



Scope and Applicability of Consumer Protection Laws and OECD Guidelines on E-Commerce in India

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Abstract

Electronic Commerce businesses isn't expressly characterized in any of the consumer enactment, however is commonly characterized as "activities on internet for purchasing and selling of goods and services". As the Internet is developing all over the world, the e-commerce scope has developed in parallel with the growth of the internet. For Indian traders, the Internet is a huge stage for trade and trade is noteworthy. As well as being perfect for consumers, this stage is beneficial for traders. Consumers have numerous advantages available, such as multiple choices, convenient delivery services, and quality goods at competitive prices, etc. In a very limited capacity to focus, e - commerce has revolutionized the system of buying and selling products and services. The present article is an endeavour to compare the OECD guidelines vis a vis Indian law in relation to E Commerce.

Keywords- OECD, Consumer, India, E Commerce, Law

1. Introduction

Electronic Commerce businesses isn't expressly characterized in any of the consumer enactment, however is commonly characterized as "activities on internet for purchasing and selling of goods and services". As the Internet is developing all over the world, the e-

commerce scope has developed in parallel with the growth of the internet. For Indian traders, the Internet is a huge stage for trade and trade is noteworthy. As well as being perfect for consumers, this stage is beneficial for traders. Consumers have numerous advantages available, such as multiple choices, convenient delivery services, and quality goods at competitive prices, etc. In a very limited capacity to focus, e - commerce has revolutionized the system of buying and selling products and services.

The historical backdrop of e-commerce begins with the main ever-online deal: on August 11, 1994, through his site NetMarket, an American retail stage, a man sold a CD by band Sting to his companion. This is the primary case of a buyer buying an item through the World Wide Web from a business — or "e-commerce" as we usually know it today.

E-commerce has since developed to make items easier to find and purchase through online retailers and shopping malls. Autonomous consultants, independent firms, and big business have all benefited from e-commerce, empowering them to sell their products and ventures on a scale that was impractical with customary disconnected retail.

There are different favourable circumstances of utilizing online shopping entryways, for example, Amazon, Flipkart, which guarantee various decisions for a wide scope of online products with an energetic and effective delivery framework, on the other hand online tasks are embraced for payment and booking purposes by Railway, State Electricity Boards, Banks, Movie Theatres, and so forth. The attainability of online transactions to the Indian exchange industry and different transactions is astounding thusly. In any case, the bleak reality on the opposite side of the coin is that there is a disservice in entering such online transactions even with such an expanded degree, being the dubiousness in the laws identifying with them.

Note that E-commerce comprises many segments, some of which have their own names. Some of the examples are stated as under:

- **electronic catalogues'** “refers to implies whereby sellers can impart their offerings to potential purchases/buyers”

- **electronic data interchange (EDI)** “refers to a specific family of standards for communicating the structured data that represent EC transactions” and
- **Electronic auctions** “for a specific set of mechanisms for setting prices.”

2. The ‘Cyber’ Market

The online medium offers distinctive facilities that could be used to direct business activities. The Cyber Market is a place where large number of people of different join together form different place with the use PC to PC correspondence. World Wide Web, newsgroups, and email are the types of online correspondence that are enormous to web-based business. Web-based display sites may be straightforward or expandable and may allow less consumer interactivity. The least complex type of advertising site is a page that gives the name of the client organization, a description of the items or administrations it offers, and ways to talk to the organization. The most outstanding business destinations allow consumers to purchase items on the web. Despite of that many websites who are having their own websites also advertise of the other websites.

2.1 Deceitful Marketing Practices

The primary security issue in internet business is an online credit card hack, that is, getting cash from another's account without approval. The details which got without approval are utilized for withdrawal of money from unapproved accounts, deceitful buys and acquiring false credit.

Due to these false marketing practices done by these correspondences is very disappointed. Sales which are done through various websites or e-mails will ask for additional information just like contact number or address to persuade or induce the customers. When the payment is made through online portals than there is a lot of chances of fraud. The most basic types of frauds done online are:

- **Hacking:**

There is no requirement for a hacker to know the whole details of the cardholder so as to have the capacity to utilize somebody card since details might be accessible some

place on the web. When the hacker got the individual card number, he could acquire the cardholder date of birth and address from various social media networking websites¹. There are different techniques for getting card details and data.

- **Skimming:**

Skimming is the way of storing of individual personal data on the credit or debit card by utilizing skimming gadgets to get the card subtleties on the magnetic strip. The number on that particular magnetic strip are eradicated and another number is embellished and the transactions are continued by utilizing of new numbers².

In contrast to a magnetic strip, a chip on an RFID transponder gives extra security. Another CVV is produced for each exchange which is totally unique in relation to the one in the card. The new CVV is conveyed to the system for it to be utilized for the new exchange. For this situation, data on the card can't be skimmed as another CVV is produced for each exchange³.

- **Identity Theft:**

Identity theft refers to that where one person adopts the identity of another person to get access to the monetary resources of that particular person. For example: site cloning which means created a false website which look similar to the legitimate website of the particular bank to trick the customers of the bank by obtaining their personal information such as PINs, ID and passwords. In extent of that, false websites are created for offering cheaper goods or services⁴.

- **Phishing:**

Just like above, Phishing is the other way of obtaining the personal details of the customers by way of false existence. It is a type of internet scam where fake e-mail is popped up and ask for the update of information of account. The customer unaware

¹ Lisa Rogak, '10 things you should know about identity theft', <http://www.creditcards.com/credit-card-news/help/10-things-you-should-know-about-identity-theft-6000.php>, as accessed on April 1, 2019.

² J K Mathur, 'Credit Card Fraud- Improving Security', www.chillibreeze.com/articles/creditcardfraud. Asp, as accessed on April 19, 2022.

³ Mark Roberti, 'Are RFID-Enabled Credit Cards Safer Than Magstripe Cards?', *RFID Journal*, 15 September, 2011.

⁴ J K Mathur, 'Credit Card Fraud- Improving Security', www.chillibreeze.com/articles/creditcardfraud. Asp, as accessed on May 5 2022.

about that provides all of his personal details on that false website, which is just like the original website of the bank or company and thus the information was hacked by them and get transfer of funds⁵.

- **Pharming:**

It is another way of getting the personal details by fraud. It occurs when the hackers shift the website traffic to some another website i.e. on false website. It is done through attacking the host file on a victim personal computer. It is protected by the installation of the antivirus or spyware on the victim computer.

- **Misleading Advertisement:**

When we get few e-mails popped in our inbox from various shopping websites for offering for free shopping for the first purchase or free ride for the first online taxi service reservation. An expansion of deceptive marketing rehearses will trail the development of online trade. Online deceptive marketing practices can add up to a few billion dollars to shopper's annual misfortunes.

- **Insufficient Services:**

It is very regular that when people endeavour to exchange money to financial balances in e-wallets, it falls flat, and once a grievance is recorded, despite the fact that the purchaser gets a message that it is remedied, however this disappointment proceeds. This regularly brings about solidifying money in the e-wallet. Now and then, regardless of whether you get a message that the money is being exchanged, it doesn't really achieve the financial records and you get a warning following a few days that the exchange is being switched. Thus, the purchaser is left with no option of whom to approach for fixing the issue⁶.

Now and then online looking happens that while situating guarantees the 24-hour delivery or delivery inside a fixed date, controlling the customer's call to settle on a chose item from a specific site over another, the organization does not deliver the products inside that period. They basically send a message to the purchaser

⁵ 'Phishing scams attempt to collect credit card numbers, passwords, etc.', <http://www.webopedia.com/TERM/P/phishing.html>, as accessed on April 30, 2012.

⁶ 'Application of Consumer Protection Laws on goods sold online- who is liable for defective goods', <https://blog.iplayers.in/consumer-protection-laws-ecommerce/>

that in delivery there has been an unexpected deferral. Essentially, we frequently discover the package left at the doorstep, or with the security or neighbours, or in the gathering office, regardless of whether our mark is required to finish the transporter's delivery⁷.

3. The Laws Regulating the E-Commerce Industry in India

India's online industry is growing at a very large scale and is expected to surpass US by 2034 and to become the second largest online industry of the world.⁸ The business is good to go to record the third most astounding development rate in the Asia-Pacific locale this year and has dramatically multiplied since 2015, in any case, despite everything it has far to go. With the increase of online business and the way this is just the start of the innovation part in India preparing itself for another time of web-based business fighting, there is no uncertainty that India need an administrative system that would connect the different arms of the legislature. With the regularly expanding pace at which web-based business is developing in the nation, a desperate need can be felt for an appropriate structure.

3.1 Drafting of E-Commerce Policy of 2018

The much-anticipated arrangement for web-based business has been deferred by a time of 3 years just for the discharged draft to cause incredible fomentation among financial specialists, merchants and retailers who have out and joined together, to conflict with the draft. A structure is certainly required for institutionalization just as to guarantee necessities for digital transactions in India incorporating reasonable cost in the nation's computerized commercial centre are met with⁹.

The draft Policy of 2018 is by all accounts a positive advancement in the segment which is a consequence of recommendations that have been gotten from modern players and different mechanical bodies. This is a marker that the administration is keen on counselling with different players in the part to guarantee that there is an approach that contemporarily addresses the issues of the market and is dynamic enough to adjust to the lively economy of

⁷ 'Application of Consumer Protection Laws on goods sold online- who is liable for defective goods', <https://blog.iplayers.in/consumer-protection-laws-ecommerce/>

⁸ <https://www.ibef.org/industry/ecommerce.aspx?cv=1>

⁹ 'Legal Framework Regulating E-Commerce in India', <https://blog.iplayers.in/ecommerce-law/>

India. That being stated, this draft arrangement has its very own arrangement of helps and banes¹⁰.

3.2 CONSUMER PROTECTION ACT, 1986

Various laws are available to consumers in accordance with a few enactments. The major and the standard Act governing the consumers laws in India is *The Consumer Protection Act, 1986*¹¹ which sets out the rights for consumers and ensures them. This act put forward the three-tier redress tool that is specifically at district, state, and national level to resolve any dispute identified with the consumer. These laws were either to be used in online transactions or not in uncertainty. One of the State Minister for Consumer Affairs, Public Distribution and Food said in his statement during the Lok Sabha Session on 8th July, 2014 to include online transactions within in the scope of the *Consumer Protections Act, 1986* through a composed response¹². This statement implies that the complaint of the consumer can now approach at a three-tier consumer forum to resolve the disputes between the buyer/consumer and seller such as the:

- i. The District Consumer Forum
- ii. State Commission and
- iii. National Commission

Before this ongoing express declaration, the Consumer Protection Act, 1986, was implicitly linked to online transactions as defined by the Act.

Earlier, there was no explicit reference was made in regard of the e-commerce transactions falling within the scope of the Consumer Protection Act and this implied that the consumer was entitled to seek redress under the same. However, only a narrower picture is provided by the Consumer Protection Act, 1986. This Act does not provide the solution to various problems which is faced by the consumers or buyers during the course of online shopping

¹⁰ Ibid. 14

¹¹ The Consumer Protection Act, 1986

¹² Press Information Bureau, Government of India, Ministry of Consumer Affairs, Food and Public Distribution.

because of the impersonal nature of the problem which can be regarded as flipside of that. Therefore, the scope of the Act is limited to provide redress mechanism on online or e-commerce transactions.

The Consumer Protection Act, 1986 defines ***Consumer***¹³ as: “Any person who buys good or avails or service for which he has paid consideration, except for commercial use is regarded as a Consumer.”

There are two rights vested with the consumer while doing shopping through online websites:

- i. To choose the kind, quality and variety of product and
- ii. Right to know about the product by descriptive form or other

These two rights are fully vested with the consumers and if the description of the goods provided by the seller is false or wrong than the consumer has the full right to return the goods¹⁴.

The person who buy goods for further sale or making any profit from further sale of goods cannot be treated as Consumer under the Consumer Protection Act and the companies or online portals who acts as a mediator between seller and buyer will not claim protection under the Act is held in case of ***Raj Kumar vs. S. C. Verma***¹⁵.

Buyer¹⁶ as per ***Sale of Goods Act, 1930*** is defined as “any person who buys or agrees to buy goods.”

According to the above two definitions mentioned above clearly indicated that any person who buys goods or services for which he had paid any consideration shall be considered as Consumer or Buyer under the above two Acts, irrespective of the fact that such sale done online. In addition, ***Contract of Sale***¹⁷ as defined by the ***Sale of Goods Act, 1930*** indicates that this may apply to online transactions together with regular transactions.

Sale of Goods Act discussed and also replicate the conditions in which goods sold in online market and the physical market:

¹³ Section 2(d) of Consumer Protection Act, 1986.

¹⁴ Section 15, Sales of goods act 1930

¹⁵ 2001 (1) CPR 437

¹⁶ Section 2(1) of Sale of Goods Act,1930.

¹⁷ Section 4(1) of Sale of Goods Act, 1930 states that a contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price.

- In case of online market buyer read the description of the goods and after reading the description if he thinks that it is suitable for him, then he placed order, whereas in the physical market buyer goes to the particular shop and check the product and if he is happy with that than he buys the product.
- The Sales of Goods Act, there is a full opportunity with the buyer in online shopping to test the product before taking the delivery, because the buyer is not able to test the product in online shopping while placing the order¹⁸.
- If the buyer is not able to get the proper opportunity of testing the product than he may deny to take the delivery of that particular product¹⁹.

Indian assembly has not instituted any different resolution for the services and goods rendered online rather, all such transactions done in that perspective are represented by the standards of equity and good conscience and consumer protection laws. Likewise, instances of negligence in administration can be guaranteed under Tort Law, with regard to the rule of the strict liability set somewhere near the House of Lords in milestone case *Donoghue versus Stevenson*²⁰.

3.3 Defect or Deficiency

In addition, the Consumer Protection Act, 1986 becomes applicable if there is a "*defect or deficiency in goods or services.*" It would therefore only come into play in 1986 only if the Consumer Protection Act met one of the above two criteria. The main concern in e-commerce is the efficient delivery of the goods. However, there is no redress provided if the goods are not delivered within the specified time. Such intricacies create more trouble for online consumers because of the seller's anonymity. Lots of consumers had lodged their complaints in the consumers forums but due to ambiguity and unclear laws leads to ignorance of their grievances.

In case of the online market if the buyer likes the specification of the goods and ordered the goods, this form a contract between the seller and buyer and the seller has to perform his duty

¹⁸ Section 41, Sales of Goods Act 1930

¹⁹ Ibid 16

²⁰ [1932] UKHL 100

by delivering the goods to the address of the buyer and if the seller had not performed his part than this is known as deficiency of services on the part of seller²¹.

In case of defective goods criminal laws should also apply. For Ex: creating the false conception about the product by showing misleading advertisement and the seller can also be liable for tortious liability and in addition to that also penalised for fraud and cheating²² under Indian Penal Code.

The accused can also be punished with imprisonment and also liable to pay damages if not able to perform his duty, is held in case of *Wheels World v. Pradeep Kumar*²³.

The seller or the manufacturer should only be held liable for the deficient services or the defective goods and they are the only one to be blamed. In case of deficient services provided by the retailer than the action can also be taken against him and he can also made a third party to the case between the manufacturer and buyer²⁴.

4. OECD Guidelines for Consumer Protection in the Context of Electronic Commerce (1999)

The Consumer Protection Guidelines in the Context of Electronic Commerce, by the OECD Council on 9th December, 1999, are intended to help ensure that consumers are no less secure when shopping than they are when buying from their neighbourhood store or requesting from a list. By establishing the centre attributes of powerful consumer protection for online business-to-consumer exchanges, the rules are designed to help dispense with a portion of the vulnerabilities experienced by both consumers and businesses when buying and selling online. The year-and-a-half after effect of talks between OECD government officials and consumer association.

²¹ Smt. Ramala Roy vs. Rabindra Nath Sen, 1994 (I) CPR 66

²² Section 415 Indian Penal code 1860

²³ I (2008) CPJ 324 NC

²⁴ 'Application of consumer protection laws on goods sold online – who is liable for defective goods?', <https://blog.ipleaders.in/consumer-protection-laws-ecommerce/>

The guidelines reflect existing legal protection available to consumers in more traditional forms of trade; encourage initiatives in the private sector that include consumer participation; and emphasize the need for cooperation between governments, businesses and consumers. Their aim is to promote: fair business, advertising and marketing practices; clear information on the identity of an online business, the goods or services it offers and the terms and conditions of any transaction; a transparent process for confirming transactions; safe payment mechanisms; fair, timely and affordable dispute resolution and redress; protection of privacy; and consumer and buyer.

Following its exhaustive review, the Committee agreed in 2014 to amend the 1999 Recommendation to address recognized difficulties and achieve strong consumer protection while boosting market advancement and rivalry. Key new improvements to the re-examined proposal in online business and it includes:

- **Transactions which not included money:**

People now a days included in the transaction of getting free services or goods by offering their personal details to the seller and these types are transactions are now included in the scope of OECD guidelines for Recommendation and the Governments should take proper steps to redress the people who are facing these types of laws and should make laws on these issues.

- **Digital Content Items:**

Transactions including digital content regularly accompany specialized or authoritative access or use constraints and numerous customers experience issues understanding their rights and commitments. New dialect has been added to elucidate that customers ought to be given clear data about such confinements, just as on usefulness and interoperability.

- **Active Shoppers:**

Current web-based business plans of action progressively obscure the limits among purchasers and organizations, with buyers assuming a participatory job in item advancement and improvement, and going into transactions with different buyers. The extent of the Recommendation has in this manner been expanded and it currently includes business exercises that encourage customer to-purchaser transactions.

Another arrangement is added to guarantee that purchaser supports are honest and straightforward.

- **Cell Phones:**

The developing utilization of cell phones for web-based business conveys various specialized difficulties to making data exposures successful (for example on little screens) and can oblige record keeping by shoppers. Two new arrangements are incorporated to feature the need to represent the mechanical impediments or exceptional attributes of the gadget utilized.

- **Security and Privacy Dangers:**

Consumer information is at the centre of numerous web-based business benefits and lifts protection and security dangers. The Recommendation reviews the need to address these dangers reliable with other OECD instruments and incorporates two new arrangements featuring explicit insurances of specific significance for B2C online business.

- **Payment Assurance:**

Recognizing that the dimension of payment security can differ contingent upon the kind of payment instrument utilized, the Recommendation approaches governments and partners to cooperate to create least dimensions of buyer insurance crosswise over payment systems.

- **Product Security:**

In various nations, a scope of dangerous items, which have been denied from deal or reviewed from the disconnected retail advertise, are accessible in web-based business. Another arrangement is added to guarantee that hazardous items are not offered to buyers online, and that organizations participate with the applicable experts to address the issue.

4.2 Some other Measures:

4.2.1 Competence of Customers through Education & Awareness

Governments ought to endeavour to teach customers, government authorities, and industry to encourage educated basic leadership and reasonable disposal of grievances from shoppers. They should be made mindful of the system for purchaser assurance appropriate to online transactions, regardless of whether local or cross-fringe, including their rights and commitments. Such mindfulness plans ought to likewise intend to improve advanced aptitudes for purchasers through preparing in computerized innovation abilities advancement. The necessities of different shopper gatherings ought to be considered when structuring such projects.

4.2.2 Self- Regulation of Industry

Members in the business industry must execute different kinds of self-guideline went for controlling misleading online promoting practices, for example,

Necessary set of accepted rules relevant to online business exercises;

- Centres for lodging complaints
- Not to support unlawful conduct
- Connectivity between the two authorities

Trade associations can assume a noteworthy job in realizing viable components of self-guideline. By ousting the individuals who neglect to agree to its participation, the trade affiliation that executes a code can verify consistency. Suppliers that give administrations basic to the activity of a misleading promoting plan ought to be mindful so as not to offer help for such plans. ISPs, payment administration administrators, online shopping proprietors and publicizing offices may decide not to encourage frustrating and out of line promoting rehearses.

On the off chance that confirmation by outsiders is broadly acknowledged, the absence of affirmation will have a slandering impact, which thusly will ask venders to raise their gauges to fit the bill for accreditation. Administrative oversight of such outsiders, be that as it may, is important to anticipate misuse.

The purchaser is unconscious of the notoriety of the dealer when transactions are made at a separation. On the off chance that there is a framework that gathers and brings together buyer protests about dealers, this issue can be redressed. Such a framework must be successful on the off chance that it is available at no expense to the shopper by means of an open system. This must likewise defend the purchaser's grumbling security intrigue and ought to have apparatuses to shield dealers from vexatious and pernicious protests being unjustifiably trashed.

4.3 Alternate Dispute Redressal & Resolution

There should be reasonable access to buyer equity and justice for e-shoppers. That is, reasonable, simple to utilize, straightforward and viable question goals strategies, including those for traverse online business. Such a framework must give immediate and economical cures. This ought to incorporate access to components for elective question goals and taking care of inward protests. Inner objection dealing with systems implies inside question goals stages that empower purchasers to determine their grievances casually at the most punctual conceivable stage through direct exchanges between the shopper and the dealer or specialist co-op.

ADR instrument ought to incorporate online question goals frameworks to encourage the goals of web based business claims with exceptional consideration regarding low-esteem or cross-outskirt transactions. Government should work to guarantee that requirement specialists, buyer associations and other self-administrative experts managing customer complaints are fit for making a move, acquiring and encouraging shopper change.

5 Conclusion

As the technology is increasing day by day due to this reason the consumers, who are doing online shopping is increasing at a high rate because of straightforwardness in transactions and it will crush the physical purchaser inside a brief timeframe. There are various subordinate laws that ensure 'e-customers' in a roundabout way. In any case, the requirement for the hour

is to have an exhaustive enactment that will cover all parts of online transactions explicitly and solely. It requires a severe and easy to understand law that gives security at the season of exchange just as ensures the purchaser's after-exchange interests. The mechanical parts of online transactions make it hard to make such enactment for the insurance of computerized purchasers, as it includes legitimate issues and encourages traders to conceal their character; thusly, the horde difficulties of ensuring customers ' rights in internet business must be tended to through the aggregate activity of different government offices, business elements and organizations. In any case, the legislature and the brokers would not deal with the privileges of customers in all conditions. Shoppers ought to be very much aware of their rights and ought to maintain such rights and defend them.