



Catalytic Role of E-Commerce and Consumer Protection in India

Dr. Ramesh Moturi

Assistant Professor in Commerce, Adikavai Nannaya University, Rajahmundry, East-Godavari District, AP

G. Alice Joy

Assistant Professor in Commerce, Adikavai Nannaya University, Rajahmundry, East Godavari District AP

Abstract: Information Technology industry in India has been one of the most significant growth contributors for the Indian economy. Internet has changed the world, it is an indisputable fact. E-commerce provides multiple benefits to the consumers in the form of availability of goods at lower cost, wider choices and save the time. E-commerce provides tremendous opportunities in different areas but it requires careful application for consumer protection issues. The Consumer Protection Act, 1986 is a social welfare legislation which was enacted as a result of widespread consumer movement. The main objective of the legislature in the enactment of this Act is to provide the better protection for the interest of the consumer and to make provisions for establishment of consumer mechanisms for information sharing between buyers and sellers, easy dispute resolution mechanism and protection of sensitive information.

Key words: Information Technology, E-commerce, Consumer Rights, Consumer Protection

Introduction

E-Commerce has almost overnight become the dominant online activity. There is no single definition of E-Commerce, it means only commercial activity which is performed or linked to or supported by Electronic Communication. The effects of e-commerce are already appearing in all areas of business, from customer service to new product design. It facilitates new types of information based business processes for reaching and interacting with customers like online advertising and marketing, online order taking and online customer service. Electronic commerce is one of the most discussed topics in business today. It is already leading to the reshaping of customer

and supplier relationships, the streamlining of business processes and, in some cases, even the restructuring of whole industries. E-commerce is beneficial to both businesses and consumers by removing time and space barriers. For modern enterprises, the value of information technology is multi-faceted, such as improving product variety, quality, and customer satisfaction, facilitating administrative processes, reducing cost, enriching labor and management productivity, and enhancing a competitive advantage.

Electronic commerce as part of the information technology revolution became widely used in the world trade in general and Indian economy in



particular. As a symbol of globalization, e-business represents the cutting edge of success in this digital age and it has changed and is still changing the way business is conducted around the world. The commercialization of the Internet has driven electronic commerce to become one of the most capable channels for inter-organizational business processes.

Electronic commerce provides a different way of doing business that comes with its own set of benefits. The market size increases greatly to encompass the whole globe. This provides business with more customers and customers more choice. More mass customization can also be achieved. It become easier through e-commerce for the customer to tell a business exactly what they require and individualize products or services. Also, electronic commerce allows the supply chain to be shortened; products can sometime be shipped directly from the manufacturer to the customer. E-commerce not only exchanges information between buyers and sellers of goods, but also provides support and services to consumers. More consumer demands appear on the internet than any other mediums today. It demonstrates that the internet has huge potential to grab many customers in a short amount of time, which in turn can become a target market for growing firms. Internet has changed the economy so much that most of the business activities today are carried out online.

E-commerce indicates a strategy for directing business through electronic means as opposed to through routine physical means. It covers a scope of diverse sorts of organizations, from

shopper based retail destinations, through closeout or music locales, to business trades exchanging products and administrations between companies. Basically there is three types of E-Commerce are exists. They are:-

Business to Business (B2B) - E-commerce has enabled various businesses to build new relationships with other businesses for efficiently managing several of their business functions. B2B applications provide new opportunities for businesses to leverage emerging technologies to build their businesses.

Business to Business to Consumer (B2B2C) - It is one of the emerging models of e-commerce. B2B2C is basically defined as using B2B to help support and rejuvenate companies attempting B2C. This is due to the fact that B2B has been an overwhelming financial success and B2C has not performed upto the expectations. This model is poised to do well as it capitalizes the success of B2B and the potential demand of B2C. B2B provides a way for B2C companies to reduce costs and improve their B2C services. An example of B2B2C is developing products to help B2C companies increase profit by integrating inventory from the manufacturer to the distributor. An application that links one online catalog to another would be considered a B2B2C application as it capitalizes on both B2B and B2C.

Consumer to Consumer (C2C) - C2C is an interesting relatively new piece of the e-commerce world. C2C applications involve consumers conducting commerce directly with other consumers. This obviously means that the company facilitating the transaction must find some non-traditional revenue stream.



This could be a small cut of the transaction, a service fee, advertising, or some combination of these. E-bay is an excellent example of a C2C application that is extremely popular with consumers.

The Legality of E-Commerce in India

The improvement of electronic trade represents various lawful and consumer challenges. In India, we are seeing a meeting of new advances and the deregulation of the monetary sector. At a time of great change consumers need to be protected, and the law is struggling to keep up.

Presence of a valid contract shapes the core of any exchange including an e-business exchange. In India, e-contracts like every single other contract are administered by the fundamental standards overseeing contracts in India, i.e. the Indian Contract Act, 1872. Not with standing this the Information Technology Act, 2000 ("IT Act") gives stronghold to the legitimacy of e-contracts. Some of the important requirements of a valid contract under the Indian Contract Act are as follows:

- i. The contract should be entered into with the free consent of the contracting parties;
- ii. There should be lawful consideration for the contract;
- iii. The parties should be competent to contract;
- iv. The object of the contract should be lawful.

E-Commerce under Consumer Protection Act, 1986: In perspective of the new models of business in e-trade, it is vital to remember consumer security issues. In India the Consumer

Protection Act 1986 ("CPA") governs the relationship between consumers and service/goods providers. There is no separate consumer protection law that is specific to and regulates online transactions. Liability under the CPA arises when there is "deficiency in service" or "defect in goods" or occurrence of "unfair trade practice". The CPA particularly prohibits from its ambit the rendering of any administration that is complimentary. 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.

The utilization of such on-line contracts obliges consideration of the extent to which such conduct by an applicant can legally constitute "acceptance" and of various writing and signature or mark requirements applicable to certain relevant types of transactions. Major consumer issues raised by Internet transaction systems include:

- (a) Security
- (b) Privacy
- (c) Terms and Conditions
- (d) Access
- (e) Dispute Resolution
- (f) Fees and Charges
- (g) Fraud
- (h) Jurisdiction issue is most important issue in E-commerce.

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 as below:

- i. Removal of defects / deficiencies.
- ii. Replacement of goods.
- iii. Return of price paid.
- iv. Pay compensation as may be awarded.
- v. Discontinue the unfair trade practice or the restrictive trade practice or not to repeat them.

Ecommerce and intellectual property issues:

While exists laws in India that protect IPRs in the physical world, the efficacy of these laws to safeguard these rights in e-commerce is not simple. Some of the main forms of intellectual property protection that an e-commerce business would be concerned about are as follows:

- **Copyrights** for protection of the content, design of the websites, the software underlying the platform and the content transmitted over such platforms.
- **Trademarks** to protect the words, taglines or logos with which any person would identify with the e-commerce platform/ business. In addition to protecting their own trademarks, an e-commerce business that sells or markets other brands on its portal would have to ensure that such business' trademarks are protected as well.
- **Patents** to protect (where allowed by law) the functionality of the software and the methods underlying such e-commerce. In India there is no patent protection for a computer programs per se and hence there is a need to look at alternate methods to protect software. Some of the most common forms of liability for infringement in India would be:

- Injunction (temporary or permanent) against the infringer stipulating that the infringing activity shall not be continued.
- Damages to the extent of lost profit or damages to remedy unjust enrichment of the infringing party.
- Order for accounts of profits
- Order for seizure and destruction of infringing articles.

Measures for the protection of e-consumer

In this electronic age there is a need to protect consumers' interest and following are the areas of central importance for the effective protection of e-consumers.

1. Correct Information: An informed consumer is self-sufficient to look after her/his own interests than an uninformed consumer. Appropriate information on the products is very important for e-consumers as that can help them to assess the benefits and risks of entering into a particular transaction. If the consumer is already aware of such information, then there will not be unnecessary disappointments; hence subsequent disputes will be avoided. Appropriate information on the products acts as a substitute for the real-life 'touch-and-feel' that occurs during offline transactions. Thus legal regulations requiring e-retailers to provide detailed information about their products, the sales process, etc. is not particularly arduous for the e-retailers. They should provide information about the following:

- **E-Retailer-** This should include the information regarding the e-retailer's identity, place of registration, physical



location, and contact details, postal address, e-mail address and telephone number. This information allows them to assess the reliability of the e-retailers.

• **Product:** Sellers must provide an accurate and appropriately detailed, description of the product, its characteristics, uses, limitations, compatibility, as well as the need for services and maintenance, the price of the product, including applicable taxes and surcharges, all costs itemized, the applicable currency, warranties and guarantees, any after-sales services.

• **Sales Process:** The rules governing the sales process are very difficult to understand for a consumer. E-retailers should provide information about the sales process like the technical steps to be followed to conclude a transaction, the delivery time and method, order tracking system in place, payment process, parties' rights to cancel, terminate or retract, as well as applicable refund, exchange and returns possibilities and about the security measures applied to the transaction.

• **Terms of the Contract:** Sellers must provide their consumers with the terms of the contract expressed in clear, unambiguous and simple language.

• **Information about the use of Consumer's Personal Data:** At minimum, e-consumer protection must require e-sellers to provide existing and potential consumers with detailed information about how it collects data, who will have access to the data and how the data will be kept safe etc.

• **Confirmation of the Transaction:** E-retailers should provide consumers with a prompt confirmation of the transaction as soon as the order has been placed. That confirmation should contain information acknowledging that the order has been accepted and information regarding expected delivery time. Furthermore, the confirmation should be printable and possible to store in electronic form.

2. Fair Contracts: Some consumers simply do not think that the terms and conditions are legally binding and most consumers are poorly equipped to understand the significance of the terms of the contracts they enter into. Consciously or subconsciously, they rely upon the legal system to protect them from unfair contractual clauses.

Many standard contracts contain complex legal clauses, such as choice of forum clauses and exclusion clauses that consumers may struggle to fully comprehend. As a result, they generally do not read the terms and conditions of the contracts they enter into. Further, consumer protection laws have created consumers who do not take the time to seek to protect their interests.

3. Adequate Regulation of Unconscionable Conduct: Satisfactory consumer protection regulations must adequately protect consumers against unconscionable conduct by sellers. A further concern arises relating to the lack of power of consumers to negotiate terms.

• It should be ensured that e-sellers do not use sales processes that confuse



consumers into accepting unreasonable terms.

- Consumer protection should contain special rules protecting consumers who have limited legal capacity and their guardians, as it is impossible to know whom you are contracting with.

4. Adequate Regulation of Product Quality and Suitability:

The sold products must meet adequate quality and safety standards. If the consumer has mentioned the purpose for which a product has to be used then, e-retailer should only deliver products suitable for the purpose described by the consumer. Also, products provided must correspond with any descriptions provided by the retailer.

5. Cancellation/Return/Refund

Policies: Merchants should provide information to consumers about their cancellation, return, and refund policies, including the time after entering into a binding obligation after which an available cancellation, return, or refund may be made. If there is no cancellation, return, or refund right, this should be stated prior to completion of the transaction.

6. Fair Dispute Resolution: A multi-faceted approach is necessary to ensure a fair resolution of a dispute between an e-retailer and an e-consumer. Law should provide consumers with fair, timely, and affordable means to settle disputes and obtain redress. Thus it must provide consumers with a realistic avenue for taking legal action against the seller/service provider, but with the

alternative or prior step of a more appropriate dispute resolution system.

- First, to be effective, a consumer protection scheme must ensure that the consumer, in an e-commerce transaction, can take legal action at her/his place of residence or domicile.
- Second, the consumer in an e-commerce transaction should always be allowed to rely upon the consumer protection provided by their country of residence or domicile.

An adequate access to advice and assistance where they can take legal action is essential for consumers. This requirement can be satisfied by a governmental department or agency working with consumer protection questions. Alternative Dispute Resolution System is becoming popular nowadays. It has been adopted by corporate houses to resolve their disputes outside courts with less strict rules and lower costs. The provision for ADR system should also be encouraged by legislation protection e-consumers right.

Conclusion

With the rapid expansion of internet, E-commerce is set to play a very important role in the 21st century, the new opportunities that will be thrown open, will be accessible to both large corporations and small companies. The role of government is to provide a legal framework for E-Commerce so that while domestic and international trade are allowed to expand their horizons, basic rights such as privacy, intellectual property, prevention of fraud, consumer protection etc are all taken care of. The rapid pace of growth of the e-commerce industry is not only indicative of the



increasing receptiveness of the public but has also brought to the fore the issues that the legal system of the country has been faced with. From the initial years when internet was a new phenomenon to recent times where internet has become a basic necessity for every household in most metropolitan cities, the e-commerce industry has come a long way. The problem of consumer protection in the framework of e-commerce has gained a huge amount of consideration both from academicians and policy-makers. The governments as well as inter-governmental organizations have come up with various frameworks to deal with e-commerce and e-consumers. But a review of existing legal framework shows that it has failed to address e-consumer needs. It has not been able to protect the consumers from infringement of their rights. The Consumer Protection Act, 1986 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. Thus India is in need of consolidating the law to deal with all above-mentioned situations so that the electronic consumers' right can be protected properly.

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