

Impact of E Commerce on Consumer Protection



Commerce

KEYWORDS : E-Commerce, Consumer Protection Issues, Internet, Security Issues, Jurisdiction Issues.

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ABSTRACT

Rapid developments in Information and Communication Technology (ICT) have fueled the new paradigm of Electronic Commerce (E-Commerce). Enterprises all over the globe have either created or are in the process of creating the E-Commerce front-ends to their traditional businesses. Several new products and services are being innovated and marketed through Internet thus creating global business opportunity to the tune of billions of dollars. E-commerce has made a profound impact on consumer's society. People can now shop online in the privacy of their own homes without ever having to leave. This can force larger brick and mortar retailers to open an online division. In some cases, it can also force smaller businesses to shut their doors, or change to being completely online. It also changes the way people look at making purchases and spending money. E-commerce has changed the face of retail, services, and other things that make our economy work. Undoubtedly, it will continue to influence how companies sell and market their products, as well as how people choose to make purchases for many years to come. But the development of electronic commerce poses a number of legal and consumer challenges. In India, we are seeing a convergence of new technologies and the deregulation of the financial sector. At a time of great change consumers need to be protected, and the law is struggling to keep up. It is evident that the problems facing consumers on-line are not much different from transactions concluded off-line, but it cannot be denied that online-consumers have special needs; e.g. the issue of privacy poses a greater risk in cyberspace that needs to be addressed carefully. This paper highlights how far consumers are protected in the era of E-Commerce.

INTRODUCTION

Today the trend of communication has changed from a face to face communication to an advanced form of communication. One such modern form of communication mechanism is internet. It is the need of the society in every sphere of their life. They can perform almost all their transaction through internet. One such important transaction in the today's world is e-commerce. Such transaction creates e-contract between the sellers and the consumers. Today e-commerce is growing day by day across the globe and also in India & the disputes in such business are also increasing.

Electronic Commerce is often interpreted as being just Internet commerce. Electronic commerce is a term for any type of business, or commercial transaction that involves the transfer of information across the Internet. It covers a range of different types of businesses, from consumer based retail sites, through auction or music sites, to business exchanges trading goods and services between corporations. It is currently one of the most important aspects of the Internet to emerge. E-Commerce allows consumers to electronically exchange goods and services with no barriers of time or distance. E-Commerce involves conducting business activities using electronic data transmission involving computers, telecommunications networks, and streamlined work processes.

Definition of Electronic Commerce "Roger Clarke"

"The conduct of commerce in goods and services, with the assistance of tele-communications and telecommunications-based tools."

Basically there are three types of E-Commerce. Business-to-business (B2B) E-Commerce is a form of E-Commerce in which participants are organizations. The business-to-consumer (B2C) E-Commerce is a form of E-Commerce in which customers deal directly with organization, avoiding any intermediaries. C2C (consumer-to-consumer) Traditionally, consumers have had dealings with other consumers, but only few of those activities were in a commercial sense. E-commerce has made it possible to bring together strangers and providing a platform for them to trade on.

OBJECTIVES OF THE STUDY

1. To study how far E-Commerce has insured the rights of consumers

2. To discuss the various security issues in E-Commerce.
3. To acquire the knowledge about various jurisdictional issues in E-Commerce.

RESEARCH METHODOLOGY

The research paper is mainly based on the secondary data. The secondary data were collected from various published sources like books, journal, reports, internet etc.

CONSUMER PROTECTION ISSUES

In view of the new models of business in e-commerce, it is important to keep in mind consumer protection 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 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 as below:

- ✓ Removal of defects / deficiencies
- ✓ Replacement of goods
- ✓ Return of price paid;
- ✓ Pay compensation as may be awarded;
- ✓ discontinue the unfair trade practice or the restrictive trade practice or not to repeat them;

SECURITY ISSUES IN E-COMMERCE

1. Authentication and Identification: Though the Internet eliminates the need for physical contact, it does not do away with the fact that any form of contract or transaction would have to be authenticated and in certain instances recorded. Different authentication technologies have evolved over a period of time for authenticating documents and also to

ensure the identity of the parties entering into online transactions. Further in relation to an e-commerce business, processing payments forms a vital part of the transaction and in this regard various payment systems to carry on an e-commerce business have also developed. Transactions on the internet, particularly consumer-related transactions, often occur between parties who have no pre-existing relationship. This may raise concerns of the person's identity and authenticity with respect to issues of the person's capacity, authority and legitimacy to enter the contract.

2. **Privacy:** For an e-commerce platform, it is almost difficult to complete any online transaction without collecting some form of personal information of the users such as details about their identity and financial information. Apart from the collection of primary data from the users, e-commerce platforms may also collect a variety of other indirect information such as users' personal choices and preferences and patterns of search. Hence, an important consideration for every e-commerce platform is to maintain the privacy of its users. Two primary concerns that a user of e-commerce platforms would have are:

- Unauthorized access to personal information
- Misuse of such personal information.

3. **Data Protection:** India has in the year 2011 notified rules under Section 43A of the IT Act titled "Reasonable practices and procedures and sensitive personal data or information Rules, 2011" which provide a framework for the protection of data in India ("**Data Protection Rules**").

Jurisdictional Issue

Jurisdiction in general refers to "A government's general power to exercise authority over all persons and things within its territory". Same situation with regards to court's jurisdiction also, it is the geographical area within which the judiciaries have the authority to adjudicate the disputes. If we talk about cyberspace jurisdiction the situation is different from physical world. The term "cyber jurisdiction" generally encompasses the system operators or users power to frame rules and enforce them in an "apparent virtual community" interacting in cyberspace, or virtual space in the cyber world which is perceived as a place on the Internet and is independent from the normal government regulations. In this virtual world the cyber jurisdiction can be exercised. As a result of internet a market place has developed in the virtual world. The users of any computer connected through internet can access to the website and enter into contract anywhere in the world. Such a contract is called e-contract. The e-contract is entered in the e-commerce. It means that all the obligation of valid contract is there in e-commerce. The existed of offer from one side and acceptance from the other side is there in a business transactions through internet. All the obligations in e-commerce need not be in only electronic form, there may be a situation where one party may perform their obligation in a physical form. It is not so important, the only thing is important is the conclusion of contracts is to be done through an online medium only. In such a case the question regarding the time 'when' and the place 'where' where the contract was actually concluded is inevitably arises.

The main trouble and problem about the internet jurisdiction is the presence of multiple parties in various parts of the world who have a virtual nexus with each other. The question arises in such cases that if one party wants to sue the other, then where can one sue? The municipal laws traditionally require two areas, the place where the defendant resides, and where the cause of

action arises. However, in the context of internet, both these are difficult to establish with any certainty. In addition to this a situation of conflict of laws among nations may also arise. For example some websites may be obscene in India but legal in US. They can be viewed in India by assessing the websites & may amount to an offence under the Indian Law, but they are not illegal in US where these sites are hosted. How can these situations be handled is a serious concern.

In determining the personal jurisdiction of a court over a foreign defendant it to be applicable or not, the 'minimum contracts' rule is to be followed in US courts. This rule was developed in US by US Supreme Court in the leading judgment, *International Shoe Co. v Washington*. This minimum contract test allows for the jurisdiction over a non-resident when such contract exists between the defendant and the Forum State such that "maintenance of the suit does not offend traditional notions of fair play and substantial justice. This Courts minimum contracts test for specific jurisdiction abandons more formalistic tests that focus on a defendant presence within a state in favour of a more flexible inquiry into whether a defendants contracts with the forum made it reasonable, in the context of the US federal system of government, to require it to defend the suit in that state.

Indian Position

With regards to the Indian position related to the internet disputes, the jurisdiction is theoretically matches with United States 'minimum contact'. The jurisdiction aspect of the courts in civil matter is governed by, the Code of Civil Procedure Code, 1908. Territorial jurisdiction in India granted by the CPC on the basis of place of residence of the defendant and secondly, the place where the cause of action arises. The cause of action can also arise at various places. The places can be domestic places and also international places. Section 20 of the CPC deals with the situation where cause of action arises in more than one place. This section through interpretation applies to transnational issues as well as private international law.

CONCLUSION

"Nothing is good or bad in this world but thinking make it so" The Internet is highly important for economic growth. It is global and represents a unique market place in terms of market penetration. Any computer, anywhere in the world, connected to the internet can access a website and may carry out an electronic transaction. As e-commerce will grow rapidly and the number of both commercial (B2B transactions) and consumer contracts (B2C transactions) through the Internet will rise, the legal framework governing both the Internet and e-commerce is of particular importance. 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 legal system has constantly tried to catch up. Therefore an in-depth understanding of the legal regime and the possible issues that an e-commerce business would face coupled with effective risk management strategies has been the need of the hour for e-commerce businesses to thrive in this industry.

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