

# LEGALFOXES LAW TIMES

## CONSUMER PROTECTION IN ELECTRONIC COMMERCE TRANSACTIONS

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### ABSTRACT:

The protection of consumers and merchants in business-to-consumer or business-to-business transactions conducted through electronic commerce is seriously threatened by a number of serious issues, including privacy concerns, infringements of intellectual property rights, online piracy, unsolicited commercial electronic advertisements, spamming, restrictions on free speech, censorship, and other dishonest practises. Despite the fact that e-commerce has a number of benefits, such as quick and easy access to a worldwide virtual market, lower distribution costs, faster turnaround times, and the development of stronger consumer relationships, among others, the legal and security risk remains a significant concern in the digitalized market. Therefore, consumer and merchant security is crucial for the proper operation of e-commerce. Laws apply to the buying and selling of items inside the e-commerce zone. But in virtual worlds like second life, there are no regulations that a business must follow. Although one might contend that this is a positive development, individuals do have moral, social, and ethical duties to the users. Consequently, an effort has been made in this paper to extensively discuss the legal context and compliance with regard to E-Commerce in the global market that has gone digital.

### INTRODUCTION:

The pre-globalization era gave birth to the Consumer Protection Act of 1986. The Indian market has had exceptional growth since liberalization, reaching a current value of \$2.8 trillion and aiming to reach \$ 5 trillion<sup>1</sup> by 2024. The choices accessible to customers and their goals have changed in tandem. India is one of the e-commerce markets that is predicted to develop the fastest, with a market value of \$84 billion by 2021. New delivery systems for goods and services

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<sup>1</sup> (sharma, 2019)

have been created as a result of the establishment of global supply chains, growth in international trade, and rapid development of e-Commerce. This has given consumers new opportunities. The reliance on internet marketplaces is currently increasing in the world in which we live. The entire Indian consumer diaspora, regardless of their financial situation or age, is involved in this online market system by watching YouTube, buying something from Flipkart, Amazon, or Grofers, signing up for Netflix or Amazon Prime, using the taxi services Ola or Uber, learning through educational apps like Byju's or Unacademy, placing food orders through Swiggy or Zomato, or paying with Paytm or Google pay. Due to the existing legislative framework's silence on these issues, the law governing e-Commerce transactions has therefore largely been developed around such judicial decisions. Even though these rulings acted as a band-aid solution, they could not be viewed as a replacement for specific legislation because legal questions can always be answered differently unless they are specifically addressed by legislation.

#### DEFINITION:

#### E-COMMERCE:

The Organisation for Economic Cooperation and Development (OECD) claims that there is no single definition of e-commerce.<sup>2</sup> The Concise Oxford English Dictionary made an attempt to describe e-commerce, stating that it refers to business transactions carried out electronically over the Internet. E-commerce, according to Akintola et al., is the electronic purchase and sale of goods and services over computer networks like the Internet. Khairi, on the other hand, defined e-commerce as a business where sellers utilise the Internet to advertise and sell goods and services to customers all over the world. The Internet here enables face-to-face interaction between the trader and the buyer to be replaced by direct contact. Bali, on the other hand, asserted that e-commerce always occurs when services are provided and paid for online. Therefore, for the purposes of this essay, "e-commerce" refers to transactions that involve the purchase and sale of products and services through the Internet, with a focus on online shopping.

#### E-CONSUMER:

The term consumer is generic which allows for broad generalization. A "Consumer" can refer to several distinct types of people. In other words, a consumer is somebody who actually uses a

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<sup>2</sup> Organisation for Economic Corporation and Development (OECD), Report on Electronic Commerce: Opportunities and Challenges for Government (OECD, 1997)

product or service. Such as power consumers, employers, hotel guests, bank clients, and insured or policyholders, etc. The Nigerian Consumer Protection Council (CPC) Act of 1992, on the other hand, defined a consumer as a person who purchases, consumes, maintains, or discards products or services.

According to Monye et al., the use of the word "individual" in the aforementioned statutory definition did not preclude a group or class of individuals from taking legal action. In other words, the CPC Act allows for the accommodation of a group or class of individual customers as "consumers." However, the term "Consumer" in the context of paper refers to a buyer of products and services made electronically through the Internet or a website run by e-traders and merchants. The terms "e-commerce consumer," "online consumer," and "electronic consumer (e-consumer)" are used frequently and interchangeably in this study.

It is important to note that the growth of ICT is what leads to the birth of this new customer demographic known as "online consumers" or "e-consumers." As online shopping becomes a new way of life for people all over the world today, the number of e-consumers is growing every day.

#### ADVANTAGES AND DISADVANTAGES OF E-COMMERCE:

The advantages of e-commerce are numerous. Let's just say that e-commerce has made it possible for people to do business without being constrained by geography or time. Seven days a week, twenty-four hours a day, purchases can be made. Making it accessible from anywhere in the world, at any time, consumers can now purchase online in the convenience of their own homes and workplaces.<sup>3</sup> It is not necessary for a customer to enter the store. He can rapidly compare costs, search through a large number of products, and order practically anything he wants.

Despite the benefits mentioned above, there have been restrictions on what can be purchased online. The inability to recognise, see, or touch the goods prior to purchase is a problem, as is the ambiguity of the product descriptions provided. Security and privacy of transactions are not guaranteed. Anyone may simply launch a business on the Internet, good or evil. Many fraudulent websites squander users' funds. These emphasize the requirement for proper legal protection for

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<sup>3</sup> (Ozuru)

customers of online retailers. Otherwise, consumers would be taken advantage of and subjected to a variety of unfair business practises that are possible in regular commercial transactions.

#### CROSS BORDER E-COMMERCE TRANSACTIONS:

Due of the ease with which online buyers and sellers from around the world can connect via cross-border e-commerce, online cross-border customers must overcome the following difficulties:

- Dealing with unfamiliar brands in a language you don't speak.<sup>4</sup>
- Lack of assurance that you'll get the product you requested or were promised.
- Hidden fees, such as those associated with customs duties and currency conversion as well as shipping or delivery.
- Product traditionalism to meet local standards.
- Lack of clarity on a seller's jurisdiction's safeguards, possible remedies in the event of a disagreement, and the enforcement of consumer awards.

#### CONSUMER PROTECTION IN E-COMMERCE:

At this point, it is important to keep in mind the distinction made between online consumer protection and online consumer redress. A cyber-consumer who is a party who has been wronged by a CCT may seek redress from a merchant in the event that the products were not delivered, were delivered incorrectly, or the merchant engaged in fraudulent activities. Instead of the more general but connected topic of cyber-consumer protection, redress is the main issue. Cyber-consumer protection is a comprehensive notion that includes difficulties with contract term regulation, bargaining phase regulation, and access to justice issues. Therefore, consumers have the option of seeking redress in order to resolve their problems, and protection is a pre-action measure that toes a fine line between redress and protection. For instance, there may be fewer disputes and they may be less expensive if there is stronger protection through uniform and implicit conditions because there won't be a need for counsel on the application of private international law standards to the current legislation<sup>5</sup>. Therefore, the effectiveness of enacting

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<sup>4</sup> (Amin, 2016)

<sup>5</sup> (Muhammad Abrar, 2016)

pertinent legislation and the enforceability of recourse options for online consumers who have been duped.

#### LEGAL FRAMEWORK ON CONSUMER PROTECTION LAWS IN A GLOBAL PERSPECTIVE:

The legal environment for e-commerce varies between different countries, and some of them pass regulatory bills. El Salvador, Mexico, and Peru, for instance, rely on normal civil law to regulate the efficient operation of e-commerce. While nations like the United States, France, Chile, Colombia, and Colombia have a specific provision for e-commerce in their consumer protection laws. The Organization for Economic Corporation and Development (OECD) proposal lays forth the fundamental elements for e-commerce's efficient operation and the<sup>6</sup> security of online shoppers. Additionally, it adds two new clauses related to payment protection, goods safety, and risks to privacy and security.

Basic principles, such as collection limitation, data quality, purpose specification, security safeguards, individual participation, accountability, implementation, and interoperability, are included in the revised OECD recommendation of the Council regarding guidelines governing the protection of privacy and cross-border flows of personal data. E-commerce's effectiveness is crucial for sustaining economic growth, boosting public welfare, and promoting social cohesion. It is a crucial component of the multilateral trading system's current situation.

The developing countries will be able to accomplish essential economic development goals like poverty reduction, education, and other areas thanks to the quick and massive growth of e-commerce. The WTO members are expected to create a global policy environment to strengthen the economic zone from an international perspective in order to accomplish this quality in this digitised era, which is benefiting increasingly from the rapidly emerging power of E-Commerce.

#### A CONCEPTUAL FRAMEWORK ON JURISDICTIONAL ASPECT TO RESOLVE DISPUTES ARISING IN ECOMMERCE:

Concerning the issue of international jurisdiction over disputes arising in e-commerce, cyber consumer protection faces a special challenge. Using common rules, the jurisdictions are

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<sup>6</sup> (Dilshad Shaik)

established when creating the law. The Brussels Convention, which is now known as the 44/2001 European Rules on International Jurisdictions, and the Rome Convention of 1980 on the Applicable Law in Contractual Matters do apply in the European system. These texts include provisions on conflicts of laws that were often meant to safeguard consumers by letting them select the jurisdiction in which they wish to live.

The courts' job is to apply those texts to particular issues arising from electronic commerce. According to the national reports, the greatest challenges are locating the allegedly wrongdoing acts and determining if those crimes pertain to a certain market. The problems in identifying certain circumstances are not restricted to national boundaries, and the lack of unity may make some people doubt the value of traditional methods in Cyber Consumer protection.

The growth of unfair business practises online calls for particular responses from states. Then, it must be concentrated on specific electronic commerce regulations developed by national legal systems. The member states should rely on international treaties or agreements for reciprocal enforcement if they want to be clearer about the jurisdictions for disputes involving e-commerce. These agreements frequently consider the foreign entity's relationships while keeping the sovereign's interests in mind when it comes to authentication.

#### E-COMMERCE TRANSACTIONS UNDER THE CONSUMER PROTECTION ACT, 2019:

It was past time to update the consumer protection laws to reflect the demands of the market and the current state of the economy. The Council on Consumer Protection in E-Commerce, which was established by the Organization for Economic Co-operation and Development (OECD), has outlined general guidelines in their recommendations for a number of issues that are specific to e-Commerce transactions, including (i) Transparency in Information Disclosure, (ii) Data Security, (iii) Payment Security, (iv) Responsible Endorsement, and (v) Redress.

Making sure that customers who engage in e-Commerce transactions receive the same level of protection as those who engage in conventional forms of commerce is one of the main goals of these recommendations. The detailed disclosure standards addressed therein make clear that the system envisioned by these proposals is focused on increasing transparency in e-Commerce

transactions.<sup>7</sup> To help their customers make an informed choice, e-commerce businesses should present all pertinent and accurate information on the goods and services they offer directly or indirectly. In order to ensure a fair market, the standards also call for the underlying contracts to be fair and to give customers the necessary latitude in making decisions. The OECD Council contends that e-Commerce companies should be accountable for keeping an eye on other people who use their platform to promote their goods to make sure they are not engaging in any unethical behaviour. To accommodate the needs of India's expanding online consumer market, the Consumer Protection Act, 2019 (hereinafter referred to as the "2019 Act") has made an effort<sup>8</sup> to fill in the gaps in the 1986 Act's regulatory framework and has incorporated many of the general guidelines suggested by the OECD Council in its recommendations.

#### CONCERNS UNDER THE 2019 ACT :

##### Unfair Contracts:

The 2019 Act has expanded its scope to include unfair contracts, giving consumers relief from being forced to sign standard form contracts without the chance to haggle. A consumer may now contest such a contract before the State Commission or the National Commission and seek appropriate remedies under the terms of the new Act. The "electronic service providers" are not included by the current definition, which only refers to "contracts between a manufacturer, trader, or service provider and a consumer." It is important to note that the term "service" under the Act precludes providing of any service without charge, and that the electronic service providers have frequently used this argument as a defence in court cases. Consumers are automatically subject to the terms and conditions of use that these electronic service providers have unilaterally established when they access, browse, or otherwise use the websites of these providers of electronic services. Many times, these terms and conditions include clauses that are detrimental to consumers and release the provider of the electronic service from all liability. By referring to the transactions taking place on their platforms as bipartite contracts between the Seller and the Buyer, the electronic service providers frequently avoid their legal obligations by limiting themselves to being merely "platforms for communication."

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<sup>7</sup> (AYILYATH, 2020)

<sup>8</sup> OECD (2016), Consumer Protection in E-commerce: OECD Recommendation, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264255258-en>.



Some of these contracts proceed under the assumption that consumers have given their consent for these electronic service providers to use, store, or disclose to third parties the personal information they have provided or that they have collected themselves simply by visiting or browsing these websites. The consumer's browser history, SMS data, contact directory, and other information may all fall under the scope of information that may be gathered, used, or disclosed in this way. Even a cursory review of these provisions demonstrates how flagrantly they violate customers' rights to privacy and data protection. They may continue to take advantage of this uncertainty to get out of their obligations unless the definition of the phrase "unfair contracts" is appropriately changed so as to expressly embrace the electronic service providers as well. The OECD Council Recommendation on e-Commerce explicitly argues for the need for such a provision, which further demonstrates its significance.

#### Digital Contents & Digital Services:

Transactions involving digital content and digital services that are transferred via online streaming or on tangible media present particular difficulties that are not adequately addressed by the 2019 Act. India is one of the greatest markets for digital products and services, and a sizable portion of its population relies on online resources for both pleasure and education. A single act of supply, such as the online purchase of a movie or an e-book, or a continuous process over time, such as a subscription to an e-learning programme or a web streaming service, are both examples of the sale of digital materials or services. Depending on the terms of the contract, a consumer may receive digital content or services via transmission on a tangible medium, download to a user's device or to a cloud platform, web streaming, access to digital content storage, or use of social media, among other delivery methods. In these transactions, it's important to make sure that the supplied contents, access rights, storage options, and access frequency all adhere to the conditions of the offer at the time the purchase is made.<sup>9</sup> Consumers frequently complain that they don't have access to or receive incorrect or defective digital content or services, or that they can't access the digital content or services at all.

A clear framework defining the requirements for how digital content or services must comply with a contract or representation and the remedies available to customers in the case of a breach

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<sup>9</sup> (Office, 2019)



should be in place. It applies to any agreement in which the trader agrees to provide a consumer with digital content or a digital service in exchange for payment from the consumer. Additionally, the Directive established specific criteria to judge whether the digital services or contents were in compliance with the contract. According to the Directive, the consumer has the option to have the digital content or service brought into compliance, get a corresponding price reduction, or end the contract in the event of noncompliance. It is always better to set up a self-regulatory system like this than to force customers to go to court to seek relief. A suitable legislative framework should be established to ensure that the contracts governing transactions, especially those involving digital material and services, contain terms that ensure transparency and provide a method for consumers' complaints to be addressed. People who want to buy digital contents or subscribe to such digital services may be required to receive a preview of the contents offered or even a trial period of use from these service providers in order to ensure the conformity of the contents.

#### PAYMENTS UNDER THE E-COMMERCE TRANSACTIONS:

According to the drafted e-Commerce Rules, the e-Commerce entity must facilitate sales payments in accordance with Reserve Bank of India (RBI) regulations. The RBI has released comprehensive rules for the control of payments made in electronic transactions involving e-Commerce businesses acting as intermediaries. This policy aims to control how Payment Aggregators and Payment Gateways, which enable electronic payment transactions involving intermediary e-Commerce businesses, operate. The roles and responsibilities of the parties involved in handling complaints, refunds or failed transactions, return policies, customer grievance redressal (including turnaround time for resolving queries), dispute resolution mechanisms, reconciliation, etc., should be clearly defined in the agreements between Payment Aggregators, merchants, and all other stake holders in accordance with these guidelines<sup>10</sup>. On their website and mobile application, they must also make full disclosures about merchant policies, customer complaints, privacy policies, and other terms and conditions. Payment aggregators must also comply with RBI recommendations on Turn Around Time (TAT) for settlement of failed transactions by having a policy for handling complaints, a dispute resolution process, and deadlines for processing reimbursements, among other things. These guidelines also

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<sup>10</sup> (AYILYATH, 2020)

specify some prerequisites for these payment aggregators to accept merchants. These payment aggregators are supposed to do background and antecedent checks on the merchants to make sure they don't offer fraudulent, counterfeit, or illegal goods, among other things, or that they don't have any bad intentions of defrauding clients.

The terms and conditions of the service as well as the turnaround time for returns and refunds should be made clear on the merchant's website. The Agreement formed between the aggregator and the merchant shall also make protection for security/privacy of customer data. These guidelines specifically forbid the merchants from keeping the customer card or related data.

#### CONCLUSION:

Consumers' interests must be safeguarded in the electronic age, and the areas of primary significance for the efficient protection of online consumers are informed consumers and easy access to appropriate redressable laws for electronic transactions. Additionally, consumers must be self-sufficient to protect their own interests. For e-consumers, having accurate product<sup>i</sup> information is crucial since it can assist them understand the advantages and dangers of engaging in a given transaction. If the consumer is already aware of this information, there won't be any needless letdown, which will prevent any further problems. Additionally, consumers are not held accountable for the terms and conditions of contracts they enter into, and most consumers lack the knowledge necessary to understand the significance of those terms. When revealing information to customers about their cancellation and return policies—including the window of time following the conclusion of a binding contract—merchants engage in misleading behaviour. Before the transaction is completed, it should be made clear if there are no cancellation, return, or refund rights. The legal regulations should provide customers with fair and inexpensive ways to resolve conflicts and seek retribution. Given these realities, it is imperative that the relevant legislation be in place to safeguard online shoppers. According to the improvisation, it is also crucial for the member States to update their E-Commerce legislation to take into account new concerns in this digitally advanced age. efficient laws and their efficient enforcement are essential for enhancing cyber-consumer protection since they will shield consumers from harm caused by unethical business practises.

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