

## **Jurisprudence of Delivery in Consumer Contract in E-Commerce: A Critical Appraisal of The Consumer Protection Law in India**

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### **Abstract**

*E-commerce market is growing tremendously due to the many advantages it provides to consumers and traders as well. On the other hand, concerns of consumer with respect to delayed delivery, wrong delivery, non-delivery and improper information pertaining to delivery of goods or services are also evident from the numbers of online consumer complaints. The Consumer Protection Act, 1986 and the Sale of Goods Act, 1930 may sufficiently protect consumers in traditional market; however, both the Acts fail to recognise the unique features of e-commerce, which have raised the new forms unease to consumers. The provisions of the newly enacted Consumer Protection Act, 2019 are structurally weak and inefficient to protect consumers in e-commerce.*

**Classification Code:** O Economic Development, Innovation, Technology Change, and Growth

**Key Words:** *E-Commerce, Technology, Delivery, Consumer Protection, Law*

### **I. Introduction**

Consumers are considered as susceptible in the hands of business societies. The susceptibility of consumer amplified in e-commerce, which provides opportunities to businesses to exploit consumers in many ways. The Minister of State for Consumer Affairs, Food and Public Distribution, Mr. Danve Raosaheb Dadarao has recently informed the Parliament that from August 2016 to March 2019 as many as 8,373 complaints of online consumers were registered pertaining to fraud in e-commerce.<sup>2</sup> The actual figures of such fraud, however, may go up by manifold.

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<sup>2</sup>Soumyarendra Barik, 'National Consumer Helpline Registered 8,373 Complaints of Fraud in Online Shopping in 3 Years, Minister Reveals' <https://www.medianama.com/2019/07/223-national-consumer-helpline-registered-8373->

In India, the rapid escalation of e-commerce retailing<sup>3</sup> is due to many reasons, for instance, advancement of information and communication technology, increase number of internet users,<sup>4</sup> ease of payment and shopping for goods or services from sellers located across the globe, shopping and payment at any time, more options in goods or services, more competition resulted in lower the prices, and discounting in energy and time. However, in contrast to the advantages, e-commerce has brought forth many challenges too with respect to the consumer protection.

## II. Issues and Concerns

There have been escalations of fears among the consumers in e-commerce with respect to non-delivery, wrong delivery, and late delivery of goods or providing services. This fright of consumers resulted from numerous experiences of consumers and stories reported in news. Following are the few examples of such stories; instead of a laptop worth of Rs. 14,090, a package of brick has been delivered to 17 years old boy when he ordered for laptop, and terribly, the delivery man had left the place before the boy could actually check the product;<sup>5</sup> A vim bar has been delivered to consumer in place of a Samsung Galaxy Core 2; some pieces of stones were delivered when a consumer ordered for iPhone 4S; in place of a Macbook Pro worth Rs. 84,000, consumer received a heater worth Rs. 600; an used phone and pair of used shoes were delivered, when a consumer ordered for brand new phone and shoes; an empty box has been

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[complaints-of-fraud-in-online-shopping-in-3-years-minister-reveals/](#) (Last visited July 30, 2019).

<sup>3</sup> Morgan Stanley expects ‘the size of the Indian Internet Market to rise from \$ 11 bn in 2013 to \$ 137 bn by 2020, making it fastest growing e-commerce market in the world’, [https://www.business-standard.com/article/companies/india-set-to-become-world-s-fastest-growing-e-commerce-market-115020601227\\_1.html](https://www.business-standard.com/article/companies/india-set-to-become-world-s-fastest-growing-e-commerce-market-115020601227_1.html) (Last visited August 1, 2019).

<sup>4</sup>Internet and Mobile Association of India (IAMAI) reported that, ‘India has 350 million Internet users’, <http://indianexpress.com/article/technology/tech-news-technology/india-now-has-over-350-million-internet-users-iamai/> (Last visited July 25, 2019).

<sup>5</sup> Bosco Dominiquel, *Teen orders laptop for 14,000 online, get brick*, <https://timesofindia.indiatimes.com/city/chennai/Teen-orders-laptop-for-Rs-14000-online-gets-brick/articleshow/50401154.cms> (Last visited : July 25, 2019).

delivered to consumer in place of a pen drive;<sup>6</sup> fake JBL Lifestyle products were selling by ShopClues.com, an e-commerce portal.<sup>7</sup> In addition, issues pertaining to lost in delivery, non delivery, and damage of goods in delivery are common practices, which consumers experience in e-commerce.<sup>8</sup> It has been argued that delay in delivery of goods continues as one of the main common grumbles of the consumers in e-commerce.<sup>9</sup> Further, it has also been alleged that the one of the reasons for delay in delivery after receiving payments from consumer is to solve cash flow problems of seller.<sup>10</sup> Presences of various fraudsters are also evident in e-commerce. They promise to sell goods at low price but deliver inferior goods or never deliver goods, or they may also disappear overnight.<sup>11</sup>

It is pertinent to mentioned that, in contrast to traditional commerce, the nature of e-commerce obligates seller to make delivery of goods or services, resulting in consumer's absolute reliance on seller for the delivery. This dilemma of complete dependence of consumer with respect to delivery has raised many legal questions pertaining to the consumer protection in this new economy. Who should bear legal responsibility to deliver the goods, seller or buyer? Who should bear the loss if goods are lost or damaged during transit? What rights consumer may exercise if seller fails to deliver the goods or services within stipulated time? What would be the stipulated time if no time is prescribed in

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<sup>6</sup>SambitSatpathy, *4 unexpected things Snapdeal delivered to buyers and one that Flipkart didn't*, *BER India*, <http://www.bgr.in/news/4-unexpected-things-snapdeal-delivered-to-buyers-and-one-that-flipkart-didnt/> (Last visited: July 20, 2019).

<sup>7</sup>Sangeeta Chengappa, *Harman issues legal notice to online retailer*, <https://www.thehindubusinessline.com/companies/harman-issues-legal-notice-to-online-retailer/article6835383.ece> (Last visited: July 22, 2019).

<sup>8</sup>Adrija Bose, *The Big Snapdeal Screw up: Man orders smartphone, gets bar of soap instead*, *firstpost*, <https://www.firstpost.com/living/the-big-snapdeal-screw-up-man-orders-smartphone-gets-bar-of-soap-instead-1779633.html> (Last visited: July 22, 2019).

<sup>9</sup>Nuzhat Parveen Khan and Parveen Khan, 'Online Shopping in India: Issues and Challenges with Special Emphasis on the Consumer Protection Bill, 2015' 3 *JLJ* 9 (2018).

<sup>10</sup>Akhileshwar Pathak, '*E-Retailing and the Consumer Protection Bill, 2015: Drawing from the European Union Consumer Directive*' Indian Institute of Management Ahmedabad Working Paper 2015-10-02, <http://vslir.iima.ac.in:8080/jspui/bitstream/11718/17055/1/WP2015-10-02.pdf> (Last visited June 15, 2019).

<sup>11</sup>Gagandeep Kaur, *Jurisprudence of E-Commerce and Consumer Protection in India* 59 (Satyam Law International, 1<sup>st</sup>edn., 2015).

the contract? What would be the rights of consumers if goods or services are not in accordance to the description? What responsibility seller or service provider must have in protecting consumer's rights with respect to the delivery of goods or services? These questions among the many others are required to be addressed by consumer protection law for the effective protection of consumer in e-commerce.

If the questions of consumer protection do not get addressed with sufficient mechanism, it may lead to many adverse effects, such as, fraud or deception to consumers, unfair competition and marketing practices.<sup>12</sup> Though, the Government of India many a times expressed importance of information technology infrastructure for economic development, however, failed to fully realise the other side of the story of consumers fright such as, online fraud, delayed delivery, delivery of wrong product or services.<sup>13</sup>

#### **i. Delivery Goods or Services in E-Commerce and the Provisions under the Consumer Protection Act, 1986**

In India, the Consumer Protection Act, 1986 administers the relationship between consumers and seller of goods and providers of services. Though, recently the Parliament has enacted the Consumer Protection Act, 2019, however, substantial provisions are borrowed from the Act of 1986. There is absence of specific legislation to regulate online transactions. In case of 'unfair trade practices', 'defects in goods', 'deficiency in services', and 'restrictive trade practice', the liability of seller or services provider arises under the Consumer Protection Act, 1986.<sup>14</sup> A consumer may be protected under the above provisions, if a seller sales fake product, defective product, does any unfair trade practice or restrictive trade practice, or provide any deficiency in services. However, issues with respect to the delivery of goods or providing services, which are peculiar in e-commerce due its unique nature of transaction,

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<sup>12</sup> Rajiv Khare and GargiRajvanshi, 'E-commerce and Consumer Protection: A Critical Analysis of Legal Regulations' 1 *IJCLP* 57 (2013).

<sup>13</sup> Nuzhat Parveen Khan and Parveen Khan, 'Online Shopping in India: Issues and Challenges with Special Emphasis on the Consumer Protection Bill, 2015' 3 *JLJ* 4 (2018).

<sup>14</sup> Rama Sharma, Vibha Srivastava, et.al., 'Consumer Protection in the era of E-commerce' 1 *IJR* 1295 (2014).

do not sufficiently fall under the above categories of liabilities of sellers or service providers.

In absence of sufficient provisions as to regulate the delivery of goods or services under the Consumer Protection Act, 1930, the various Consumer Forums established under the Act have dealt with issues with respect to effective delivery of goods or services in e-commerce. In *India Times Shopping v ShivanandNarain*<sup>15</sup>, the Chandigarh State Consumer Dispute Redressal Commission had made India Times Shopping, an e-commerce website accountable for delivering a faulty mobile set. Further, in *Amazon Seller Service Ltd v Gopal Krishan*<sup>16</sup>, the Chandigarh State Consumer Dispute Redressal Commission had directed the Amazon Seller Service Ltd, an e-commerce portal to refund to the consumer along with compensation for delivering defective mobile handset Xiaomi Redmi Note 3. Moreover, the Andhra Pradesh State Consumer Disputes Redressal Commission in *Shanmukha Sharma v Amit Agarwal*<sup>17</sup> had observed that the delivery of food item after the date of expiry by e-commerce website, amazon.in is not only constitute a delivery of defective goods but also a deficiency in service.

One of the classic cases with respect to the issues of delivery of defective product and consumer' right arising there from has recently been dealt with by the Chhatisgarh State Consumer Dispute Redressal Commission in *Amazon Seller Service Private Limited v Love Kumar Sahoo*.<sup>18</sup>In this case, the complainant had ordered a mobile handset of Micromax Company worth of Rs.9000 from Amazon.in, an e-commerce portal. On receiving the mobile handset, the complainant had observed defects in sensor and battery of the handset. On being informed the same by the complainant, the customer care service of Amazon.in had assured automatic solution to the problem through new updated software. However, problem in the handset still remained even after updating the software. On being informed again, the Amazon.in had assured to replace the battery. Nevertheless, such replacement could solve the battery problem, but problems with sensor remain unresolved. This time, the Amazon.in made a promise to replace the phone. On receiving a replaced phone,

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<sup>15</sup> (2010)MANU/SF/0061.

<sup>16</sup> (2017)MANU/SF/0038.

<sup>17</sup> (2017)MANU/SA/0002.

<sup>18</sup> (2018)MANU/SG/0001.

complainant had observed same issues in the replaced phone and communicated the same to Amazon.in, which again replaced the phone for second time. The new phone, though, had dual sim capacity; however, one sim was functioning. Eventually, that phone was again replaced with another new phone for third time, and that too had problems of hanging and switching off while talking. The frustrated complainant requested for refund instead of replacement. However, to his surprise, refund policy of Amazon.in had been shown up to him, which exempts Amazon.in from any refund after 15 days of delivery, and since 15 days had been expired with many replacements, complainant was not refunded with the price. However, to solve the problem, the complainant had contacted the authorised service centre of the Micromax Company, where he had been informed that the phone was sold under a special offer, which disentitles the complainant to get the phone repaired through the service centre. Finally, the complainant had to knock the door of the District Consumer Forum. The Forum had directed the Opposition Parties (OPs) to refund the amount along with interest to the complainant. In appeal, the State Consumer Dispute Redressal Commission has upheld the decisions of the District Forum. Though, the decision of the forum came as a rescue for the consumer, however, this case raised many fundamental questions with respect to rights of consumer in e-commerce, such as, do sellers have unfettered liberty in framing 'refund policy' in consumer contract especially in e-commerce? How many replacements of products should be allowed in e-commerce? Should the refund period be counted from the date of delivery or from the date of last replacement? Do the consumers have right to claim compensation for deprivation of product during the period of replacement?

According to Ian Ramsay 'role of consumer protection law should be to regulate market practices and social practices for controlling distressing consequences of probable violation of consumer protection with a view to ensuring adequate consumer protection along with the growth of e-commerce market'<sup>19</sup>. To answer the questions posed in e-commerce, consumer law should regulate e-commerce with detailed guidelines.

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<sup>19</sup> As quoted in Rajiv Khare and Gargi Rajvanshi, 'E-commerce and Consumer Protection: A Critical Analysis of Legal Regulations' 1 IJCLP 64 (2013).

## ii. Consumer Protection with Respect to Delivery under the Sale of Goods Act, 1930

It is pertinent to mention that the Sale of Goods Act, 1930 contains significant provisions with respect to the issues of the delivery of goods and corresponding rights of buyer. With respect to the responsibility of delivery of goods, however, the provision of Act left it to the contract between the parties, which may be express or implied, and in absence of any such contract, seller is responsible to deliver the goods up to 'the place at which they are at the time of sale'.<sup>20</sup> Thus, this provision does not protect the consumer in terms of the responsibility to deliver of the goods. Issue pertaining to the damage of the goods during transit has been dealt by the Sale of Goods Act to a limited extent. Section 40 of the Act obligates buyer to shoulder 'any risk of deterioration in the goods necessary incident in the course of transit' even if a seller takes responsibility to deliver 'at his own risk'. Further, as per the provisions of the Act, in case of loss of goods in transit, the liability of seller would be depending on the question whether there has been transfer of property in goods or not?<sup>21</sup> However, with respect to the time of delivery of goods, the Act dealt with two different situations; first, time of delivery is not stipulated in the contract and second, the time of delivery is stipulated in the contract. With respect to the first situation, the Act provides that in absence of stipulated time as to delivery, seller must deliver goods within reasonable time.<sup>22</sup> On the other hand, with respect to the second situation, in absence of any clear provision in the Act, the judicial interpretations<sup>23</sup> compel seller to deliver goods within stipulated time, and

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<sup>20</sup> The Sale of Goods Act 1930, s 36(1)

<sup>21</sup> Section 26 of the Sale of Goods Act, 1930 reads as; '26. Risk prima facie passes with property.- unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not.'

<sup>22</sup> The Sale of Goods Act 1930, s 36(2)

<sup>23</sup> Section 11 of the Sale of Goods Act, 1930 *inter alia* provides 'any stipulation as to time is of essence of the contract or not depends on the terms of the contract'. This provision was interpreted by MacCardie, J in *Hartly v. Hymans* (1920) 3 KB 475, 484 as 'in ordinary commercial contracts for the sale of goods the rule clearly is that time is *prima facie* of the essence with respect to delivery'. This proposition of MacCardie, J had been supported and reasoned out by Patna High Court in *Orissa Textile Mills v. Ganesh Das* AIR 1961 Pat 107, 109 in the following words; 'the reason is obvious. The mercantile contract is not always an isolated transaction, but a link in a chain of

failure of which entitles buyer to treat the contract as breach. Nonetheless, buyer has the liberty of acquiesce to the delayed delivery. However, in absence of any express provisions in the contract as to the time as essence to the contract, determining such essence is on the court to determine. It is pertinent to mentioned that, in e-commerce, a consumer has to follow the standard automatic procedure for ordering goods or service, where she has little opportunity to negotiate as to the time to be treated as essence to the contract.

Further, the Sale of Goods Act, 1930 recognised the rights of buyer in case of defective or wrong delivery of goods in the form of breach of conditions or warranties, which may be implied or express. Breach of conditions entitles a buyer to terminate a contract; whereas, breach of warranties do not enable buyer to terminate contract and reject goods, however, buyer may claim damages from the seller.<sup>24</sup> The Act allows buyer to terminate the contract for breach of implied conditions if the delivered goods are not as per the description in the contract,<sup>25</sup> are not fit for purpose as agreed by contract or are not of merchantable quality<sup>26</sup>. The above provisions of the Sale of Goods Act, 1930, though, lay a good source of right of buyer under the Act, however, section 62 of the Act enables seller in e-commerce to exempt himself from the above liabilities under the Act through standard terms of contract.<sup>27</sup> Further, the Sale of Goods Act, 1930 has limited applicability up to the sale contract; the provisions for service contract are entirely out its purview.

It has been argued that, in addition to the Consumer Protection Act, 1986, sellers of goods and providers of services are also required to adhere to the provisions under the Indian Contract Act, 1872, and in case of sale contract, the provisions

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transactions, so that punctual performance may go to the whole of consideration for the sale’.

<sup>24</sup> The Sale of Goods Act, 1930, s 12 (2) & (3).

<sup>25</sup> The Sale of Goods Act, 1930, s 15.

<sup>26</sup> See The Sale of Goods Act, s 16.

<sup>27</sup> Section 62 of the Sale of Goods Act, 1930 reads as ‘62. Exclusion of implied terms and Conditions.- where any right, duty or liability would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage is such as to bind both the parties to the contract.’



under the Sale of Goods Act, 1930.<sup>28</sup> This argument may be validated with the provision of section 3 of the Consumer Protection Act, 1986, which provides that ‘the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force’. However, contrary arguments are also raised, which argued that, though, the consumer protection law rest on the underpinning of the Indian Contract Act, 1872 and the Sale of Goods Act, 1930, however, consumer protection law failed to express this foundation and changes it brought in these laws. Hence, without expressing this foundation, law would become confusing, conflicting and unclear. Thus, it would be logical as well as rational to organise consumer law in such a manner which clearly declare the rights of consumer.<sup>29</sup>

### **iii. Protection under the Consumer Protection Act, 2019**

The Parliament of India has recently enacted the Consumer Protection Act, 2019 to replace the Consumer Protection Act, 1986. The genesis of the Consumer Protection Act, 2019 is the Consumer Protection Bill, 2015. The Consumer Protection Act, 2019 introduced a new right of consumer, which enable a consumer to return the goods within 30 days of delivery if any defects in goods or deficiency in services observed by consumer on receiving the goods or services.<sup>30</sup> This right of consumer is called right of ‘cooling-off’. This is applicable to both service contract as well as sale contract. It has been criticised that the provision in the present form is only declared right and remain as undernourished. Detailed provisions should be made to make this right efficient

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<sup>28</sup>Sarla Gupta and Beniprasad Agrawal, *Cyber Laws: Law Relating to Information Technology, Hacking, Intellectual Property Rights, Trade Marks, E-Commerce, Computers, Computer Software, Internet and Cyber Crimes etc.* 944-945 (Premier Publishing Co, Allahabad, 2<sup>nd</sup>edn., 2016).

<sup>29</sup>Akhileshwar Pathak, ‘The Consumer Protection Bill, 2005: (Lack of) Rights of the Consumer to Terminate Sale Contract’ Indian Institute of Management, Working Paper No. 2015-09-01, <http://vslir.iima.ac.in:8080/jspui/handle/11718/17104>

<sup>30</sup> Section 2 (47)(viii) of the Consumer Protection Act, 2019 recognise the following act of seller or service provider as ‘unfair trade practice’, which reads as ‘after selling such goods and rendering of such services, refuses to take back or withdraw the goods or withdraw or discontinue the service and refuses to refund the consideration thereof, if paid, within a period of thirty days after the receipt of goods or availing of services if it is so stipulated and requested by the consumer’

and functional.<sup>31</sup> Though, the objective of this right of consumer is to permit the consumer to test, feel, touch and use the goods or services, however, in recognising this right, a circumstance may occur, where a seller may raise an objection that the condition of the goods is diminished during 'cooling off' period, and are not in same condition as he delivered to consumer; eventually that may results in refusal by seller to refund price, if any, paid by the consumer. Thus, this situation may raise a legal question as to how much tests, touch, feel and use of goods or services be allowed to consumer? The answer should be, as much as a consumer is permitted in a physical shop.<sup>32</sup> In addition, the legal provisions should also be made to answer the further questions, for instance, who should bear the responsibility to communicate the decisions to cancel the contract to the seller? What procedure and mode of such communication should be followed? What will be the legal consequence if a consumer communicates his decision to terminate contract before the 'cooling off' period gets over, but such communication reaches to a seller after the cooling off period gets over? It has been suggested that detailed legal provisions should made to answer the in the following order; firstly, it is the consumer who should bear the responsibility to communicate the decision to cancel the contract; secondly, seller must provide a cancelation form along with delivered goods in a durable form, which may also furnish through electronic means or puts up on website of the seller, however, consumer should have autonomy to use any other mode of communication in durable form; and thirdly, communication should be binding on the seller if the consumer communicates before the 'cooling off' periods gets over; though, it may reaches to the seller after the 'cooling off' period gets over.<sup>33</sup>

Further, the applicability of the provision of 'cooling off' period to service contract may create a new problem. In service contract, once a service is consumed, it is irreversible. However, if the service is of continuing nature, a consumer may have a right to cancel a contract. In such a case, price may be charged for the service already received. Thus, it has been suggested that a

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<sup>31</sup>Akhileshwar Pathak, 'E-Retailing and the Consumer Protection Bill, 2015: Drawing from the European Union Consumer Directive' Indian Institute of Management Ahmedabad Working Paper 2015-10-02, <http://vsllir.iima.ac.in:8080/jspui/bitstream/11718/17055/1/WP2015-10-02.pdf>

<sup>32</sup>See *id.*

<sup>33</sup>See *id.*

solution in such a case of service contract should be to defer the provision of service till the period of 'cooling off' gets over. However, a consumer should have right request for the service during the cooling off period, and he should still have right to cancel the contract; provided he has to pay for the service consumed. It has been further suggested that the 'cooling off' period in case of service contract should be 14 days instead of 30 days as provided in the EU Directives, and it should start from the date of contract (unlike sale of goods, where cooling off periods start from the date of receiving the goods by consumer).<sup>34</sup>

Similarly, though, digital contents are classified as 'goods' in the case of *Tata Consultancy Services v State of Andhra Pradesh*<sup>35</sup> by the Supreme Court of India, however, for the purpose of exercising the right of 'cooling off' with respect to digital contents (if not selling on CD, pen drive, DVD or other similar medium) should not be classified as goods, as it has similar features as service, which once consumed cannot be reversed. Thus, cooling period and rights of consumers which are to be applicable in service contract should also be applicable to digital contents (if not selling of CD, pen drive, DVD or any other similar medium).<sup>36</sup>

It is further pertinent to mention that with respect to the sale of perishable goods, news magazine, newspaper and other goods of similar nature, the provision of 30 days 'cooling off' period may not be feasible for sellers. Thus, there may be two feasible solutions to the above problems; first, law should either categorise the goods, services and digital contents in three different categories, and different time period should be fixed for each category; second, law should provide compulsory 'cooling off' period for all the categories; however, duration of 'cooling off' period should be left with the parties to decide with the express consent.

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<sup>34</sup>See *id.*

<sup>35</sup> AIR 2005 SC 371.

<sup>36</sup>See *Supra* note 33

### **III. Delivery Jurisprudence in Consumer Contract in Other Jurisdictions**

#### **i. Position in the USA**

The Mail, Internet, or Telephone Order Merchandise Rule made by the Federal Trade Commission (FTC) regulates delivery issues in e-commerce in the USA. The Rules inflicted responsibility on traders to disclose clearly and conspicuously delivery date at the time trader solicits consumer. However, in absence of such a disclosure, a trader is bound to make delivery within 30 days of order placed by consumer.<sup>37</sup> Further, seller has to communicate a consumer promptly if any change occurred in the delivery date, and also duty bound to take fresh consent from buyer in such extended date of delivery with an option to buyer to cancel the contract.<sup>38</sup> In additions, detailed legal framework also laid down in the Rules with respect to the seller's responsibility pertaining to delayed delivery, consumer's rights of cancellation and refund.

#### **ii. Position in the UK**

The Consumer Rights Act, 2015 provides comprehensive provisions for proper delivery of the goods, services and digital content to consumer in the UK. Instead of providing similar yardsticks for proper delivery of goods, services and digital content, the Act prescribed diverse requirements or standards separately to make sure proper delivery with respect to goods, services and digital content, which are founded on the different nature of transactions and expectations of the consumer with regard to goods, services and digital contents. The Act cast the responsibility of delivery of goods specifically on seller in the Act.<sup>39</sup> In addition, with respect to the time duration for delivery, the Act left it with the parties to decide. However, in absence of any contract with respect time of delivery, the Act obligates seller to make delivery without undue delay, within utmost time duration of 30 days after placing the order by consumer.<sup>40</sup> However, under provision of the Act, in absence of any contract, service

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<sup>37</sup> Mail, Internet or Telephone Order Merchandise Rule, §435.2(a)(1).

<sup>38</sup> Mail, Internet or Telephone Order Merchandise Rule, §435.2(a)(2).

<sup>39</sup> The Consumer Rights Act 2015, s 28.

<sup>40</sup> See *id.*

provider has to perform service with a reasonable time, which is a question of fact.<sup>41</sup>

### **iii. Position in Canada**

In Canada, though, consumer protection issue is a provincial subject, however, many guideline laid down at federal level for the provinces. The Internet Sales Contract Harmonisation Template provides a maximum of 30 days from the date of the contract for deliver in absence of any contract with respect to delivery between trader and consumer, failure of which by traders entitle consumers to exercise opportunity to cancel the contract.<sup>42</sup> Similar provisions are also incorporated in the Canadian Code of Practice for Consumer Protection in Electronic Commerce, which provides that if a trader unable to deliver goods or commence service within the time as agreed, or any other material alteration in the goods or services, or in the contract, the trader must inform the same to the consumer in the same method as used to informed the consumer before entering into contract, and must also give a choice to consumer either accept the changed terms or cancel the order.<sup>43</sup> The Canadian Code further exempted consumer from any responsibility in cases of late-delivery, wrong delivery, or provides wrong information about delivery and lack of opportunity to the consumer to terminate an inadvertent transaction.<sup>44</sup>

## **IV. Conclusion**

Thus, delivery of goods or services is a critical facet in e-commerce. The entire process of delivery remains within the domain of traders. Further, the date and time of delivery largely remains within the unilateral decision of the e-trader. E-traders may either themselves make delivery or outsource it. Indeed, from the consumer perspective, a proper delivery is the only purpose of ordering goods or services online and making payment.

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<sup>41</sup> The Consumer Rights Act 2015, s 52.

<sup>42</sup> Internet Sales Contract Harmonisation Template, s 5(3).

<sup>43</sup> Canadian Code of Practice for Consumer Protection in Electronic Commerce, principle 3.2& 3.3.

<sup>44</sup> Canadian Code of Practice for Consumer Protection in Electronic Commerce, principle 3.4.

The Consumer Protection Act, 1986 protects consumer in case of delivery of defective goods, deficiency in providing service, unfair and restrictive trade practice. These terms are also highly defined under the Act. In spite of use of liability exemption clause in consumer contract various Consumer Forums have recognised the rights of consumer in delivery of defective products in e-commerce. Apart from the Consumer Protection Act, 1986; the Indian Contract Act, 1872, the Sale of Goods, 1930 may also protect consumer in many aspect with respect the delivery, though the Scope Sale of Goods Act, 1930 is limited to sale contract. The recently enacted Consumer Protection Act, 2019, though, took few steps for recognising right of consumer in the form of cooling off, however, the Act in the present form appears to be inadequate to tackle the issues raised with respect to the delivery in e-commerce.

Thus, the existing Indian legal framework seem to be inadequate and unclear as to many peculiar issues with respect to delivery in e-commerce, such as, clear and conspicuous information regarding the date and time of delivery of goods or services; mode, manner and time of providing such information; maximum time limit for delivering goods or services; obligation to inform consumer in case of delay in delivery and recognition of consumer's rights in such as cases; other rights of consumer in case of late delivery, non-delivery, damage in delivery, lost in delivery of goods or services.

Hence, it is suggested that the legal provision should be enacted to provide for inalienable responsibility of traders in e-commerce to provide clear and conspicuous information in a durable form about the date of delivery before a consumer places an order. Further, depending upon the nature of transaction, maximum time duration with respect to delivery should be fixed by law. A responsibility of delivery and all the risk attached to it should be borne by traders in e-commerce. Use of any exemption clause in the 'user agreement' of consumer contract should be prohibited and declared such term as void. Law should clearly define the term 'proper delivery' of goods and services in retail e-commerce. Legal responsibility should be imposed on traders in e-commerce inform consumer promptly and clearly in a durable form, if any change in delivery date, due to the reason beyond the capacity of trader, and give an option to consumer to cancel the contract without any cost. A clear and comprehensive legal framework should be made to recognise rights of consumer

in case of non-delivery, lost in delivery, late delivery, damage in delivery and delivery of wrong products or fake products or services. The laws in the USA, Canada, and the UK may facilitate in developing Indian legal system with regard to delivery in e-commerce transactions.