

**NOTES AND COMMENTS****Relevance of Consumer Protection Act, 2019 in  
E-Commerce***Chinmay Patra<sup>1</sup>**Abstract*

Advancement in technology and modern consumer behavioural pattern has replaced the traditional mode of buying and selling practice of the consumer with the online mode of shopping which gives ease to the customer, to shop while sitting at his own space and placing order online and there after the product gets delivered at the customers address as opted. But this new technology-based shopping also brought many hassles to the customise online frauds, fake products, sub-standard products, debit card and credit card account hacking, no guarantee and warranty on products, jurisdictional issues, dubious product return policy, etc. In order to protect the interest of the Consumers, it was felt necessary to establish an adjudicatory mechanism to redress the grievance and issues of the consumer. Hence the Consumer Protection Bill came to existence on 1<sup>st</sup> of April 2020 after framing of the Consumer Protection Rules by the Central Government, for effective implementation of the act. This paper intends to highlight the issues which have not been addressed in the amended version of Consumer Protection Act 2019.

**Keywords:** E-Commerce, Protection of consumer rights, Unfair Trade Practice, Consumer Courts, Services Consumer Protection Act 2019.

**I. Introduction**

Ecommerce has overtaken the tradition mode of physical market place, where consumer uses to walk in to the shop/store to purchase products or avail services. All kinds of buying and selling are now possible online using internet, by just a click of a computer mouse, or tap of a mobile phone, and that to just sitting at their private space, no need to go out, stand in a queue, to buy things. This is just possible only because of the advancement of technology and change in consumer behaviour and needs. By the use of the internet service, consumers are now availing all kinds of online services including banking, insurance,

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purchase of product, and hire professional services, even participate in e- tender process and many more. Perhaps this new diversified field of ecommerce, gives enormous ease to the consumer, by saving their valuable time and energy, it also provides goods and services at very competitive and unbeatable price, which a consumer can't avail at the same price in the physical market. The online mode of buying goods or hiring services, gives consumer another advantage, by which they can at one time, search variety of related products, and compare their prices, and there after take an informed decision, to buy the product which is more profitable to them or choose not to buy. Here the consumer is the king and he can locate any vendor throughout the globe of his choice and at his convenience. Ecommerce now-a-days not only remain the necessity but also an integral part of daily life of the consumer. This paper aims to analyse the ecommerce industry in India and consumer behaviourism in making online transactions, what are the issues faced by the consumers during online shopping through digital means, what are the various laws in India that protects the consumer rights and their interest, who are the various stakeholders in ecommerce industry in India. This research paper also focuses on studying, what went wrong with the 34 year old Consumer Protection Act 1986 for which the Government of India repealed it and in its place brought the new Consumer Protection Act 2019. This research paper also wants to analyse the various provisions of law that is contained in the new Act and its relevance to ecommerce industry.

## **II. Research Methodology**

The research methodology as adopted by the researcher is specifically qualitative, descriptive and analytical in nature. The various sources from which the researcher has collected information are mostly from documents and files, articles available online data maintained in various e-repositories, books, legislative enactments, Acts. All the above information and data has been properly and systematically analysed and on the basis of which research hypothesis has been formulated and answered by the researcher by following the rules of research methodology. And due consideration and credit has been given to all the references obtained in coming to a final conclusion on the research topic.

### III. Defining E-commerce

“Ecommerce” is defined as a process of businesses and trading with goods and services using electronic links. “It means doing business over the internet selling goods and services which are delivered offline, as well as goods which are ‘digitalised’ and delivered online such as ‘computer software’”<sup>2</sup>.

This mode of buying and selling through internet is known as “*electronic commerce*” (EC) or “*ecommerce*”.

### IV. Classification of Ecommerce

#### *Business to Business ecommerce (B to B)*

This is the longest form of ecommerce business, it involves supply chain management, e-procurement etc.

#### *Business to Consumer ecommerce (B to C)*

It involves Businesses introducing and selling products to the consumer through online internet service.

#### *Consumer to Consumer (C to C)*

Here participants in an online market place can buy and sell goods to each other.

#### *Businesses to government (B to G)*

Here businesses sell goods and services to Government.

### V. Impact of Ecommerce on Consumer Rights

Before discussing in details, the impact of ecommerce on consumer rights, let us first know about what are the rights available to a consumer. The United nation has laid down certain guidelines to protect consumer rights, these guidelines are known as “United Nation Guidelines For Consumer Protection” (UNGCP), for bringing effective legislation for protection of consumer rights, establishment of institutions to redress the consumer grievance and assisting the member states in formulating and enforcing domestic and local laws, rules, regulations for

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<sup>2</sup> OECD Economic Outlook, Vol-67(2007).

effective implementation of such guidelines<sup>3</sup>. The US President John F. Kennedy on March 15<sup>th</sup> 1962, has recognised four basic consumer rights, i.e. right to safety, right to be heard, right to be informed and right to choose, these rights later on known as “Consumer Bill of Rights” which were further expanded by the “UNGCP” into eight rights by including four more new rights into it, i.e. right to basic needs, right to redress, right to consumer education, right to healthy environment<sup>4</sup>.

These eight rights have formed the “basis to protect consumer interest” throughout the entire world. The said rights can be described in the following terms:

- **Right to satisfaction of basic needs:** - to have access to basic, essential goods and services: adequate food, clothing, shelter, healthcare, education and sanitation.
- **Right to a healthy environment:** - to live and work in an environment which is non-threatening to the well-being of present and future generations.
- **Right to safety:** - to be protected against products, production processes and services that are hazardous to health or life.
- **Right to be heard:** - to have consumer interests represented in the making and execution of government policy, and in the development of products and services.
- **Right to redress:** - to receive a fair settlement of just claims, including compensation for misrepresentation, sale of spurious goods or unsatisfactory services.
- **Right to be informed:** - to be given the facts needed to make an informed choice, and to be protected against dishonest or misleading advertising and labelling.
- **Right to consumer education:** - to acquire knowledge and skills needed to make informed, confident choices about goods and services,

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<sup>3</sup> A History of Consumer Rights and Improvements, By Lexington Law, August ,23<sup>rd</sup> ,2011, <https://www.lexingtonlaw.com/blog/credit-repair/history-consumer-rights-improvements.html#>

<sup>4</sup> Consumer Association of South Australia Inc.:  
<http://www.consumerssa.com/consumer-rights#>:

while being aware of basic consumer rights and responsibilities and how to act on them.

- **Right to choose:** - to be able to select from a range of products and services, offered at competitive prices with an assurance of satisfactory quality.

In India, consumer rights are very much present during the Vedic period, but the “consumerism movement” only started, after the enactment of the “Consumer Protection Act 1986”, which provided for the better protection of consumer rights, and led down provisions for establishment of Consumer Councils, and other authorities, for settlement of consumer disputes and matters connected there with.<sup>5</sup> This led the consumers to become more vigilant about their rights and became protective to safeguard their rights from the mischievous traders, online merchants and service providers who use unfair trade practice, sale spurious goods and are deficient in their services.

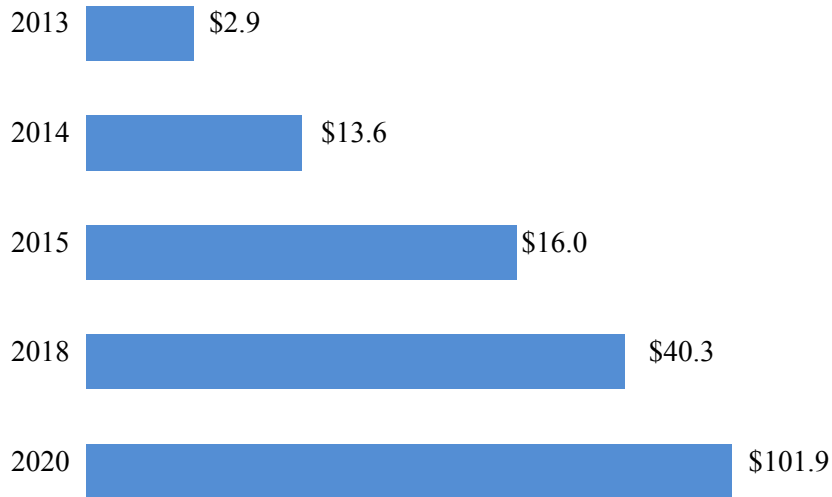
In the year 2012, the Indian retail market composed of 92% in the unorganised sector, and 8% in the organised sector, out of which only 0.2% relates to online segment. Hence, ecommerce is a small silver of the Indian retail<sup>6</sup>. The ecommerce business in India has shown exponential growth in the last decade only because of the rapid adoption of technology, by the consumers and traders and also due to the digitalization policy of the Government of India.

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<sup>5</sup> Statement of Object and Reasons, (Consumer protection Act 1986).

<sup>6</sup>India E-Commerce, A report by AsselPartners India, 2014, [www.slideshare.net/accelindiavc/accel-partners-india-india-ecommerce-insights-march-2014](http://www.slideshare.net/accelindiavc/accel-partners-india-india-ecommerce-insights-march-2014).

Figure-1 (E-commerce size (\$ billion) in India



Source – National report on ecommerce development in India (UNIDO)

*\*“Ever since Men began to modify their lives by using technology, they have found themselves in a series of technological trap”\** (Roger Revelle).

So, due to the rise in online transactions and more dependency on ecommerce, the consumers faced many issues and drawbacks i.e. taxation issues, distribution of spurious and counterfeit goods, fraud, cyber security threat issues, low digital literacy among the consumers, data theft etc. The ecommerce giant companies like, Amazon, Flipkart, Snapdeal has also spending huge amounts of money to entice and lure the Indian consumers, so that they could expand their dominion in the Indian market.<sup>7</sup> All this practices, has in fact raised the number of disappointed consumer, and also because of the faulty product and deficient services that they receive from the online merchants, and in order to redress

<sup>7</sup> United National Industrial Development Organization, National Report on E-Commerce Development in India: [https://www.unido.org/sites/default/files/2017-10/WP\\_15\\_2017\\_.pdf](https://www.unido.org/sites/default/files/2017-10/WP_15_2017_.pdf)

their grievances, they approach mostly to the Consumer Courts as established under the Consumer Protection Act 1986.

This led to filing of more number of consumer cases and resulting in more backlogs of cases as because the consumer courts were already overburdened and packed with many pending cases with them. Also the Consumers Forum, in online dispute related cases, most of the time, fails to get himself satisfy, that whether the case is amenable to their territorial jurisdiction or not, as there is a confusion pertaining to “where the cause of action arouse”, as because in online purchase, the trader or merchant, sells their product on virtual mode and they don’t have a physical store or shop available in a particular fixed place and their registered offices and branch office are sometimes situated in far flung areas or mostly outside India and this gives rise to jurisdiction hunting situation, as because the act was not adequate and well drafted to address these kind of issues and this lead to ambiguity in deciding cases pertaining to online buying and selling disputes. Because as per the provisions of consumer protection Act 1986, “a complaint shall be instituted in a District Forum within the local limits of whose jurisdiction, the opposite party or parties resides, at the time of institution of the complaint, or where the opposite party or parties have a place of business or a branch office or personally works for gain, or where the cause of action wholly or partly arises”<sup>8</sup> Further the Consumer Protection Act 1986, entertains only disputes where there is a “defect in goods” or “services” or regarding “unfair trade practice”, and does not have any provisions to redress issues pertaining to delay in delivery of goods purchased through online medium.

These loopholes were not even properly addressed in the Consumer protection Act 1986, Indian Contract Act, Indian Penal Code, Indian Evidence Act, Indian Stamp Act, and Information Technology Act 2000. The online negotiations, that took place, between the buyers and sellers, at the time of purchase of goods, or hiring services through electronic medium,, are not even considered as a valid form of contract or accepted form of documentary evidence within the definition of the Act itself, and which can be produced or accepted or relied upon by the Court, as a valid piece of documentary evidence, because all the above stated laws, are very old and were enacted when ecommerce business were not prevalent during that period. Hence all these lacunas in law, has grossly effected

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<sup>8</sup>Section-11(1), (2),’ Consumer Protection Act 1986’.

the consumer rights and interest and they are being victimised, by the scrupulous online merchants and traders, who used the ecommerce medium, to accumulate huge wealth resorting to unfair means and at the peril and pain of the consumers, by jeopardising their right and interest. So, all these speculations and anomalies, have led to the enactment of a new law of consumer protection, which specifically addressed all the issues pertaining to ecommerce business.

Some of the Major Acts also got amended i.e. Contract Act, Indian Penal Code, Information Technology Act, Indian Evidence Act, Indian Stamp Act, so as to include provisions pertaining to validation of electronic transactions, electronic records, electronic documents and e-contracts, data security and authenticity of ecommerce transactions done online. But all such amendments still could not fill the lacuna and because of which that the Indian consumers suffer a lot while addressing their issues pertaining to ecommerce transactions, so finally the Government of India came up with the decision to repeal the old Consumer Protection Act 1986 and replace it with a new one which addresses all the issues which a consumer encounters doing ecommerce transactions.

The Consumer protection Bill 2019, was introduced in the parliament in January 2018, to replace the three decade (34 years) old "Consumer Protection Act 1986" because irrespective of amending the acts for three times, this old act failed to address issues pertaining to online transactions, telemarketing, multilevel and digital marketing. The Bill was introduced in the parliament on July 8<sup>th</sup> 2019 and got the assent of the President on August 9<sup>th</sup> 2019.

## **VI. Salient Features of Consumer Protection Act, 2019**

The various features contained in the new consumer protection are as follows:

### **A. Application to E-Commerce Transaction**

The Consumer protection Act 2019, has widened the definition of 'consumer'. As per section-2(7) of the Act, a 'consumer' is person who buys any goods or hires any services either through online, or offline transaction, or by any electronic means, teleshopping, direct selling or from multi level marketing. Hence the new Act along with others also brought ecommerce transaction disputes within its jurisdiction.

### **B. Complaints through E-filing**

The new Act, provided another facility to the consumers, in which a consumer is entitled to file complaint before the District, State or National Commission through e-filing, though the traditional mode of physical filing of complaints also available to him . The Act also provided, if the complaint seeks to appear and conduct hearing through video conferencing mode, then the Consumer Court can also extend the technical support for the same<sup>9</sup>.

### **C. Enhanced Pecuniary Jurisdiction**

The Act also raised the pecuniary Jurisdiction of all the District, State & National Consumer Commission. The District Consumer Forum(Now District Consumer Commission as per the New Act) is entitled to entertain complaint, where the value of the goods or services paid does not exceed Rs, 10,000,000/- (INR Ten Million). The State Commission can entertain complaint where the value of the goods or services does not exceed Rs, 100,000,000/- (INR One Hundred Million). Similarly National Commission can exercise jurisdiction where the value exceeds Rs, 100,000,000/- (INR One Hundred Million)<sup>10</sup>.

### **D. Protection of Personal Data**

The New Act also made provisions, where if a trader, merchant or service provider shares any of the personal confidential information of the consumer without consumer consents, than it will amount to be covered under the definition of “Unfair trade practice”<sup>11</sup>.

### **E. Monetary Cost for Misleading Advertisement**

The New Act added penalty provisions for punishing any manufacturer, trader, retailer or seller or any endorser, advertiser and publisher who ever makes any false or misleading advertisement. The Central Consumer Protection Authority is entrusted with the powers to punish the offender, by imposing penalty orders or by passing directions of prohibition or discontinuance orders to the trader,

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<sup>9</sup> Chapter-4, Section-35(1), 38(6), “Consumer Protection Act 2019’.

<sup>10</sup> Sections, 34,47,58 ‘Consumer Protection Act 2019’.

<sup>11</sup> Section-2(47),ix, ‘Consumer Protection Act 2019’.

manufacturer, and publisher etc, whoever was found to have engaged in such misleading advertisement<sup>12</sup>.

#### **F. Mediation**

The New Act provides provisions for Alternative Dispute Settlement Mechanism (ADR), whereby the complainant may settle the dispute through the process of “mediation” by amicable means in a quicker way but provided that it is only possible where both the parties are willing to refer their dispute for settlement through mediation only<sup>13</sup>.

#### **G. Complaint can be Filed where Complainant Resides**

The most relevant amendment done in the new Act is this one, whereby a complainant is entitled to file complaint where he resides or works for gain<sup>14</sup>. The earlier act contained provisions for filing complaint only at the place where defendant reside or works for gain or where the cause of action partly or fully aroused. This new provisions will certainly give shy of relief to those complainants, who earlier suffered a lot, as they could not afford to file cases at the place where the defendant resided or works for gain, because such places are very far from the place of complainant residence, so it could not be possible for the complainant to approach the District Forum having jurisdiction, to file the complaint and conduct the hearing where defendant resides or works for gain.

#### **H. Creation of Central State, District Consumer Protection Council**

The Act lays down provisions for establishment of Central, State and District Consumer Protection Council, whose objective is to provide advice to the Government on promotion and protection of consumer rights under the Act, within the Country. State and District<sup>15</sup>.

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<sup>12</sup> Section-21, ‘Consumer Protection Act 2019’.

<sup>13</sup> Chapter-4 –Section-37, r/w,Chapter-5,Section-74-81(Mediation), ‘Consumer Protection Act 2019’.

<sup>14</sup> Chapter-4, Section-34(2)(d), ‘Consumer Protection Act 2019’

<sup>15</sup> Chapter-2, Section-3 - 9 ‘Consumer Protection Act 2019’.

## **VII. Consumer Protection E-Commerce Rules, 2020**

The Central Government in exercise of the power conferred under section 101(1), sub-clause eg. Consumer protection Act 2019, has framed the rules named as 'Consumer protection E-Commerce Rules,2020. It applies to all kinds of goods and services availed through electronic and digital networks and also include digital products. It specifies all forms of unfair trade practice applicable to all kinds of ecommerce models. It also lays down the duties and liabilities of all kinds of ecommerce entities. And in case if any ecommerce entity violates the said rules, the Consumer Protection Authority as appointed under the Act, will initiate action against the same as per the law laid down under the Consumer Protection Act 2019.

## **VIII. Conclusion**

In today's Consumer behaviour pattern, ecommerce has certainly become an integral part of their life. The Government of India, initiate to create a digital platform and connect the entire globe with it, including the rural sectors is also a laudable step along with the promotion of Information and Technology Media among the peoples as a means for the advancement of the nation. But every technology has some bugs that need to be fixed, so do in the case of mushrooming of ecommerce entities and the consumer being more reluctant on the online buying and selling of goods and services also created many techno-legal hassles and bugs for which the consumers rights are being hampered and as there was no direct regulatory authority present to regulate the same just before passing of the Consumer Protection Act 2019, So the rights of the consumers were being compromised as the Consumer Forum were not adequately equipped by law to deal with such cases. Hence the need aroused for bringing a separate law by repealing the old act of Consumer Protection. So by the introduction the new Consumer Protection Act 2019 along with the Consumer Protection Ecommerce Rules,2020, the consumers interest are being given due consideration and it won't be wrong to say that the new Act and the new Ecommerce Rule, both are very welcome initiate and relevant in protecting the rights and the consumers interest and shaping the modalities of ecommerce transaction.

