

## AN ANALYSIS OF LEGAL REGIME STRENGTHENING THE POSITION OF E-CONSUMERS

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**Abstract:** Electronic Commerce or E-Commerce is a revolution in itself. The fact that we can actually have a great shopping experience in just a few clicks is what makes it so fascinating. The virtual shopping experience and the time and cost it reduces, makes it an obvious choice for the masses. However, the E-Commerce industry has to go through a lot of difficulties in India to make the facilities available to its consumers. Considering the consumer point of view, the growing numbers of incidents on cyber crimes and the failure rates of e-commerce transactions adding to it, the incidents of cheating, have called for greater rate of caution. The legal regulations relating to e-commerce are very basic and no consumer specific provision can be found in the Information Technology Act 2000. However, if the IT Act is considered in the light of the traditional legislations like Consumer Protection Act and the Sale of Goods Act fills the void to a small extent which was created due to lack of specific legislation. The article aims to analyze the legal regime aimed to protect the Consumers in the massive E-Commerce industry and the consumer related problems.

**Keywords:** E-Commerce, Consumer laws, E-Consumer.

**Introduction:** Though there exists no standard definition for the term e-commerce, it is generally used in the sense of conducting business online. Such electronic means include 'click & buy' methods using computers as well as 'm-commerce' which make use of various mobile devices or smart phones. This term takes into account not just the act of purchasing goods and / or availing services through an online platform but also all other activities which are associated with any transaction such as, Delivery, Payment facilitation and Supply chain and service management.

E-commerce has defined the traditional structure of businesses trading with consumers bringing to the fore various business models which has empowered consumers. The various modes of E-Commerce are Business 2 Business, Business 2 Consumer and Consumer 2 Consumer. Some of the most common forms of e-contracts are click wrap, browse wrap and shrink-wrap contracts. In each of these contracts, the terms and conditions of the contract are made available to the contracting party in a form that is significantly different from the usual paper contracts. In case of a click wrap contract, the contracting party's affirmative acceptance is taken by means of checking on an 'I accept' tab. Also, there is typically a scroll box that allows the contracting party to view the terms and conditions. Most of the times the consumer is forced to accept the terms and conditions as he would have to read the complete document for the same.

Social networks play an important role in driving consumers online and getting them to engage with brands. E-commerce sales from social media grew by 202% in 2014 and it is expected to further increase. Worldwide B2C e-commerce sales reached \$1.7 trillion in 2015, and it is estimated to reach \$2.35

trillion by 2018. With the government wanting to increase internet availability in India it is further likely to boost e-commerce in India.

**Ecommerce and the Consumers:** Due to the nature of online transactions the consumer is benefitted to a large extent due to reduction of time consumed and expenses. However, at the same time the consumers face a lot of problems. Major consumer issues raised by Internet transaction systems include:

Security, Privacy, Terms and Conditions, Access, Dispute Resolution, Fees and Charges, Fraud, Jurisdiction issue is most important issue in E-commerce.

**Consumer Protection Legislations in India:** In view of the growing demand for e-commerce, it is important to keep in mind consumer protection issues. Unfortunately the laws to protect e-consumers is not well developed in India. The Consumer Protection Act 1986(COPRA) and the Sale of Goods Act govern the relationship between consumers and service/goods providers. There is no separate consumer protection legislation to cater the needs of E-Commerce industry which comes with challenges specific to the online atmosphere. The Information Technology Act 2000 deals with just the basic provisions which were provided under the UNCITRAL Model Law and hence it is required to consider the previous legislations and IT Act together to find solutions for the E-Consumer disputes.

Liability under the CPA arises when there is "deficiency in service" or "defect in goods" or occurrence of "unfair trade practice". The CPA specifically excludes from its ambit the rendering of any service that is free of charge. If an online platform is not charging the users, the CPA may not apply. If actual sales are taking place on the online platform, the users will be considered 'consumers' under the

CPA and its provision will apply to the sale of products by the online platform. Depending upon who is actually selling the goods or rendering services the liability may trigger. The distributor of goods also comes within the purview of the CPA. There is a special adjudicating forum (with appellate forums) which is constituted under the CPA. Some of the various sanctions which may be imposed under the CPA are: Removal of defects / deficiencies, Replacement of goods, Return of price paid, Payment of compensation as may be awarded and discontinue the unfair trade practice or the restrictive trade practice or not to repeat them.

**Critical Analysis and Conclusion:** Under COPRA, Consumer is defined as, any person who, buys any goods or[hires or avails of] any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose. It is pertinent to note that many ecommerce portals give services free of cost and the e-consumer fails to qualify as a consumer hence according to the law, cannot claim under COPRA.

*Indian Steel & Wire Products Ltd. vs. State of Madras and Ors.*, (AIR 1968 SC 478) The Supreme Court, in the abovementioned case, laid down the essentials of a valid sale as follows: to constitute a valid sale, there must be concurrence of the following elements viz. (1) parties competent to contract (2) mutual assent (3) a thing the absolute or general property in which is transferred from the seller to the buyer and (4) a price in money paid or promised. However, in e-commerce it is very difficult to determine the age of the consumer and also mutual assent is doubtful as the shrink wrap and click wrap contracts mostly

provide the terms and conditions which are totally dominated and one sided through which the consumer is forced to accept them as there is no choice.

Further, the jurisdiction issues are not resolved and as a result the question of which country's laws would be applicable is still undecided. The payment method under E-commerce is severely affected by the online frauds and other cyber crimes. The police and other enforcement agencies are not well trained and hence causes a lot of problem to an E-Consumer. Another problem is regarding the adjudication mechanism. While the e-consumer gets access to the products and services online at the ease of their home, but at the same time they have to approach traditional courts and go through standard procedures to claim their remedy. there are many such problems which creep up as e-commerce is in its nascent stage in India but unfortunately the consumer is in the receiving end.

A business is not reviewed in isolation but is always considered in a combination with the consumers of its good and services. Given such high level of importance that a consumer has in a business network, it is a matter of great shame that their consumer rights are not protected due to non-availability of effective and stringent laws and the ineffectual redressal mechanisms, specially in e-commerce or online transactions. Thus it can be concluded that the IT Act and the traditional laws are not sufficient to protect the E-Consumers and hence there is a need for better legislation. However, the recent Consumer Protection Bill, 2016 has indeed brought a hope in this regard.

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## References:

1. <https://hostingfacts.com/internet-facts-stats-2016/>, visited on 8/10/2016
2. Bijal Bhatt, Business intelligence: Facts of Business; Business Sciences International Research Journal ISSN 2321 – 3191 Vol 2 Issue 1 (2014), Pg 13-17
3. [http://www.nishithdesai.com/fileadmin/user\\_upload/pdfs/Research%20Papers/E-Commerce\\_in\\_India.pdf](http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/E-Commerce_in_India.pdf), visited on 9/10/2016
4. *Santosh Pavan Tammineni*, Mobile Phone Role In Internet Usage And Communication Services; Business Sciences International Research Journal ISSN 2321 – 3191 Vol 3 Issue 1 (2015), Pg 55-60
5. Ronald De Bruin, Consumer trust in Electronic Commerce: time for best practice” (New York; Kluwer Law International; 2002)
6. Bivas Chatterjee, *Cyber Contract*, ( Hyderabad; Asia Law House; 2015)

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