



Unfair Trade Practices In Electronic Commerce: An Analysis From The Standpoint Of Consumers

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ABSTRACT

The advent of Information Technology law in India has recognized electronic forms of commerce as legally valid and binding on the parties. With the ease and availability of technology, online shopping of goods and services are now a part of the everyday vocabulary. A wide range of activities are being conducted through this medium, from retail to purchase of software and other digital products to services. At the same time, there seems to be an inevitable increase in the Unfair Trade Practices such as number of failed transactions and fraudulent schemes plotted by rouge businesses, taking advantage of the anonymity of the platform. It also witnesses advancements in the form of development in Consumer Protection laws in bringing the contemporary electronic commerce within the purview of Consumer Protection law. This paper analyses various Unfair trade practices in e commerce businesses and whether the recent legal developments meet the challenges posed by the click-and-mortar system

Key Words: E-commerce. Unfair Trade Practices. Consumer, The Consumer Protection Act,2019

1. INTRODUCTION

Recent years have seen a meteoric rise in the prevalence of e-commerce. E-commerce, sometimes known as "electronic commerce," is the process of doing commercial transactions electronically rather than face-to-face. The World Trade Organisation coined the phrase "electronic commerce" to define the process of producing, disseminating, marketing, selling, or transporting products and services via the use of digital means. The "Organisation for Economic Co-operation and Development (OECD)" defines e-commerce as "any form of electronic transaction between firms, households, individuals, governments, or other public or private organisations that takes place over the Internet," which includes the selling and purchase of products and services. As defined by the APEC, e-commerce includes any and all commercial activity conducted over the Internet which Promotes cross-border e-commerce as a way to integrate Asia-Pacific markets and empower small enterprises [1]. The "United Nations Conference on Trade and Development (UNCTAD)" defines electronic commerce as the purchasing and selling of products and services via the Internet and other electronic techniques [2]. It Views e-commerce as a central element of ICT-enabled trade, helping countries participate in global markets through digital means [3]. The wide variety of products and services that can be purchased with the click of a mouse is a big reason why online shopping has become so popular. Notwithstanding, a considerable number of purchasers desire to annul or recover the expenses of their internet-based acquisitions due to issues related to shipment or the calibre of the merchandise. During our routine activities, we may come across numerous instances of online consumer fraud and deceit. Unfair business practises such as product misrepresentation, exorbitant pricing, and defective or low Quality and useless products can be readily identified and rectified through a fair and transparent exchange of goods and services. Nonetheless, in situations where consumers are deceived by

inequitable contracts, unjust business practises, or unilateral agreements, the insignificance of the issue is reduced.

2. LAW RELATED TO CONSUMER PROTECTION AND E COMMERCE:

On April 9, 1985, the United Nations General Assembly (UNGA) approved “consumer protection guidelines” and empowered the UN Secretary-General to encourage member states to enact policies and laws that more effectively protect the interests of consumers.

The Organisation for “Economic Co-operation and Development (OECD)” established its consumer protection guidelines in 1999 in response to the proliferation of e-commerce. These rules, revised in 2016, are in place to safeguard consumers engaged in electronic transactions. The rules are adaptable to the dynamic corporate landscape in which electronic commerce plays a major role. Furthermore, these regulations have effectively extended the consumer protection rules to the realm of online trade. The message is clear: internet shoppers should have the same legal safeguards afforded to them as their offline counterparts [4].

In 1986, India enacted the Consumer Protection Act (CPA) to meet the requirements of the aforementioned resolution, which it had signed. In December 1986, India's Parliament (the country's legislature) enacted a measure that would become law on April 15, 1987. The Act's principal object to protect consumer rights and establish consumer councils and other entities empowered to resolve consumer grievances. A new law, the CPA 2019 law, protects consumers when they purchase online. The new consumer protection legislative framework updates the 1986 legislation to account for concerns brought on by the novel business models prevalent in the Internet Age. In order to facilitate effectiveness in the consumer dispute resolution system and keep up with the increasing complexity of consumer disputes including e-marketplaces, online aggregators, intermediates, and endorsers. Consumer protection legislation safeguards purchasers from fraudulent commercial practises, defective or impaired merchandise, and unethical corporate conduct. Furthermore, the government has instituted several modifications to the legal framework in order to enhance the protection of consumer rights and furnish avenues for recourse. The Act of 2019 pertains to the regulation of unfair commercial practises and electronic contracts. Facilitating the process of returns and refunds for defective or impaired items is imperative in safeguarding consumers against internet-based fraudulent activities. Changes to the handling and resolution of customer complaints are included in the CPA, 2019 in India. It has harsh penalties, including jail time, for things like fraudulent advertising and adulteration. What's more, it lays forth standards for doing business online today.

In a new Section 10-A, the Amendment Act of 2008 makes it clear that electronic contracts are legally binding. It is clear that the IT Act does not have exclusive jurisdiction over such contracts based on a reading of Section 10A. Reading Sections 10 A and 81 together will also help you understand this. Section 81 says that, the IT Act's provisions shall take force notwithstanding any contradicting provisions established in any other legislation. So long as they don't directly contradict the laws regulating electronic contracts under the IT Act, all the principles of the Contract Act remain applicable. When it comes to contracts, the Indian Contract Act is a must-have foundational legislation, and the IT Act only applies to the parts of electronic contracts that are explicitly addressed there. Electronic mail (or email) and the click wrap technique used on the World Wide Web are the two most common ways to enter into a legally binding contract without physically meeting in person[5]. The OECD Council's 2016 Recommendation on Consumer Protection in E-Commerce updated the earlier 1999 Guidelines to address the rapid growth of digital markets and new challenges faced by consumers online. It emphasized that consumer protection in e-commerce should be no less effective than in traditional commerce. The Recommendation called for fair business, advertising, and marketing practices, requiring businesses to provide clear and transparent information disclosures about goods, services, costs, and contractual terms. It also highlighted the importance of secure and easy-to-use payment mechanisms, effective dispute resolution systems (including cross-border complaints), and consumer education to build trust in online transactions. Privacy and data protection were recognized as essential, and member countries were urged to cooperate internationally to combat fraudulent, misleading, and unfair practices in global e-commerce. Overall, the Recommendation reinforced transparency, accountability, and consumer confidence in the digital economy [6]. The Consumer Protection (E-Commerce) Rules, 2020 were introduced under the Consumer Protection Act, 2019 to regulate online trade and safeguard consumer rights in the digital marketplace. These rules apply to all e-commerce entities operating in India, whether domestic or foreign, and cover both marketplace and inventory models. They mandate transparency by requiring platforms to disclose seller details, return and refund policies, and the country of origin of goods. They prohibit unfair trade

practices such as misleading advertisements, fake reviews, and manipulative pricing, while also ensuring that platforms cannot influence prices or discriminate among sellers. To strengthen consumer redressal, the rules require e-commerce companies to appoint a grievance officer, acknowledge complaints within 48 hours, and resolve them within 30 days. Overall, the framework ensures accountability, fairness, and consumer confidence in online transactions, aligning India's digital commerce standards with global best practices.

3. E- CONSUMER DEFINED

After studying the definition of consumer of CPA Act [7], we can say that any person who purchases goods or avails services for himself or for his depends is a consumer. The definition in the previous Act did not deal with the mode of purchase, whether off-line or online but in the new Consumer Protection Act of 2019 in its explanation (b) incorporated the "the expressions "buys any goods" and "hires or avails any services" includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing." Thus, we can say that e-consumer is a consumer who makes purchases online.

In this landmark case Regional Provident Fund Commissioner v. Shiv kumar Joshi [8], the Supreme Court clarified that the meaning of *consumer* under the Consumer Protection Act is broad and extends beyond the purchase of goods to also include the use of services obtained for consideration. Such consideration may be paid upfront, promised for future payment, or structured through deferred instalments. Importantly, the Court recognized that even beneficiaries of a person who hires or avails services fall within the ambit of the term. The Act was understood as a welfare legislation designed to safeguard the interests of individuals, not only in the commercial sense as buyers of goods but also in the wider sense as users of services. A defining feature of goods and services under the Act is that they are supplied for a price, which covers costs and typically generates income or profit for the seller or service provider

In another case, the Supreme Court explained that the definition of *consumer* under the Consumer Protection Act has two distinct parts—one relating to goods and the other to services. Both segments use broad language to describe their scope, which is further widened through inclusive clauses. The Court clarified that the term does not only cover the person who purchases goods or hires services for consideration, but also extends to those who use the goods or benefit from the services with the consent of the original buyer or hirer. The purpose of the Act is to safeguard the economic interests of individuals, both in the narrower commercial sense as buyers of goods and in the broader sense as users of services. A common feature of goods and services under the Act is that they are supplied for a price, which covers costs and typically generates income or profit for the seller or service provider [9].

4. UNFAIR TRADE PRACTICES TOWARDS CONSUMERS IN E-COMMERCE TRANSACTIONS.

• UNFAIR TRADE PRACTICE

There is another definition which is of interest for us in online transactions, that is the definition of Unfair Trade Practice which is provided under section 2(47) of the CPA 2019. It defines the term *unfair trade practice* in a broad sense to include any deceptive, fraudulent, or unethical method adopted by traders or service providers to promote the sale, use, or supply of goods and services. It covers practices such as making false claims about the quality, grade, or sponsorship of goods and services, misrepresenting rebuilt or second-hand goods as new, misleading advertisements, manipulative pricing, hoarding to create artificial scarcity, and supplying goods or services that are unsafe or hazardous. The provision ensures that consumers are protected not only from traditional forms of exploitation but also from modern challenges like misleading digital promotions and e-commerce malpractices. Its central aim is to safeguard consumer interests by ensuring transparency, fairness, and accountability in the marketplace.

• DISCLOSURE OF INFORMATION IN ONLINE SHOPPING

The OECD Council released the Guidelines for Consumer Protection in the Context of Electronic Commerce in 1999(revised in 2016). The viability of e-commerce enterprises is contingent upon the degree of transparency and lucidity exhibited in their presentation of business operations and the commodities and amenities they offer. The Guidelines mandate that individuals who participate in electronic commerce must be provided with unambiguous and efficacious safeguards pertaining to accountability and disclosure in the realm of consumer protection. The degree of security offered here shouldn't be lower than that of other commercial transactions. Any firm doing business with customers

over the Internet must provide specific, understandable, and easily accessible data on the company itself, the offered products and services, and the transaction itself. The Guidelines also provide a framework for the following: confirmation; payment; dispute resolution; privacy; consumer awareness and education; and global collaboration on information exchange; coordination; communication; and collective action to counter transnational fraudulent, deceptive, and inequitable commercial practises [10].

The legal provisions concerning safeguarding the interests of consumers in India demonstrate a lack of clarity regarding the dissemination of information in the realm of electronic commerce. The Consumer Protection Act, 2019 also recognises several unfair trade practices [11]. Deceptive practises encompass a range of actions such as misrepresenting the quality, standard, or grade of goods and services, providing false information to the public about the typical price of goods, making derogatory comments about goods, and misrepresenting warranties or guarantees. The latest revision to the definition has integrated clauses that pertain to cooling-off, privacy, and security within the framework of online transactions.

In 2008, the definition of 'Intermediaries' as stipulated by the Information Technology Act was broadened to include virtual marketplaces [12]. The exemption from liability of intermediaries is explicitly outlined in Section 79 of the Act, provided that said intermediaries can demonstrate due diligence beyond a reasonable doubt. The Information Technology (Intermediaries Guidelines) Rules went into effect in 2011, requiring intermediaries to make public their rules and guidelines, privacy policy, and user agreement for gaining access to or making use of their services. According to the regulations, the intermediary is obligated to disclose the identity and contact information of the Grievance Officer on its website. This allows users who have experienced negative consequences due to their use of the computer resource to report their grievances.

• ISSUES RELATING TO PRICING DETAILS

It is imperative for enterprises involved in electronic commerce to furnish unambiguous, precise, and readily available details pertaining not only to the merchandise but also to the expenses associated with the transaction. This would enable the consumer to make a well-informed decision before committing to the transaction. The cost of a product is a crucial factor that influences a consumer's decision to make a purchase.

The primary objective of the Consumer Protection Act of 2019 in India is to safeguard consumers from various forms of exploitation, including but not limited to excessive pricing. As per Section 2(7)(iv) of the CPA, 2019, the term "Complaint" encompasses the act of charging an excessive price for goods or services, which is deemed as a valid basis for a consumer to file a complaint. In cases where a trader charges a price that exceeds the legally mandated or advertised price, or the price agreed upon between the parties involved, consumers have the right to file a complaint against the offending trader or service provider.

The aforementioned legislation encompasses UTPs such as overcharging and providing false information to the public regarding promotions and discounts [13].

“Quoting, issuing, or exhibiting price lists, invoices, cash memos, or issuing any such advertising other than in accordance with the standard unit of weight, measure, or numeration is prohibited under the Legal Metrology Act, 2009 (which repeals and replaces the Standard of Weights and Measures Act, 1976) [14].”

The Legal Metrology (Packaged Commodities) Rules, 2011 further defines [15] “Market Value When discussing a product or service, the phrase "maximum retail price" refers to the most money that can be made off of selling it to the final customer in its packed form. The packaging must prominently display the following pricing information: "Maximum or Max. Retail Price Rs.... inclusive of all taxes or MRP Rs..... incl., of all taxes.".

The online shopping portal may act in the capacity of a dealer [16] or packer [17] or a retail dealer [18] within the meaning of the Rules, 2011.

Rule 6 mandates the declaration of the suggested retail price, together with the manufacturer/packer's name and address, net amount, and the month and year of production, packing, or import. The rules provide that no retailer, packer, or producer may sell any prepackaged item for more than the maximum allowed retail price. Wholesalers and retailers are prohibited by the Rule from covering up, obscuring, or otherwise tampering with the suggested retail price that has been printed on the product's packaging or label by the manufacturer, packer, or importer.

In certain cases, different online marketplaces may list different MRSPs for the same items and claim to sell them for lower prices to attract customers. Consumers might be misled by this technique, that's why it is considered unethical. Another issue relating to MRP can be seen in the case of Dr. John Tharappel Devassia v. Indiaplaza.com [19], complaint about a tab acquired by the complainant from India plaza on

January 4, 2012. received product turned out to be useless and not even worth the Rs. 6,000 paid for it. On the date of purchase, the MRP advertised by the other party was Rs.26,000, whereas the complainant paid Rs.13,999 as the offer price. After that, OP adjusted the retail price of the tablet to Rs.17,100 and revised the product's technical features. Based on allegations of deceptive business practises, the District Forum found the OP at fault.

When shopping online, it's important to compare shipping fees, which may vary widely depending on the total amount spent and the chosen payment method, with the product's retail price. For example, the delivery fee on www.amazon.com is Rs.80 for orders under Rs.500, whereas the delivery fee on www.firstcry.com is Rs.50. Any additional shipping fees should be made clear when a transaction is completed so the buyer is aware of the full price of their purchase.

Important details for consumers include the length of time an offer or promotion is active and the quantity of items still available at the sale price. There should be no ambiguity about which payment options are available or what the terms and conditions are for each.

There is no standard policy for how prices and methods of payment should be communicated to customers on the website. If a customer wants to know how much their purchase will cost, they'll have to click on a few different buttons on the page. Therefore, the price issue may be fixed by establishing uniform guidelines for compiling all relevant pricing information into a single link on the web portal's landing page.

Some websites like Flipkart [20], ebay [21] and Amazon have a distinct button or section on their site dedicated to payment information, where clear and concise facts regarding the accepted methods of payment and any additional fees associated with the transaction can be found. The terms of service on several other websites also outline how payments are to be made.

Disclosure of transaction costs is emphasised by the OECD Council in its 1999 Guidelines for Consumer Protection in the Context of Electronic Commerce [22]. It requires that businesses engaged in electronic commerce to “allow customers to make an educated choice about whether or not to engage a transaction by disclosing all relevant terms, conditions, and prices.”

In the context of pricing the Guideline provides –

“In accordance with the transaction at hand, it is advisable and appropriate to provide the following information: a comprehensive breakdown of all costs accrued and/or enforced by the business; notification of any additional costs that may be routinely applicable to the consumer, but are not enforced by the business; terms pertaining to delivery or performance; any limitations, restrictions or conditions that may be associated with the purchase, such as the need for parental or guardian approval, or geographical or temporal constraints; instructions for proper usage, including warnings regarding safety and health care; information regarding after-sales service availability; details and conditions pertaining to withdrawal, termination, return, exchange, cancellation, and/or refund policies; and any warranties or guarantees that may be available [23]”.

● ISSUES RELATING TO AVAILABILITY DETAILS

Availability-related information gaps can arise from a number of sources, including a lack of information or incorrect information about serviceable regions of the online portal, product availability, sale duration, warranty/guarantee terms, after-sale support, and other similar factors.

Abdul Manas N.A v. Homeshop 18 and The Professional Couriers [24], “One of the cases brought before the District Forum in Kasaragod involved a complainant who had purchased a mobile phone from HomeShop18. The complainant was denied the product due to the unavailability of courier services at the provided shipping address. However, the complainant did receive a refund in the form of a Demand Draught.”

When a customer enters their zip code, certain websites will immediately display whether or not the service is available in their region. In the pre-buying phase, this kind of availability data is included in the product description. Due to the fact that it is not mandated that such information be provided, some websites do so as a matter of best practise while others do not.

A customer may engage in domestic electronic commerce by making a purchase through the website of a domestic online retailer or a foreign retailer with a physical presence or web shop in the consumer's home country, but receiving the products from a warehouse in a different nation. When a customer places an order with an international online store that does not have a local web shop, the items may be sent to them from a warehouse in their home country. In a other kind of e-commerce scenario, a local online store may import products from outside and sell them to customers inside the nation. In such a situation, the customer's need for product details and the availability of support after the transaction cannot be

overstated. For instance, in the case of “Pardeep Bansal v. Ebay India Pvt Ltd. and Others [25]”, The laptop the complainant got was not covered by any kind of international warranty, since it had been imported from the United States. A service failure and unfair business practise were found to have occurred on the part of the other party, according to the District Forum. Most websites make it clear before you even make a purchase that a product is unavailable. However, the trader may use the item's unavailability as leverage to sell the customer lower-quality items at a greater price as a makeshift replacement. In one such case, the complainant was told by an internet retailer (the "Opposite Party") that he was one of five fortunate customers to get diamonds normally priced at Rs.30,000/- for just Rs.12,999/- along with gift items including a dinner set, gold-plated playing cards, and so on. Complainant relied on the guarantee of the Opposite Party and made an order for the item, paying Rs.12,999/- using a debit card. When he got the package, he saw that the diamonds were subpar and that the overall quality of the things was low. After OP's persistent pleading, the company decided to take back the products and give him store credit to use within six months. A pair of shoes, a subterranean bazaar hookah, and a cell phone followed a few days later. However, the ordered goods were never delivered. The OP verified that the cell phone was now unavailable. The complainant asked the OP to void the transaction and return the money. OP said a refund will be issued within a week. Later, OP provided the complainant a mobile phone, but it was of poor quality and was returned. The District Forum found that the other party was responsible for the lack of service [26].

• ISSUES RELATING TO CANCELLATION

"Cancellation" or "cooling-off" periods allow consumers to cancel purchases and get a full refund, regardless of the reason. This applies to distance transactions, including online shopping, since the purchaser cannot "touch and feel" the item before purchasing and may return it if he is not satisfied. Online contracts should include a "cooling off" time so customers may check the product's quality and features against the portal's description. This gives consumers greater options. Sites usually need a 1-7day "cooling off" period before cancelling. However, cancellation has downsides. First, the buyer may misuse the items during the cooling-off period. Second, if buyers cancel orders during the "cooling off" period, retailers may struggle to recuperate their inventory costs. Buyers pay the product's high price. The cancellation policy should state when the withdrawal time starts, such as when the consumer gets the products, the contract is completely completed, or the order is sent.

The Consumer Protection Act of 2019 prescribes a period of time referred to as the "cooling off period" for online transactions conducted within the jurisdiction of India. Section 2(47) of the Act has been amended to incorporate a novel clause pertaining to the right of withdrawal of consumers in electronic contracts

• ISSUES RELATING TO RETURN/REPLACEMENT

The provision of a cooling-off period notwithstanding, a return policy that is intricate or ambiguous can impede the entitlements of consumers. Online shoppers depend on either a concise product description or an image of the product to make purchasing decisions. Therefore, it is essential to have a suitable return or replacement policy in place for all types of distance selling. Simultaneously, it is crucial to analyse the components that comprise an effective return policy. E-commerce enterprises establish their own optimal protocols for returns or exchanges, taking into account their logistical operations. A well-defined policy that delineates the acceptable items for return, the designated personnel to approach for the purpose of return, the financial responsibility for the return process, and other pertinent details is indicative of a trustworthy business to consumers.

As seen in the case of Rediff.com India Ltd. v. M/s Urmil Munjal [27], “though the appellant (opposite party) provided for a cooling-off period, the respondent(complainant) could not avail the right as the information about the manner in which items received were to be returned were not explicitly provided by the portal. Hence, a positive return experience lies in clear communication by the business such that the consumer will know what to expect.”

E-commerce return policies must be grammatically correct and straightforward to find on websites. According to the OECD's Guidelines for Consumer Protection in an Online Context, retailers must make their withdrawal, termination, return, exchange, cancellation, and/or refund policy information clear, accurate, and easily accessible to customers.

5. CONCLUSION

It is evident from the standpoint of consumers that there exists a necessity for more robust regulatory frameworks and enforcement mechanisms to safeguard their rights in the context of e-commerce transactions. Despite laws and rules, the contemporary digital marketplace presents distinctive challenges that necessitate the revision and customization of current consumer protection laws and regulations. Furthermore, it is recommended that increased attention be given to the implementation of awareness and educational initiatives aimed at equipping consumers with the necessary information regarding their entitlements, as well as strategies for detecting and reporting instances of inequitable trade practises.

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