiction, the National Commission is empowered to entertain complaints where the value of goods or services and the compensation claimed exceeds rupees one crore. The National Commission can entertain complaints from anywhere in India. It can also entertain appeals against the order of any state commission.

The National Commission enjoys the power to transfer any complaint pending before a district forum of one state to another district forum of any other state or before one state commission to another state commission. Ordinarily the National Commission functions at New Delhi but it may perform its functions at any such other place as the central government may notify in consultation with the National Commission.

Supreme Court

Any person aggrieved by an order made by the National Commission may prefer an appeal against such order to the Supreme Court within a period of thirty days from the date of the order. The Supreme Court may entertain an appeal even after the expiry of thirty days if it is satisfied that there was a sufficient cause for not filing it within the stipulations period. An appeal may be entertained by the Supreme Court only after the appellant has deposited fifty percent of the ordered amount or rupees fifty thousand, whichever is less. The National Commission may generally keep observing the working of the state commissions and the district forums for their proper functioning. In the same way the state commissions enjoy administrative control over all district forums within their jurisdiction.

VI.CONCLUSION:

Even after the enactment of the Consumer Protection Act, 1986 and the consumer protection bill, 2018 it is known fact that without people's participation, the Government alone cannot make rules and protect consumers from defective products. Speedy trial and transparency is the key to uplift consumer protection. The effectiveness of consumer laws lies in the alertness of the consumers and sincerity of the authorities in their implementation. Creating awareness should also encourage the e-consumers to be more informed about their rights in the context of transactions over the Internet. Due to digitization, consumers have become an integral part of the growing community of global traders in the electronic market. Therefore, it is true to say that the consumer rights can be protected to its fullest potential in the electronic civilization, only when the electronic consumers are afforded the same level of protection under consumer law.

¹⁴ Section 20 of the Consumer Protection Act, 1986.

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