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“A CRITICAL STUDY ON E-CONSUMER RIGHTS WITH SPECIAL REFERENCE TO ACCESS TO JUSTICE”

Deepak Singh, Ph.D. Scholar, Faculty of Law, University of Delhi.

ABSTRACT

In *Anita Kushwaha v. Pushap Sudan*¹, Apex Court of the country held “access to justice is an ultimate right guaranteed under article 14 and 21 of the Constitution of India”. But ‘Justice’ and ‘Access to Justice’ have two different dimensions in today’s scenario. Justice has different meaning for both the urban and rural persons. It becomes real for those who got access to it in their life time. Yes, in today’s worlds of information technology one new species of group, a group need access to justice, has emerged from the traditional consumerism to e-consumerism. This new group also require access to justice to safeguard the fraud that happens with them when they go for e-banking or online transactions of any kind. This word ‘e-consumer’ is wide in his scope as it includes every consumer who uses or consumes paid or unpaid goods or services. In this research paper, the author will analyze the rights of e-consumers in the background of access to justice as per the maxim of *ubi jus ibi remedium*². Is justice has reached the e-consumers in a mannered way. Do we require a new legislation to fill the void?

Keywords: - E-consumers, Justice, e-commerce, online transactions.

¹ (2016) 8 SCC 509.

² The well-known Latin maxim **Ubi jus, ibi remedium** – meaning 'where there is a right, there is a remedy', postulates that where law has established a right there should be a corresponding remedy for its breach. The right to a remedy is one of the fundamental rights historically recognized in all legal systems. Available at:- <https://brill.com/previewpdf/book/9789004209039/B9789004209039-s002.xml#:~:text=Introduction-,The%20well%2Dknown%20Latin%20maxim%20Ubi%20jus%2C%20ibi%20remedium%20%E2%80%93,recognized%20in%20all%20legal%20systems> visited on 01/07/2021.

INTRODUCTION

Law has been a driving force in the overall march of the human race from the Stone Age to the Information Age. In every civilization, whether big or little, strong or weak, there exists a framework of guiding principles for the overall development of the community. All the boundaries of what can and cannot be done, as well as acceptable and unacceptable actions, have been delineated by the people in that community.

One of the evolution of information and technology which has changed the face of market in India is e-commerce, which has grown by leaps and bounds. A more broad definition of e-commerce is given by Wigand (1997) as: "The seamless application of information and communication technology from its point of origin to its endpoint along the entire value chain of business processes conducted electronically and designed to enable the accomplishment of a business goal. These procedures may be partial or complete or may encompass business to business as well as business to consumer and consumer to business transactions. E-commerce can be viewed as online business".³ Both globalisation and e-commerce developed at the same time, which has made it much easier to expand one's market to other locations around the globe. Electronic commerce offers an active and collaborative platform for businesses and consumers alike. Competition has risen, and costs have decreased as a consequence. Consumers have the option to access a diverse variety of products and services throughout the globe, no matter their location or time constraints. To remain competitive, businesses continuously come up with new technology in order to deal with the e-commerce industry's changes. One of the major factors driving the development of e-commerce is the increasing number of people who use ICT platforms as a platform to trade.

Due to its widespread usage, the word "e-commerce" has become extremely popular. Every day, we deal with a variety of E-commerce-related tasks. Everyone has access to a smart phone, and even the most inexperienced user may quickly join the world of E-commerce from any location and at any time. E-commerce has put transactions in the palms of people's hands. We shop in Pansari shops, retail stores, and shopping malls as is our custom. In traditional shopping, the customer and vendor meet at the moment of purchase and shop. Traditional shopping is leaving home, walking or taking a taxi to a store or shopping complex, and then purchasing what one desires. Traditional purchasing allows you to view the thing before you pay for it. With the money, one might purchase the real thing that he or she desires. It is a crucial attribute for consumers purchasing fashion items like as clothing and shoes, since they must ensure that the clothing or shoes are the correct color or size. This feature of conventional purchasing ensures that the transaction is secure. Traditional purchasing also ensures that the goods is delivered as soon as the payment is received. This is very helpful when purchasing daily essentials such as shampoos and tissues. The most essential aspect of this approach is that buyers and sellers physically meet at the location. As a result, customers do not need to be concerned about security while buying in conventional stores. Because the buyer sees the vendor in person, there is no space for doubt.

³ Rolf Wigand, "Electronic Commerce: Definition, Theory, and Context", available at: <https://www.tandfonline.com/doi/abs/10.1080/019722497129241> visited on 01/07/2021.

Many people have become used to doing their shopping online because of modern technologies. Because it's more convenient and faster, more people choose to buy online. Customers may save time and money spent in buying online while still receiving the advantages of discounts and reward points. In contrast to brick-and-mortar retailers, online customers have the freedom to shop from many brands in one place. To let customers compare brand quality and pricing. Customers do not have to wait in line. Only a small percentage of consumers feel safe using it. Customers do not need to have cash on hand while using your service. No opportunity for physical fraud exists. When internet purchasing is on the rise, dishonest business practices are, too. Shoppers have had quality, money return, data security, and trust ability issues in the e-commerce realm. It is important that consumers be informed of their rights in today's culture. The degree of consumer knowledge regarding consumer protection rights is extremely poor.

A person who understands the many consumer rights that are accessible to them, as well as their own rights, is not willing to spend their time and money by pursuing consumer grievance resolution procedures. It is thus the responsibility of the society to first be aware of the problem, and then to establish a fast consumer redress process. It is the responsibility of the manufacturer to display each product with the date of production, expiration date, weight, and M.R.P (the maximum retail price). They must also warn the public of the abuse of the product. It should be clear to see what the components are in the product. Urban consumers are aware of their rights, but they do not want to know due to expense and effort. While there is a lack of consumer rights in the rural areas, there are more shopping options in the urban region. The rural populace is oblivious to the process or techniques for handling consumer complaints. With illiteracy among the rural population, people often experience feelings of helplessness when they are offended. Therefore, there is a great need for increasing consumer rights knowledge among uneducated and defenseless individuals.

Globalization has brought undoubted benefits in the fields of commerce, technology and communications, but also increased dangers concerning the rapid rise of cyber threat and the growth of cyber terrorism. We cannot deny the fact that the advent of satellite and electronic media has given limitless opportunities to manufacturers of goods and service providers to sell their products and services. But the Internet has raised a variety of legal issues with the rise of e-commerce with reference to cybercrime, data privacy, cyber frauds, online transaction loopholes most in the area of e-consumer rights and protection.

So, before we progress to analyze e-consumer rights with access to justice, let's discuss the phrase 'Justice' and 'Access to Justice'.

ACCESS TO JUSTICE

Human society is full of inequalities. The reason may be any but all human beings are not equal. There may be differences of physical and mental capacities, of ability, aptitude, efficiency, skill and talent. The society is constituted of rich and poor, masters and servants, employers and employees, land lords and tenants, landowners and landless labor, manufacturers, customers and consumers, Brahmins⁴, Kshatriya⁵, Vaishya's⁶, and Shudras⁷, privileged and under privileged, physically strong and weak. The inequality may be natural or unnatural. The natural inequalities are due to natural differences among men. Rousseau has distinguished between "Natural and unnatural inequality"⁸. According to him, "As established by nature, natural or physical inequality is defined by age, health, physiological strength, and the cognitive and emotional capacities of the individual. It is dependent on tradition and sanctioned by agreement. It includes many rights that are unequally distributed, such as being wealthier, more respected, more powerful, or having the ability to command compliance"⁹.

So Inequality may be described as an individual, group, or class privilege in which an individual, group, or class has power over another person, group, or class. For those seeking to establish dominance, there are numerous grounds or sources to choose from, such as a nation's property structure, its organisational system, the web of status and cultural values, some being more significant than others. Thus inequality may be understood as a social relationship characterizes by some form of domination.¹⁰

RULE OF LAW A SINE QUA NON FOR A JUST SOCIETY

If protection of law is available to only a fortunate few, it will be violative of Rule of law. The poor too have civil and political rights and Rule of Law is meant for them also.¹¹ 'Rule of Law' is a way of life of a community pointing to the directions as well as to the goal of a more rewarding existence, a better life for the citizen. It is basically an instrument for ensuring just society with emphasis not on power, status or wealth but the dignity of man. Its immediate objective is that it is an instrument of the economic privileges as well as of political rights.¹² It demands the establishment of certain fundamental social and economic standards under the effective governmental machinery designed to provide basic needs of the people and acceptance of the method of sound economic planning to reduce hunger, want, poverty and unemployment, For ensuring a just society, discriminations and inequalities

⁴ Brahman, also spelled Brahmin, Sanskrit Brāhmaṇa ("Possessor of Brahma"), highest ranking of the four *varnas*, or social classes, in Hindu India. Available at:- <https://www.britannica.com/topic/Brahman-caste> visited on 02/07/2021.

⁵ Kshatriya, also spelled Kshatriya or Kshatriya, second highest in ritual status of the four *varnas*, or social classes, of Hindu India, traditionally the military or ruling class. Available at:- <https://www.britannica.com/topic/Brahman-caste> visited on 02/07/2021.

⁶ Vaishya, also spelled Vaisya, third highest in ritual status of the four *varnas*, or social classes, of Hindu India, traditionally described as commoners. Available at: - <https://www.britannica.com/topic/Brahman-caste> visited on 02/07/2021.

⁷ Shudra, also spelled Sudra, Sanskrit Sudra, fourth and lowest of the traditional *varnas*, or social classes, of India, traditionally artisans and laborers. Available at: - <https://www.britannica.com/topic/Brahman-caste> visited on 02/07/2021.

⁸ Jean Jacques Rousseau, "A Dissertation on the Origin and Foundation of the Inequalities of Mankind and is it Authorized by Natural law?" available at: <https://www.marxists.org/reference/subject/economics/Rousseau/inequality/ch01.htm> visited on 02/07/2021.

⁹ *Ibid.*

¹⁰ Mohanti, "Towards a Political Theory of Inequality", *Equality an Inequality*, Edited by Andre Beteille, oxford Publication, 1983, p.243.

¹¹ Bhagwati C.J. in People's Union for Democratic Rights v. Union of India, AIR 1982 SC 1473.

¹² Available at: <https://www.un.org/ruleoflaw/what-is-the-rule-of-law/> visited on 03/07/2021.

springing from circumstances of birth, or personal attributes or discriminations springing from religion, linguistic, geographical, or regional, or communal considerations may be suppressed.

The positive role of Rule of law is to devise a process of safeguarding civil and political rights of individual in a free society, as well as of establishing social, economic, educational and cultural conditions in which legitimate aspirations and dignity of the individual may be raised. It is not only a means of maintaining order but an instrument or medium for ensuring conditions and environments in which the individual may feel the glow of pride to belong to an order which is just.

Our constitutional system displays great regard for the impoverished and defenceless, as well as a great desire to mitigate inequitable inherited burdens and injustices, and to provide social justice for the vast world.¹³ These Directives that were created when the founders of the state formed the constitution make it obligatory for the state to make an effort to better the lives of millions of people who are now struggling with poverty, ignorance, and social backwardness. They commit to creating a promise that serves as a call to action for the next generation of what the state aims to foster in order to meet the obligations placed on fathers of the constitution by the people of India.¹⁴

CONCEPT OF JUSTICE

Justice has ever been the highest ideal of mankind. It has been a dominant urge behind all social upheavals and revolutions. Justice, under various names governs the world-nature and humanity, science and conscience, logic and morals, political economy, politics, history, literature and art.¹⁵ Whatever name may be given to 'Justice' it is the most primitive in the human soul, most fundamental in society and most sacred among ideas. It is the essence of religions and the sum total of reason, the secret object of faith, and, of knowledge. Justice can be imagined more universal, stronger and more complete than justice. Justice is founded on what the majority of right thinking people regard as fair.¹⁶ Justice, according to Aristotle¹⁷, requires that things of this universe be equitably distributed among all the members of the community *or* state and this just distribution shall be maintained by law as against any violation.

Aristotle distinguishes between natural and conventional Justice. By Natural Justice he means that justice which has the same force everywhere and does not exist by people's thinking this or that. Natural rules are the same everywhere whether we accept it or not. By conventional justice he means that part of justice which is laid down by law. A rule of conventional justice has settled one way or the other indifferently and once it is settled it no

¹³ Some Half-hidden Aspects of Indian Social Justice: by Justice V. R. Krishna Iyer, Eastern Book Company, 1980, p. 16. *Ibid*.

¹⁴ Justice Khanna in *Keswananda Bharati v Union of India*, AIR 1973 SC 1461.

¹⁵ Available at: <https://www.un.org/esa/socdev/documents/ifsd/SocialJustice.pdf> visited on 03/07/2021.

¹⁶ John Rawls, *Theory of Justice*, Harvard University Press, 2005.

¹⁷ Available at: <https://is.cuni.cz/studium/predmety/index.php?do=download&did=104852&kod=JPM327> visited on 03/07/2021.

longer remains indifferent, and is to be followed by society. The things are 'just' by virtue of convention or expediency. The things which are 'just' not by nature but by human enactment are not everywhere the same.¹⁸

According to John Rawls, concept of justice is proper balancing between competing claims. John Rawls starts with a premise that society is a cooperative venture for mutual advantages and so a set of principles is required to determine the distribution of advantages. These principles are the principles of social justice. They provide a way of assigning rights and duties in the basic institutions of society and they define the appropriate distribution of benefits and burdens of social cooperation.¹⁹

Rawls says that primary object of Justice is the basic structure of society, or more exactly the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation.²⁰

EQUALITY OF ACCESS TO JUSTICE

Equality before law is the fundamental principle of our legal system and its logical corollary is the equality of opportunity to get justice. It is not sufficient that law treats all persons equally. The emphasis is that everyone should have equal access to the courts that doors of the courts be opened to all alike and that law should not only be applied to all impartially but should be equally accessible to all. 'Access to Justice' is a powerful expression of a social need which is imperative, urgent and more widespread than is generally acknowledged.

Equality of access here means effective access and not the theoretical access. The idea of "Access to Justice" represents social order, in which justice is provided to all people, regardless of their position in society. Administration of civil justice should be made accessible to all citizens without regard to financial or social status. On the other hand, a key premise of the idea is that justice should be provided to all people in an evenhanded and effective manner, and on the flip side, no one should face oppression because of his or her inability to pay or the fear of going to court.²¹ In other words, it means that problems and complaints occurring in society be dealt with in an orderly and lawful manner. the main goal is to help ensure social harmony and prevent social disharmony. The two primary objectives of the legal system are stated in the phrase "access to justice." The words 'access to Justice' focus on two basic purposes of the legal system.

(1) The system must be equally accessible to all and,

(2) It must lead to results that are individually and socially just.²²

¹⁸ John Rawls, A Theory of Justice, <https://www.jstor.org/stable/191342>

¹⁹ Available at: https://www.consiglio.regione.campania.it/cms/CM_PORTALE_CRC/servlet/Docs?dir=docs_biblio&file=BiblioContenuto_3641.pdf visited on 03/07/2021.

²⁰ *Ibid.*

²¹ Andrew Higgins, "Legal Aid and Access to Justice in England and India", available at: <https://www.jstor.org/stable/44283780> visited on 03/07/2021.

²² *Ibid.*

Traditional concept of “access to justice” as understood by man in the street, is the access to, the courts of law. For a common man the courts represent the very essence of justice. For him, the court system is an ideal and practical forum for the administration of justice, both civil and criminal, where legal rights and duties are determined and enforced. The ordinary courts are *seen* as part of the machinery of government, in which the judges exercise judicial power and authority with dignity, integrity and impartiality. Access to courts is considered as the basic mode for the adjudication of legal disputes and conflicts.

Lord Dip lock in *Attorney General v Tunes News Papers Ltd*,²³ observed: “My Lords, in any society, it is a function of government to maintain courts of law to which its citizens can have access for the impartial decision of disputes as to their legal rights and obligations towards one another individually and towards the state as representing society as a whole. The provision of such a system for the administration of justice by courts of Law and the maintenance of public confidence in it, are essential if citizens are to live together in peaceful association with one another.”

Indian Perspective for the Protection of E-consumers

On lines with the United Nations Guidelines on Consumer Protection (UNGCP), India enacted the Consumer Protection Act in 1986 to protect consumer interests. The popularity of the enactment lies in its avowed objectives of identifying consumer rights and providing cost effective and speedy redressal. The Act guarantees six rights to the consumer which are right to safety, right to be informed, right to choose, right to be heard, right to seek redressal and right to consumer education. The Act applies to all goods and services unless specifically exempt by the Central Government. It covers all sectors, public, private and co-operative.

The Consumer Protection Act, which came into effect in 1986, protects consumers against faulty products, poor service, and commercial practises that are restricted or unfair. While other consumer and company rights laws have been enacted as well, notable recent laws that pertain to privacy, cybersquatting, and electronic signatures include the Consumer Protection Act, 1986. This is only the first round of Internet market regulation. Due to the ongoing growth and evolution of the Internet, these new rules will almost likely not be the last to be enacted in terms of Internet control. Consumer confidence mostly stems from two beliefs: consumers believe they will get what they want, and if something goes wrong, consumers believe they have recourse. Anonymity of participants to consumer contracts is the most important obstacle to customer trust in electronic transactions.

To resolve the consumer grievances in the age of e-commerce, The Ministry of Consumer Affairs, Food and Public Distribution has, on July 23, 2020, notified the Consumer Protection (E-Commerce) Rules, 2020 (“Rules”) under the Consumer Protection Act, 2019 (“Act”), with an intent to prevent unfair trade practices in e-commerce and protect interests and rights of consumers by repealing the old Consumer Protection Act, 1986. The new face of consumer protection laws is equipped with many drastic changes like establishing ‘Consumer Protection Councils’

²³ (1974) AC 273.

and 'Central Consumer Protection Authority (CCPA)' for redressal of consumer-related issues, the concept of 'Mediation' as an Alternate Dispute Resolution mechanism. The Act has incorporated the e-commerce into its ambit along with the element of 'Product Liability', impact of 'Unfair Trade Practices' and 'Misleading Advertisements'.

The Act contains numerous advantageous provisions, but it has a multitude of loopholes, like the fact that 'Platforms' which offer services for free are exempted from the applicability of these Rules because the Act's definition of services does not include providing any service for free. Another loop hole is that the new Consumer Protection Act which opens up the district forum to additional applicants does not provide an expanded scope of authority by not providing the power to order interim injunctions or cease and desist orders; except for the multitude of rights granted by the Consumer Protection Act, 2019 section 6, like the Right to Choose, Right to Safety, Right to be Informed, Right to Redress, and Right to Consumer Education, the Act does not cover the Right to Safe and Healthy Environment for the consumer.

The Act has introduced the concept of e-commerce but failed to issue rules or guide lines for e-commerce platforms to hire a high standard cyber security programs. Denial of having Cyber Security programs will automatically invite cybercrimes against the e-consumers. The term cyber-crime includes every illegal practice that is done using a network or a device. Some popular type of e-commerce crimes are:- data privacy crimes, online transaction fraud, Investment and security scams; Spoofing; e-spamming and the most common cybercrime happens when the consumer go for payment from debit card or credit card and their private information got open for cyber criminals and they divert them to other websites for payment. Now the question arises, if this happens under which Act he will demand redressal i.e. IT Act, 2000, The New Consumer Protection Act, 2019, The Indian Contract Act, 1872 or through tortious liabilities against the manufacturer. The situation will get worse if he belongs to a rural background where there is no one to listen his grievances. The main problem is that we don't have a separate laws for the protection of e-consumers as other developed and developing countries has formed.

Apart for Consumer Protection Act 2019, has enacted many more provisions herein after mentioned:-

1. The Indian Penal Code, 1860.

The Indian Penal Code, passed in 1860, was among the first pieces of law to safeguard the interests of consumers. Sections 264 and 267 of the IPC make it a criminal offence to use fake weights and measures,²⁴ employ false measuring equipment²⁵, and to possess²⁶ or sell false weights and measures²⁷, all punishable by one year in jail or a fine, or both. Section 272 and Section 273 of the Indian Penal Code make it a criminal offence, for example, to adulterate food or drink, to sell harmful food or drink, or to produce food or drink that is injurious to health. Sections 274 to 276 of the Indian Penal Code deals with penalties for

²⁴ Section 264, Indian Penal Code, 1860.

²⁵ Section 265, Indian Penal Code, 1860.

²⁶ Section 266, Indian Penal Code, 1860.

²⁷ Section 267, Indian Penal Code, 1860.

mislabeled and adulterated pharmaceuticals that are intended for sale²⁸, mislabeled and adulterated pharmaceuticals that are for sale, and mislabeled and adulterated pharmaceuticals that are being sold as something else. The other sections related to the use of “false property mark”²⁹ have implications for consumer protection as well.

2. The Sale of Goods Act, 1930

The Sale of Goods Act, 1930 is the only consumer protection legislation in India that applies exclusively to all cases. As a matter of fact, it was also known as the “Consumer's Charter”. In connection to the Act, the key topics are property rights, the quality of products, and transfer of property. If something can't be utilized, it won't move, and vice versa, anything that can be used will appear in trade only if it is capable of the usual functions it was designed for. The implicit understanding is that when things are bought and sold, they must match the description and be of merchantable quality.

3. Law of Torts

The non-statutory remedies afforded to individuals under the law of tort are still present in India. The foundation to this approach of consumer protection under tort laws was reflected in the case of *Donoghue v. Stevenson*,³⁰ which laid down the principle that the producer has a duty of care to everyone who may consume his goods. In such a case, the manufacturer is always at risk of being sued by a buyer, no matter how much merchandise is sold. A manufacturer has a duty of care to all consumers of his goods, and consumers may initiate actions against manufacturers even if there is no contract between the two. Defective, unsuitable, or hazardous items may result in significant losses for consumers, since the law of torts offers protection with damages against manufacturers, suppliers, distributors, retailers, and importers. For either carelessness on the part of the seller or when the manufacturer or seller defrauds the customer, the responsibility may emerge. In the event of carelessness, a customer has recourse to the tort of negligence in order to recoup losses caused by dangerous or faulty goods. Tort of negligence applies to any situation where there is a breach of duty as a result of a failure to perform something which a sensible person would do (misfeasance). In tort of negligence, you must show three things: (i) the duty of care; (ii) a violation of that duty; and (iii) the breach of duty causing the plaintiff's damages. To safeguard consumers, the tort of deception also makes them whole when they incur financial loss as a result of fraud. There is also a tort of deception if someone makes a misrepresentation of information they know to be untrue or does not believe to be true. Any dishonest statement that is made carelessly is also the basis for responsibility.

4. Constitutional Protection for consumers

Like many other countries, India included human rights into the constitution, which is mentioned in the constitution in Chapters III and IV and the section on fundamental rights. While enshrining social and economic justice in the Constitution, Indian citizens also have a right to seek justice from the marketplace.

²⁸ Section 274, Indian Penal Code, 1860.

²⁹ Section 479-489, Indian Penal Code, 1860.

³⁰ (1932) AC 562.

A number of specific clauses in the Indian constitution impact directly on consumer interests. A variety of legislations regulating consumer protection, including standardization, grading, packaging, branding, food safety, and preventing food adulteration, have been implemented in accordance with the Constitutional mandate.

Protection of basic rights is also included in the Article 14 of the Constitution of India, which mandates equal negotiating power for both supplier and buyer. Several public interest lawsuits have been brought against businesses for deceptive advertising under Article 14 of the Constitution of India against corporations indorsing misleading advertisements. A very good example of this is the case of Mumbai Grahak Panchayat v. Lohia Machines Ltd.,³¹ decided by the National Consumer Disputes Redressal Commission, which was a decision in favor of consumers, taken in 1990.

When it comes to the consumers' rights, the right to accurate information is critical in the market space because of the importance of transparency. Information accessibility increases in distance contracts, such as buying online, when parties involved in the transaction do not meet face-to-face at any point.

5. Food Safety and Standards Act, 2006.

The objective of the Prevention of Food Adulteration Act, 1954 was to safeguard the interests of the customers by preventing fraudulent activities, as well as to protect customers from inferior food products. The Department of Food Safety replaced the earlier enactment, the Prevention of Food Adulteration Act, with the Food Safety and Standards Act in 2006. Section 23, 24 and 26 plays a very important role in protecting consumers from adulteration food.

6. The Essential Commodities Act, 1955

The Essential Commodities Act, passed in 1955, was created to safeguard the general public from those unscrupulous merchants who sought to take advantage of them. It set regulations for the supply, production, and distribution of vital goods.

7. Information Technology Law in Consumer Perspective

For the last decade, the number of B2C (Business to Consumers) e-commerce transactions has grown considerably. An increasing number of other products and services may be purchased online, in addition to books and software. Many organizations don't have an exact definition for the word e-commerce. To carry out a transaction using electronic data interchange and other forms of electronic communication (i.e. alternative to paper-based methods of transmission and storage of information), the Information Technology Act, 2000 refers to the term "electronic commerce." To summarize, electronic commerce (or e-commerce) refers to a kind of doing business through electronic means, apart from the traditional methods of conducting business. The Information Technology Act, 2000's Section 10A³² is included to verify contracts that were created through electronic methods.³³

³¹ (1991) 1 CPR 184 (NCDRC).

³² Ins.by Act 10 of 2009, Sec.9 (w.e.f 27-10-2009)

³³ Information Technology (Amendment) Act, 2008, Section 10A – "Where in a contract formation, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptances, as the case may be, are expressed in electronic form or by means

In the case of *Trimex International FZE Ltd. Dubai v. Vedanta Aluminum Ltd.*,³⁴ the Supreme Court accepted electronic transactions, such as emails used to communicate mutual responsibilities between parties as contracts.

INTERNATIONAL PRESPECTIVE ON E-CONSUMERS RIGHTS

The UN Guidelines for Consumer Protection

UNGCP(United Nations Guidelines for Consumer Protection, 1985) was a milestone in the evolution of consumer law since it was the first time a set of international consumer law principles were established. In recent decades, there have been significant changes in the ways we communicate, trade, and shop. With the advent of the digital age, we have had to deal with many worldwide issues, particularly in the financial services industry.

United Nations Convention on the Use of Electronic Communications in International Contracts was prepared by the United Nations Commission on International Trade Law (UNCITRAL) and adopted by the United Nations General Assembly on 23 November 2005.

Some very important UN agencies also contributed in consumer protection at International standards:-

1. Food and Agriculture Organization of the United Nations, FAO³⁵, established the Emergency Prevention Systems for food safety.
2. WHO created the Codex Alimentarius³⁶ Ad Hoc Commission. The food standard setters in this organisation are behind a number of national food law efforts, and have played a critical role in WTO-related trade disputes.
3. ISO³⁷ has played an active role in UN discussions on consumer protection, such as the right to restitution, and has developed many international standards on product safety, customer satisfaction, and access to information.
4. FinCoNet³⁸, a voluntary organisation of regulatory agencies for financial consumer protection that is coordinated by the EU, the US, Africa, Asia, and South America, was founded in 2013.

United States of America

of an electronic record, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose.”

³⁴ *Trimex International FZE Ltd. Dubai v. Vedanta Aluminum Ltd.*, 2010 (1) SCALE 574

³⁵ Available at: <http://www.fao.org/food/food-safety-quality/empres-food-safety/en/> visited on 05/07/2021.

³⁶ Available at: <https://www.who.int/> visited on 05/07/2021.

³⁷ International Organization for Standardization, available at: <https://www.iso.org/iso-and-consumers.html> visited on 05/07/2021.

³⁸ International Financial Consumer Protection Organization, available at: <http://www.finconet.org/> visited on 05/07/2021.

With regards to ecommerce, the Federal Trade Commission (FTC) serves as the main regulatory body in the United States. This incorporates business email, internet advertising, and consumer privacy among other things. PCI (Payment Card Industry) Security Standards Council is another group that ecommerce site owners should become acquainted with. This company offers client financial data security guidelines.³⁹

United Kingdom

The Consumer Contracts Regulations - which came into force on 13 June 2014 and implement the Consumer Rights Directive - give you rights when shopping online, so you're covered if things go wrong.⁴⁰

Sri Lanka

The Electronic Transaction Act, No. 19 of 2006, has been approved as a significant piece of legislation to govern electronic transactions in Sri Lanka. The Act is similar to the UNCITRAL Model Law on e-commerce and electronic signatures, since the Act is almost identical to the previous law on electronic signatures. It provides Sri Lankan businesses all the tools they need to draught, create, exchange, and transfer various forms of electronic communications in electronic form. It is also intended to create a certification authority and licence and authorise certification service providers.⁴¹

Russia

The General Data Protection Regulation 2016/679 is a regulation in EU law on data protection and privacy in the European Union and the European Economic Area. It also addresses the transfer of personal data outside the EU and EEA areas.⁴²

PROBLEMS OF E-CONSUMERS REGARDING ACCESS TO JUSTICE

Above we have discussed a brief concept of Justice, Rule of Law, Access to Justice, Indian perspective and International Provisions for the protection of e-consumers right. Now, after discussion of above mentioned, we can recognize the problem and the main loophole on which the researcher will work is regarding "Whether the e-consumers knows their right to access to justice", "Are they fully aware where they need to go first i.e. the bank or the police or even to the customer care services, if some incidents happens with them." None the less we have several provisions apart from consumer protection Act, 2019 and yes legislatures have included the intermediaries in the justice circle and have resolved many problems regarding delivery of goods, refunds of the customer. But

³⁹ Available at: <https://ecommerceguide.com/guides/ecommerce-legals/> visited on 06/07/2021.

⁴⁰ Available at: <https://www.which.co.uk/consumer-rights/regulation/consumer-contracts-regulations-ajWHC8m21c> AK visited on 06/07/2021.

⁴¹ Available at: <https://www.srilankalaw.lk/Volume-III/electronic-transactions-act.html> visited on 06/07/2021.

⁴² Available at: https://en.wikipedia.org/wiki/General_Data_Protection_Regulation visited on 06/07/2021.

how many of the consumers knew about these powerful rights they have. E-consumers does not only include urban e-consumers but also rural e-consumers and they even don't know where to call in case of emergency.

As I earlier said Access to Justice has two fold meanings:-

- (1) The system must be equally accessible to all and,
- (2) It must lead to results that are individually and socially just.

We have several problems or we can say limitations because of which e-consumer are not equally access the justice. Some of them are⁴³:-

1. Digital Illiteracy

Indian consumer have digital illiteracy regarding how to understand the terms and conditions of this rising IT industries. Indian Consumers without understanding the consequences of downloading the apps or surfing online websites make contract of goods or services and then it harms them.

2. Security

Customers must utilize an online payment channel when they want to buy online. Personal information, such as payment details, may be accessed in a database from which the business keeps records. With this in mind, e-customers must be more aware of the risks of having their personal data stolen from websites. In e-consumers rural consumers are on greater risk of losing data.

3. Floation of Personal Information

An issue with online consumers is that they run the danger of personal information from third-party businesses being passed along to unwanted email and spam senders without their permission and they have no access to find out to whom their data transferred.

4. Trust

One of the biggest problems that traditional Indian purchasing psychology has to overcome is the ambiguity of unknown sellers and owners. Indian psychology states that the seller or owner must be present while doing business. Online purchasing does not include it. As a result, it is difficult for individuals to go online to buy.

5. Less knowledge of online payment system or application

- a) BHIM UPI: BHIM UPI (Unified Payment Interface): It's a mobile payment method that lets you send money between two bank accounts instantaneously. Furthermore, businesses that accept BHIM UPI as a payment method for transactions may also be paid. BHIM is a mobile software that let you conduct basic, straightforward, and simple transactions utilizing Unified Payments Interface

⁴³ Available at: <http://www.yourarticlelibrary.com/business/7-challenges-faced-by-e-commerce-in-india-explained/41228/> visited on 06/07/2021.

(UPI). UPI ID or scanning the QR with the BHIM app enables you to make direct bank payments to anybody. If you have a UPI ID, you may request money from the app.

- b) Paytm offers an option to set your mobile number as Paytm BHIM UPI ID, which is a mobile number@paytm by default. Any of your Savings bank account may be linked to this unique Paytm BHIM UPI ID, and money transfers and receipts can be initiated. UPI IDs recognized across all banks and UPI applications accept the Paytm BHIM UPI IDs.
- c) PhonePe is a UPI-based e-commerce payment system and digital wallet designed by Flipkart, which allows customers to transact without having to use cash. This was the first Unified Payments Interface (UPI) payment software developed.
- d) The Google Pay platform is a digital wallet designed for use on Android-powered smartphones, tablets, and wearables that provides in-app and tap-to-pay payment features.
- e) Credit Card is a method of payment for the customers that includes an actual card and a financial account for users. This gives cardholders the ability to pay for products and services on the basis of their promise to pay. For the process of online buying, when the client wants to pay by credit card, he or she must provide all of the credit card information on the order desk of the e-commerce site. From here the data of credit got open to theft.
- f) With a debit card, you can spend money more conveniently than carrying cash. For online purchasing, credit cards have the same payment procedure as debit cards. Every consumer whether he belongs to rural or urban group they use for their transactions.
- g) Web-based electronic payment systems, such as a retail bank, virtual bank, credit union, or building society, allow clients of a financial organization to perform financial transactions on the institution's website, such as a bank's website. Banking via the internet is often referred to as virtual banking, e-banking, internet banking, or other names. A customer will set up an ID and password when he or she opens an account in order to utilize the Internet banking service.
- h) An electronic device that enables one to conduct electronic commerce transactions is a digital wallet. There are various names for every E-wallet for every online buying website. Online shoppers may use any payment method to save their E-wallet balance and pay their order anytime they choose.⁴⁴

Usually, e-consumer uses these platforms for their convenience and got hitched. Our existing provisions laws are not fully secured and e-consumers are not even fully aware of the cyber world for example: - Websites' addresses with their significations (The websites - https), have the - (s) as a guarantee for security were the most little known facts regarding online protection⁴⁵. When the e-consumers fills their details in application or website for

⁴⁴ Available at: <http://www.ijrtcc.org/download/1431398570.pdf> visited on 06/07/2021.

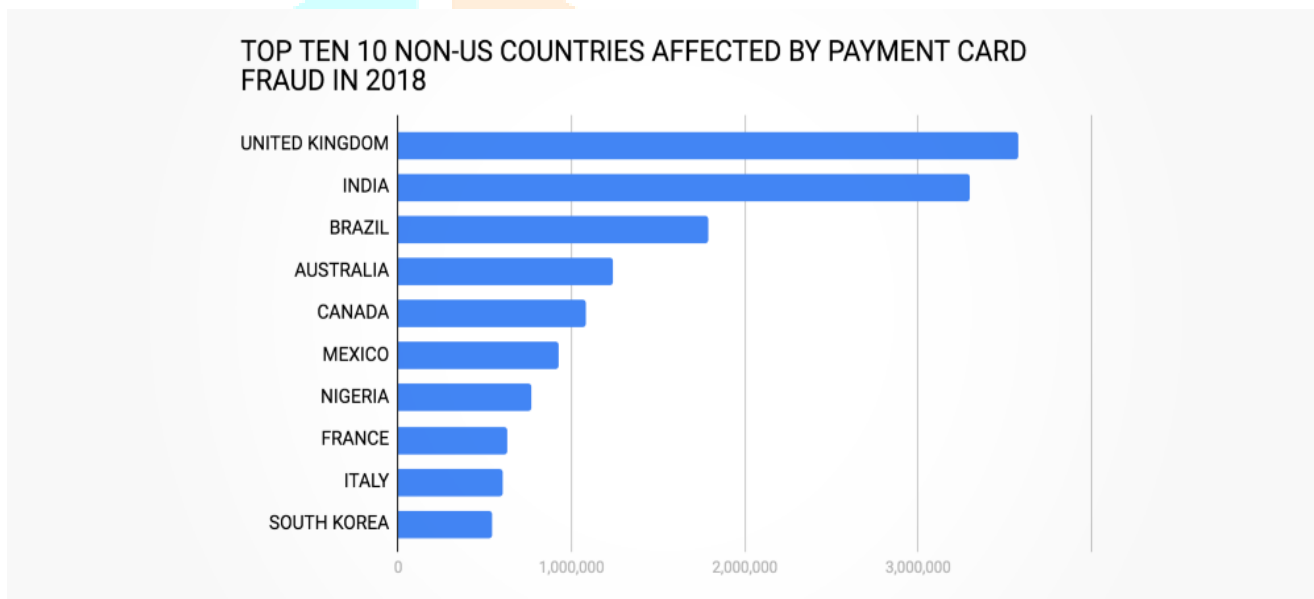
⁴⁵ D. Nicoleta and A. Theodora, "Nowadays online consumers' rights and interests. Case study- the Romanian educated online young consumer", (2011), *Management & Marketing Challenges for the Knowledge Society*, 6(2), p. 16.

transactions they prefer the sites to remember their details for further transactions and this is one of the main cause of data loss and offences.

In our present laws, there is no provision which can define the jurisdiction of these websites because cyber space does not belong to any one. For example, if an e-consumer buys on some commercial website and fraud happens then where the jurisdiction lies because you cannot trace the money and the offender.

Ananya Kumar,⁴⁶ in his article “*Consumer Protection in Cyber Space*” observed that “there is no specific provision for infringement of rights of a consumer. If the rights of a consumer are violated in the cyber space there is no fixed provision that can be applied directly but we have to take a mix of various provisions of the various acts to bring it under one umbrella. There is a very vital need of amendment of the consumer act as well as the information technology act to bring the infringement of the rights of a consumer under the ambit of cyber-crime.”

Let us further discuss some of the statistical diagrams on offences e-consumers:-



Source: - Statista, leading provider of Market and Consumer Data (Fig.1)

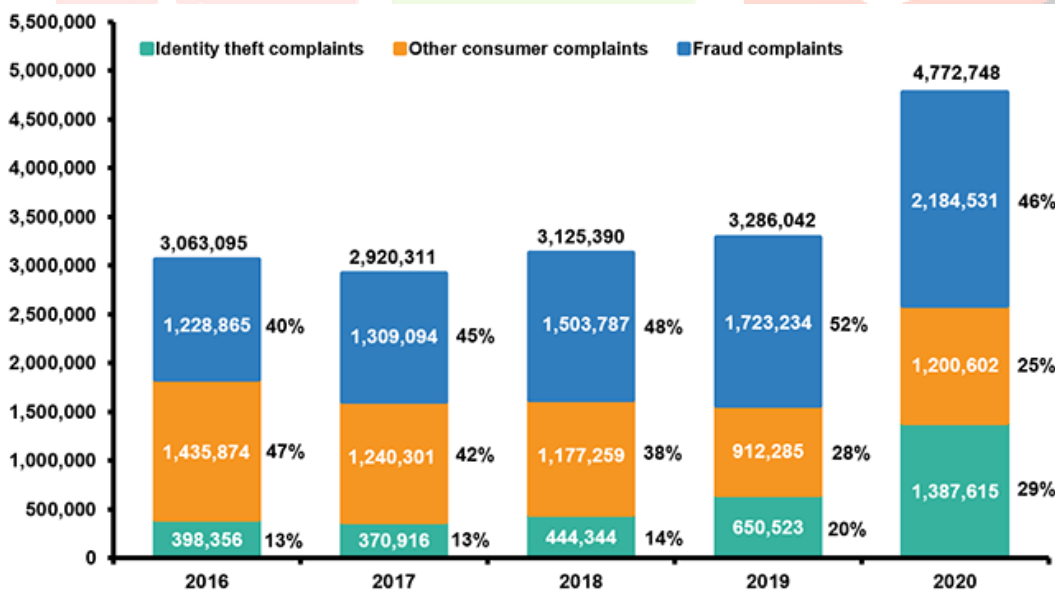
⁴⁶ Ananya Kumar, “*Consumer Protection in Cyber Space*”, available at: - <https://www.ijlmh.com/wp-content/uploads/2019/03/Consumer-Protection-in-Cyber-Space.pdf> visited on 06/07/2021.

In this very statically diagram (Fig.1), we can see that after UK, India has 2nd position who is affected by online frauds. India has the largest democracy is leading from the front against countries who has GDP less than India. We have the third largest army but we are helpless against cybercrimes.



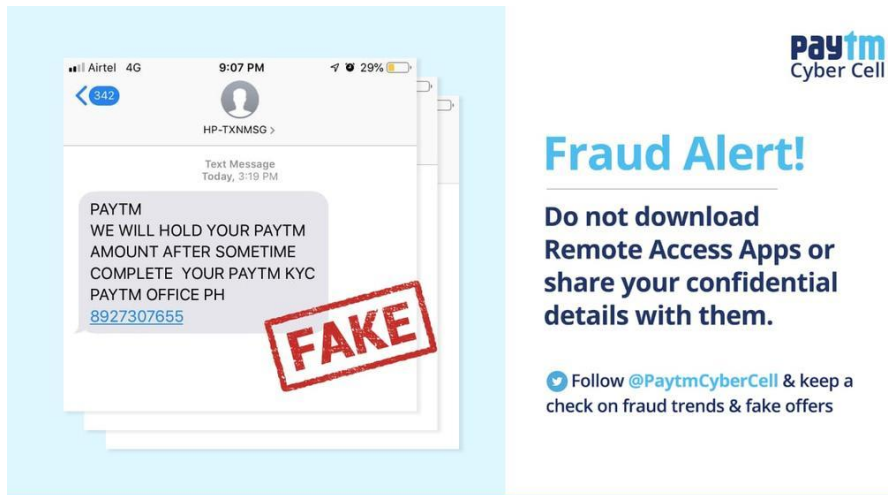
Source: - Statista, leading provider of Market and Consumer Data (Fig.II)

This statically data (Fig.1I) shows the most effective tools of fraud among people rather every consumer or merchant uses online services. If we observe precisely card verification number, credit card history, Address verification are the tools that criminals applies on e-consumers who are digitally illiterate and have less awareness.



Source: Google (Fig.1II)

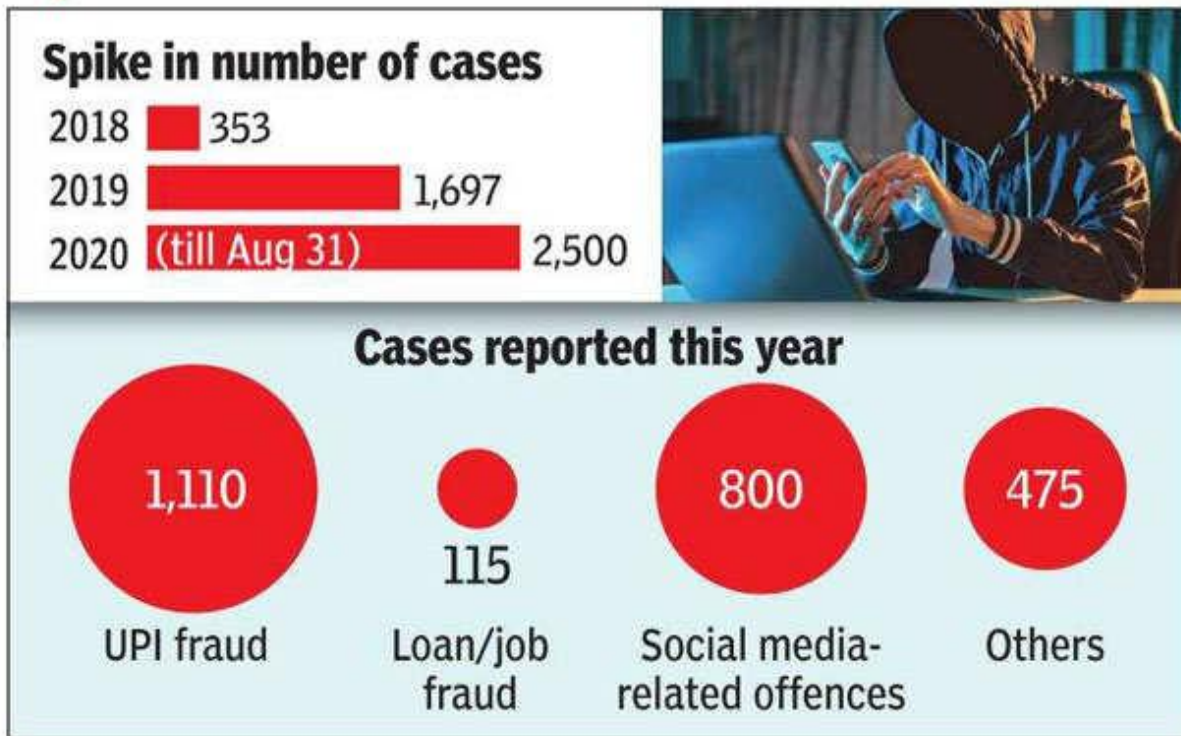
Now, let us see the categories of complaints of e-consumers (Fig.1II). There is a high rise in complaints of e-consumers in 2020 rather 2016 to 2019 in three categories i.e. identity theft, fraud complaints and other consumer complaints. This rise may be due to Covid-19 impact because due to covid-19 people adopted online consumerism rather than traditional consumerism. This covid-19 not only unveiled our dark age in health sector but in IT sector too.



Source: - Twitter (Fig.1V)

This is picture(Fig. IV) downloaded from twitter(Social Media Platform) and most commonly used technique to fraud the consumers and sometimes the illiterate customers when they allow consumers to pay from Paytm or other UPI methods. The main problem is that we cannot trace the person who sends these messages. These are other methods too like calling, emailing regarding lottery etc.

2,500 CASES FILED THIS YEAR



Source: - Times

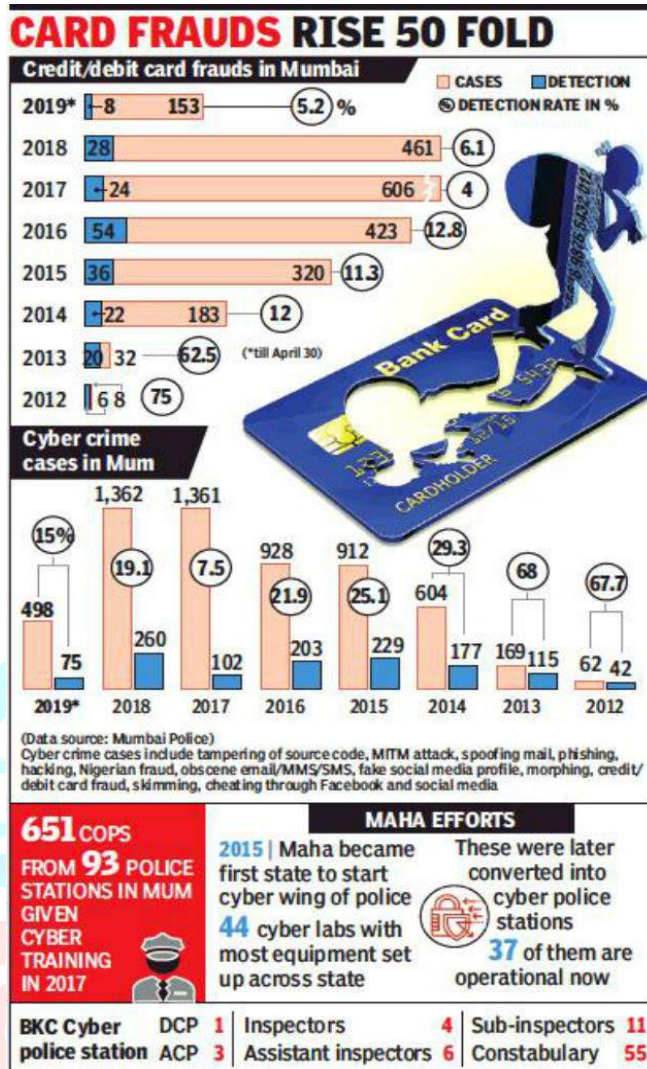
of India (Fig)

Now, this data showed the number of FIR files year wise against frauds against e-consumers and the maximum cases reported in UPI column which is the most commonly used method of online transaction by applications or website.

According to a report by Times of India (Fig. V1), in Mumbai, only 21% of cases got resolved by the law enforcement agency.⁴⁷ According to Cyber Law Advocate Prashant Mali, “Cybercrime is a technical subject and cops posted to the special cell often do not have technical aptitude or qualification. A cybercrime magistrate is the need of the hour as it is felt that specialized judges”⁴⁸

⁴⁷ Available at: <https://timesofindia.indiatimes.com/city/mumbai/mumbai-only-21-of-cyber-crime-cases-solved-since2012/articleshow/69708717.cms#:~:text=From%202012%20to%20this%20April,as%20the%20training%20is%20rudimentary visited on 07/07/2021.>

⁴⁸ *Ibid.*



Source; Times of India (Fig.V1)

Conclusion:-

After the huge discussion, information stated, what we have understood that the e-consumers are lacking two things which are necessary for the “Access to Justice” and they are:-

1. Lack of awareness among e-consumers about online transactions and its protection for goods and services they contract.
2. Lack of a separate e-commerce law for the protection of e-consumers.

E-consumer education efforts focus on topics such as cyber scams, payment problems, product reviews, and online shopping security and privacy, which is more than understandable. However, in order to keep all areas covered, it is also necessary to educate e-consumers about fraudulent websites and counterfeit goods that may be found on web portals. E-consumer education should also concentrate on cross-border safety measures to be implemented.

According to Hohfeld theory of Jural Postulates⁴⁹, if there is right, there is duty so without including the obligations and duties of e-consumers, e-consumer education is inadequate. Online purchasing, however, is also important for teaching e-customers about their obligations. Online companies are able to accommodate contractual conditions related to the sale of goods, including privacy policies, as well as many additional terms. Citizens who purchase products or services via the internet should exercise due caution.

The following in Consumer awareness programs:⁵⁰

- I. These initiatives educate customers about which online portals they should use.
- II. In addition, being aware of fraud and counterfeits via online portals such as Amazon is required.
- III. To increase customers' understanding of the need of preserving product descriptions viewed on the online portals before to buy, several programme or efforts are implemented.
- IV. Companies must develop an awareness amongst customers regarding personal privacy and the transmission of sensitive personal information via their websites.
- V. Intended to help people be aware of methods they may safely use credit and debit cards.
- VI. Adolescents and young children have heightened awareness of using internet portals and websites to verify information, for instance, geographical location of the website, delivery area pin code, price information, and product description.
- VII. Consumers have more awareness of the many options for conflict resolution they have while utilizing online platforms, such as alternative dispute resolution (ADR).
- VIII. Customers need to be educated about security precautions when they conduct international business.
- IX. An additional purpose of online consumer awareness campaigns is to inform customers about their online obligations, and get them to familiarize themselves with the website's rules before to making any online transactions.

“Born-global” e-commerce firms offer additional difficulties to jurisdiction and enforcement when it comes to consumers resolving their disputes cross-border. For the customer, the convenience of buying goods/services anywhere in the globe through the internet is undeniable. On the other hand, there are variables such as the difficulty and expense of settlement, as well as the jurisdiction and other impediments that make conflict resolution difficult or impossible for the customer. In these instances, the customer will likely be left without a remedy, even if there is a well-established consumer protection legislation in place.

We need a strong E-commerce Security Act based upon UNCITRAL Model and it should take inspiration form Russian provisions in GDPR. We need a provision which does not require support of any other act and we should make it substantive and procedural both. The major suggestions for the formation of provisions are:-

⁴⁹ Available at: <http://classic.austlii.edu.au/au/journals/MurUEJL/2005/9.html> visited on 07/07/2021.

⁵⁰ Available at: http://shodhganga.inflibnet.ac.in:8080/jspui/bitstream/10603/224939/17/17_chapter8.pdf visited on 07/07/2021.

- a) The Act would be required so that it is in alignment with the advancement of science and technology.
- b) Every police station must have advance cyber cell throughout the country.
- c) Cyber Police should be segregated from law enforcement officers from the beginning of their career.
- d) The necessity for policing the Internet has never been greater.
- e) Law enforcement personnel, as well as judges and prosecutors, must be trained on cyber laws and enforcement policies.
- f) Establishment of specialized courts to handle all sorts of cybercrime.

