

Author:

Arushi Guha

Symbiosis Law School, Pune

3<sup>rd</sup> Year, BBA LL.B. (Hons.)

**A LEGAL FRAMEWORK FOR E-COMMERCE PROTECTION IN THE ERA E-COMMERCE**

**Abstract**

*In today's day and age technology plays a significant role in all aspects of our lives. This includes market spaces and consumer-producer relationships with the advent of electronic commerce or e-commerce platforms. The recent SAR- COV-19 or the novel Covid-19 pandemic that contained us to the walls of our home intensified the presence of such e-commerce platforms and its usage that has led to the formation of much needed legislations that govern the protection of the rights of the aggrieved consumers via redressal mechanisms. This article peers into these legislations- namely- The Consumer Protection Act of 2019 and the Consumer Protection (E-commerce) Rules 2020 and analyses these legal frameworks for the protection of consumer rights in the era of E-commerce.*

**Key Words**

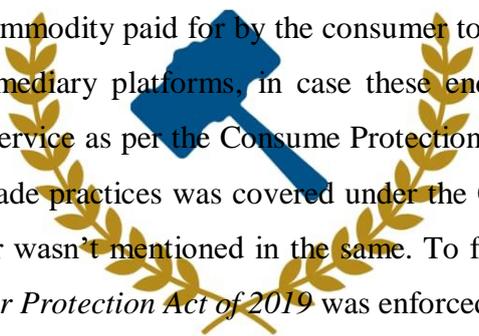
E-consumer, E-commerce, Electronic Transaction, Covid-19, Electronic Marketplace, Intermediaries.

**Introduction**

With Liberalisation, Privatisation and most importantly Globalisation due to the advent of superior technological advancements, market and commercial platforms have also taken the 'e-highway' to build a vast empire of e-commerce dependency in the recent times. This creates several benefits such as wider reach, faster delivery and convenience to both the retailers and the consumers. Further the onset of the Covid-19 pandemic in 2020 has further

given rise to circumstances of surging popularity of e-commerce platforms with a steep rise in consumers partaking in electronic policies of trade. This has also led to a myriad of issues for in case of a deficiency of service that acts as the core cause of action for consumer protection disputes, the liability is divided between the intermediaries (e-commerce platforms such as Amazon or Flipkart) and the seller. Further the vicarious nature of liability also arises in case of methods of transportation of the commodities as well as the issue of jurisdiction, contractual problems and verifiable validity of the same.

Even though in recent times there has been a change to the e-platform for the policies of trade, the consumerism and the needs of protection of consumer rights remains the same. It remains to be the desired commodity paid for by the consumer to be delivered or received by the consumer via the intermediary platforms, in case these end up defective it would be considered a deficiency of service as per the Consumer Protection Act of 2019 section 2(11)<sup>1</sup>. The recognition of unfair trade practices was covered under the Consumer Protection Act of 1986 however the consumer wasn't mentioned in the same. To further these rights in an age of digitization, the *Consumer Protection Act of 2019* was enforced.<sup>2</sup>



The year 2020 however brought the onset of new problems faced in the industry due to the advent of the Covid-19 Pandemic due to which there was a noticeable surge in the e-consumers on E-commerce platforms creating the 'Era of E-Commerce'. The Competition Commission of India noted that an upward trend was noticed in the growth of revenue for the E-Commerce sector from USD 39 billion in 2017 to USD 120 billion in 2020<sup>3</sup>. Due to this steady growth in the industrial sector, with a preference of e-commerce platforms over physical market platforms of trade, there was dynamism required in the Consumer Protection laws of India for the adaption to the new scenario. This particular reasoning led to the Central Government under Section 101(2)(zg) (Power of Central Government to make rules) of the Consumer Protection Act, 2019 ("CPA 2019"), the Ministry of Consumer Affairs, Food and Public Distributions notified the Consumer Protection (E-Commerce) Rules, 2020 ("Rules")

---

<sup>1</sup>The Consumer Protection Act, 1986 replaced with the CPA 2019, enforced on July 20, 2020.

<sup>2</sup>Prof. (Dr.) Ashok R.Patil, Dr. Pratima Narayan, *E-Consumer Protection in India: Trends and Challenges*, NLSIU Cyber Law Journal, <https://revistas.unlp.edu.ar/ReDIP/article/download/6354/5418/>

<sup>3</sup>Competition Commission of India, Market Study on E-Commerce in India (08 January, 2020), [https://www.cci.gov.in/sites/default/files/whats\\_newdocument/Market-study-on-e-Commerce-in-India.pdf](https://www.cci.gov.in/sites/default/files/whats_newdocument/Market-study-on-e-Commerce-in-India.pdf).

on 23 July 2020.<sup>4</sup> This led to the formation of the Consumer Protection (E-commerce) Rules 2020.

### **E-commerce practice in India**

The Information Technology Act, 2000 and Information Technology Rules (Intermediaries Guidelines), 2011 are the legislations that govern e-commerce practice in India. They provide remedies for the breaches in the e-contract and service areas of e-commerce platforms as well as the liability of intermediaries and the defences available for the same (Section 79 of the IT Act 2000).

### **Present Situation of E-Consumer Protection in India**

The global nature of E-Commerce along with its rising popularity has led to a greatly developing sector of the economy in the recent years. As mentioned previously in this article the 2020 rise in the E-Commerce sector from USD 39 billion in 2017 to USD 120 billion<sup>5</sup> proved to have an increase in consumers using the electronic trade platform. Irrespective of the same, e-consumers were still deprived of a certain legal framework that set out the presence of liability on the sellers and intermediaries involved in the same as the cookies tracking system provided a perennial flow of promotions for e-consumers and this too needed protection against. The installation of the international an applicable GDPR was paramount in the protection of the e-consumers privacy with modifiable tracking of their data. This promotion of consumer behaviour is essentially focused on the delivery of the commodity products and the lack of legal frameworks for the same was an area of concern.<sup>6</sup>

#### *Data Protection and Privacy*

Black's Law Dictionary defines privacy as a basic right to protect one's person and property from unwarranted interference and this includes private data. Privacy is a glaring concern for consumers partaking in e-commerce trade due to the system of cookies and data tracking. The way E-commerce websites functions by making the most of technology in today's times also plays a great role in enhancing the capacity of these e-commerce platforms to collect and analyses a huge amount of data from customers that visit their websites which of course now raises concerns about how this data is being treated and whether it is being kept secured.

---

<sup>4</sup>A preliminary draft of the Rules was released in November 2019, wherein consultation from various stakeholders had been invited by December 2019. The 2019 draft of the Rules was preceded by the E-Commerce Guidelines for Consumer Protection, 2019. The present version of the Rules comprises an upgraded version of the 2019 draft rules which replaces the E-Commerce Guidelines for Consumer Protection, 2019.

<sup>5</sup> Supra 4

<sup>6</sup>Martin Kutz, *Introduction to E-Commerce- Combining Business and Information Technology*, 1<sup>st</sup> Edition, 2016

Moreover, the companies can record, track and sell a consumer's shopping and banking practices by tracking their usage of credit cards, debit cards and smart cards. Hence the protection for this data is of paramount importance under Consumer Rights Protection.

The *European Union's General Data Protection Rules* (GDPR) launched in 2016 is a key framework for the above mentioned dilemma. The GDPR covers regulations pertaining to and guidelines for consumer data rights protection in the aspects of rights of the data subject (consumers in e-commerce) as well as the controllers and processors as per chapters 3 and 4<sup>7</sup> of the rules. It further covers the regulations pertaining to the transfer of personal data to third parties (from intermediaries or sellers) or to international organisations. Further in case of breach of these regulations violating the rights of the e-consumers by the e-commerce platforms or by the third parties Chapter 8 of the GDPR covers the remedies, penalties and liabilities of the same.<sup>8</sup>

*Consumer Protection Act, 2019*

Unfair practice in provision of goods or services to a consumer has been provided for under the Consumer Protection Act of 1986 under the Indian legal framework, however there stands a lacuna in the provision for trade on electronic platforms in the same. The cause of action for approaching the Consumer Forum is mainly a deficiency in service<sup>9</sup> or defective goods and unfair trade practices which under the ambit of e-consumers has been ignored to the fullest by the 1986 Act<sup>10</sup> depriving the consumer grievances by being struck down with a lack of redressal or relief due to the absence of jurisdiction in case of maintainability. (A recent judgment of the National Commission in *Marwar Engineering College and Research Centre v. Hanwant Singh*<sup>11</sup> has made it clear that Consumer's place of e-commerce transaction is the jurisdiction to file a complaint.)

With this concern being of paramount importance in this era or e-commerce, the Consumer Protection Act, 2019 was made enforceable to fill in the lacuna in the preceding Act. The Act of 2019 deals with the provision of accurate information and description of goods to be provided as well as dealing with e-commerce dispute redressal at the forum under the provided jurisdiction<sup>12</sup>. The dynamic nature of the market space must be considered validly

<sup>7</sup>General Data Protection Regulation, Articles 5-11 and 12-23, (EU) 2016/679

<sup>8</sup>General Data Protection Regulation, Articles 77-84, (EU) 2016/679

<sup>9</sup>Consumer Protection Act, §35 2019, Consumer Protection Act, 2(11), 2019

<sup>10</sup>Consumer Protection Act, 1986

<sup>11</sup> *Marwar Engineering College and Research Centre v. Hanwant Singh*, IV (2014) CPJ 582 (NC)

<sup>12</sup> Supra 9

for the amendments made to consumer protection mechanisms as witnessed by the introduction of this Act.<sup>13</sup>

The Consumer Protection Act of 2019 was made enforceable on the 20<sup>th</sup> of July 2020 amidst the Global Covid-19 Pandemic that brought about massive reforms for the functioning of a digitized market space with new consumer protection laws. These rights include:

1. Right to Safety
2. Right to safety
3. Right to be informed
4. Right to choose
5. Right to be heard
6. Right to redress
7. Right to consumer education



### *Challenges*

Via the rights mentioned above, international trade for e-commerce platforms were provided more structure in case of defrauding or lack of service activities. Further the amended Act of 2019 also provides for redressal to be permitted only in the case a transaction has taken place as well as the option to the consumer to file a complaint via electronic means to the consumer forum with appropriate jurisdiction.<sup>14</sup> However the challenges faced by the consumers in case of e-commerce transactions still exist in circumstances where

1. The discrepancy pertaining to the time, location and terms and conditions of an e-contract which has been provided for by the IT Act, 2000 under section 13, however the practicality of the terms and conditions and tedious processes in the covering of it are an impediment.
2. Transaction details and diversion of money via e-payment modes and security measures are an area of concern for criminal activity being a common ground on e-commerce platforms for e-consumers.
3. Concepts of unilateral contracts in cases of browse wrap or shrink wrap agreements and its validity under the laws is another impediment that has been tackled by provisions in

---

<sup>13</sup>Hina Kausar, *E-Commerce and the Rights of E-Consumers*, Manupatra, <http://docs.manupatra.in/newslines/articles/Upload/755BA66E-1F56-447F-A2A2-FA160F1D43D2.pdf>

<sup>14</sup>Bejon Misra, *No Time to Lose on Consumer Protection*, The Hindu, <https://www.thehindubusinessline.com/opinion/no-time-to-lose-on-consumer-protection/article22071821.ece1#>

UNCITRAL-MLEC<sup>15</sup> and ECC<sup>16</sup> however is not freely available to the e-consumer.

4. Non Compliance by e-commerce intermediaries of legal provisions<sup>17</sup> which though provided for under IT Act, 2000<sup>18</sup> has a defence in place.

UN Guidelines on Consumer Protection of 2015 lays special emphasis on transactions taking place through Electronic Commerce, which include fair and equitable treatment, ethical commercial behaviour, disclosure and transparency and raising education and awareness.<sup>19</sup>

### **Consumer Protection (E-Commerce) Rules, 2020**

Rule 2 of the Consumer Protection (E-Commerce) Rules, 2020<sup>20</sup> provides for the application of the same on firstly, all goods and services that include digital commodities such as e-books and movie streaming, where a transaction has taken place. The models covered under this provision encompass all formats of e-commerce market places including inventory. This legal framework not only takes into consideration domestic but also international intermediary networks as well be it single brand or multi-brand retailing Lastly the cause of action under this legislation is applicable to any means of unfair trade practice or deficiency of service under the e-commerce platform model. It is important to note that while the Act of 2019 covers all consumers, the 2020 Rules are applicable only to e-consumers of an e-commerce platform and not to a natural person. This electronic transaction must be independent and not part of a normal transaction. The major change in this legislation is that global nature in recognizing the international class of e-commerce in being applicable to extra-territorial entities.<sup>21</sup>

## **LAW JOURNAL**

The Rules further have been established to impose the liability on the two major stakeholders who affect the consumer rights of e-consumers which encompass the:

1. The E-Commerce entity<sup>22</sup> which covers the third party that acts as the intermediary between the seller and the consumer to facilitate the provision of goods and services. The security of payment gateways relies on this entity and is the point of contact that creates the electronic or virtual marketplace environment as well as the point of

---

<sup>15</sup> UNCITRAL Model Law on Electronic Commerce, Article 15, 1996

<sup>16</sup> United Nations Electronic Communication Convention, Article 10, 2005

<sup>17</sup> United Nations Conference on Trade and Development, UNCTAD, India-BIT 2020  
[https://unctad.org/meetings/en/SessionalDocuments/cicplpd7\\_en.pdf](https://unctad.org/meetings/en/SessionalDocuments/cicplpd7_en.pdf)

<sup>18</sup> Information Technology Act, § 79, 2000

<sup>19</sup> UN Guidelines on Consumer Protection of 2015, Supra 3.

<sup>20</sup> Consumer Protection (E-Commerce) Rules, Rule 2, 2020

<sup>21</sup> Consumer Protection (E-Commerce) Rules, Rule 2(2), 2020

<sup>22</sup> Consumer Protection (E-Commerce) Rules, Rule 4, 2020

contact for the third party usage of data collected in the process of purchase or trade transaction. These entities are Marketplace E-Commerce Entities<sup>23</sup> and Inventory E-Commerce Entities.<sup>24</sup>

2. The Seller of the product to the consumer who contacts them either through the intermediary or Marketplace E-commerce entity or directly.<sup>25</sup> The seller is the provider of the product be it goods or services.

### **Liability under the Consumer Protection (E-Commerce) Rules, 2020**

The e-commerce retailer in most cases as an intermediary or third party falls under the definition of Market Place E-Commerce entity as given under Rule 3(g) of the E-Commerce Rules, 2020. This is because the e-retailer here acts as an entity that provides a web platform to facilitate transactions between sellers and consumers.

#### *a. Liability of the E-Commerce Entity*

**Rule 5** of the rules provides for the duties and liabilities for marketplace e-commerce entity which are as follows:

1. If the e-commerce entity seeks to avail the exemption under Section 79(1) of the Information Technology Act, 2000, as an intermediary, they must comply with the due diligence as mentioned under sub-section (2) and (3) of the same along with provision of the Information Technology (Intermediary Guidelines) Rules, 2011.

In this case it is the duty of the e-commerce entity to require sellers through an undertaking to ensure that the description of the goods and products of the seller is accurate in terms of appearance, nature, quality etc. If these duties are not followed by the entity/intermediary, it would be held liable. The same has been seen in numerous cases such as *Christian Louboutin Sas. v. Nakul Bajaj & Ors.*<sup>26</sup> In this particular case the High Court at Delhi stated that the 'safe harbour' provided to the intermediaries is not absolute and that to fall under section 79 of the IT Act, there must be an active participation by the intermediaries to ensure good action by their entity.

#### *b. Liability of the Seller*

**Rule 6** of the rules provides for the duties and liabilities for sellers in e-commerce transactions:

---

<sup>23</sup> Consumer Protection (E-Commerce) Rules, Rule 5, 2020

<sup>24</sup> Consumer Protection (E-Commerce) Rules, Rule 7, 2020

<sup>25</sup> Consumer Protection (E-Commerce) Rules, Rule 6, 2020

<sup>26</sup> *Christian Louboutin Sas. v. Nakul Bajaj & Ors.*, CS(COMM) 344/2018

1. **Rule 6(1)**- The seller offering goods or services through a marketplace e-commerce entity mustn't adopt unfair trade practices whether in the course of the offer or otherwise.
2. **Rule 6(3)**- The seller selling in a marketplace e-commerce entity mustn't refuse to take back goods, or withdraw or discontinue services purchased or refuse to refund consideration if such goods or services are defective, deficient or spurious

The other duties imposed under this rule to the seller are to not post fake reviews, to fully disclose details of the product and enter into a valid contract with the appointment of a grievance officer. In cases where the seller is liable under these sub-sections, according to Section 8 of the rules in the case of the contravention of any of the provisions in the rules the provisions of the Consumer Protection Act, 2019 shall apply. This provides for valid remedies for the aggrieved consumer.

*c. Inventory E-Commerce Entity*

**Rule 7** of the rules provides for the duties and liabilities for the seller in e-commerce transactions.

An inventory E-commerce platform is a seller as well as the marketplace e-commerce platform. It is one that owns the products (goods and services) that will be purchased by the consumer. Hence the liabilities placed on it are the same as under Rule 6 and Rule 5 as and where it might be applicable. A key focus for prevention of liability here is for the authenticity and representation of the product as well as the due diligence in fulfilling the duties of the e-commerce entity.

**Non- Compliance with the Rules**

In case the entities under this rule, i.e. the Intermediary, E-commerce Platform or Seller breaches the rules as provided in the Act of 2020, a penalty has been placed under the Act. In case of injury to the consumer that is physical due to the defective product, the penalty placed shall amount to imprisonment of 1 month to life on the basis of the offence. Further a fine in case of legal rights of the consumer being breached may lead to a fine ranging from 25 Thousand INR to 5 Million INR.

**Suggestions**

Investment in the Indian market scenario in the future of commerce- E-Commerce is still low is compared to on a global scale. Purchases by multi retailer fashion brands as Foreign Direct Investment still stands low due to the bounty of RBI stipulated restrictions acts as an

impediment to the same. Indian e-commerce giants such as Flipkart aim at selling to foreign brands rather than expansion and this is caused by the lack of decent legislation in creating a greater market of e-consumers. The proper compliance according to the rules and provisions as mentioned above act as incentive to create a wider market base for e-consumers. The break-up of price values is another benefit for disclosure that must be incorporated in the Consumer Protection Act of 2019 for consumer viewing. The Personal Data Protection Draft must be passed in accordance with consumer protection laws in India (of 2019 and 2020) for the prevention of data breach which is a massive concern for the e-consumer. Lastly strict implementation of the regulations on the malpractices and unfair trade practices by e-commerce entities and sellers must be cracked on to set an example for the creating a wider e-consumer base. These factors will easily influence consumers by creating trust in the system and do so.

### **Way forward**

An elaborate consumer protection mechanism by compulsory compliance overlaps several sectors and other legal frameworks affecting the market space. The Consumer Protection (E-Commerce) Rules of 2020 have compelled entities made liable under it to re-visit their policies of action to make it more consumer friendly. Formation of terms and condition and its availability in electronic contracts has seen a major shift, along with a shift to click wrap agreement formats. Further the due diligence practiced by e-commerce entities interms of liability, indemnity and privacy policies has also made a massive shift to be more compliant as to fall under the defence provided under the IT Act of 2000. Further the compliance with other fields of law such as Intellectual Property Rights (trademarks Act of 1999)<sup>27</sup> protection and competition law have also been enforced and implemented for smooth availing of services as to not be deficient to consumers. This is also valid in other provisions such as the Food Safety and Standards Act, 2006 and Drugs and Cosmetics Act, 1940 for labelling and quality compliance.

Lastly the Department for Promotion of Industry and Internal Trade must release the E-Commerce Policy for enabling foreign investment entities be subject to the stringent

---

<sup>27</sup>Supra 24; Amazon Seller Services Pvt. Ltd. v. Amway Idnia Enterprises Pvt. Ltd & Ors, CM APPL. 32954/2019

compliance towards consumer protection as per the NDI Rules in a fashion similar to domestic ones.<sup>28</sup>

## **Conclusion**

The introduction of the Consumer Protection Act, 2019 and the Consumer Protection (E-Commerce) Rules, 2020 was due high time in the Indian legal system due to the surge in the IT as well as E-Commerce sectors in India. The placement of liability for not performing the duties mentioned portrays the interdependency of the Acts. The next step however in this process if creating a more consumer friendly environment for e-consumers is the speedy disposal of cases arising out of breaches that will definitely ensue post the enforcing of the new legal framework. The much anticipated E-commerce Policy will also be heavily scrutinized for the rigidity of imposing liability on foreign investors must be legally compliant for consumer protection as well as not be too much of a deterrent to attract foreign investment. Further, as the global nature of India's e-commerce sector expands an application on globally concerning issues such as data privacy must be dealt with, with a GDPR compliant Data Protection Bill (PDP Draft 2019). Control of the existing laws must also be incorporated into various fields such as Media law that affects the consumer immensely.

Hence the even though there exists a fairly sufficient legal framework for the protection of E-Consumers in the era of E-Commerce, the legal framework needs efficient implementation as well as expansion into other fields of law to be airtight to provide complete protection to the consumers right.

---

<sup>28</sup>Department for Promotion of Industry and Internal Trade,  
[https://dipp.gov.in/sites/default/files/DraftNational\\_ecommerce\\_Policy\\_23February2019.pdf](https://dipp.gov.in/sites/default/files/DraftNational_ecommerce_Policy_23February2019.pdf)