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E-Consumers' Protection in India

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ECONSUMERSPROTECTIONININDIA

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E-Consumers' Protection in India

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Abstract- Growing practice of electronic transactions includes both e-commerce and e-consumers. Lack of proper policy standard and specific laws regulating electronic transactions of consumer and numerous cases reported through print media as well as electronic media necessitated the measures for the protection of electronic consumers. In the process of e-commerce e-consumers are looking forward for appropriate consumer protective regulations for the protection of their rights on e-transactions. In this article endeavour has been made to assess and device or improve the existing laws or policies apart from analysis and comparison of usefulness of e-consumers protective mechanism for the protection of consumer' rights and keeping in view of Consumer Protection Act, 1987 and Contract Act, 1872 in India the article attempts to find out the possible ways for the protection of e-consumers' rights in general and rights of Indian e-consumers in particular. The article also suggests possible measures to protect the right of consumers during transactions in the virtual world called electronic world, which demonstrates the need for a model that uncompromisingly protect the needs of consumers for their safe electronic transactions.

Keywords: e-commerce, e-transaction, internet, information technology, e-consumer protection, e-privacy, dispute resolution; consumer contracts, e-jurisdiction.

I. Introduction

Economists of the age indicates that we are moving from the traditional economy that emphasized on physical manufacturing of goods to the new economy where institutions concentrate more on knowledge and information than anything. The key to the new digital world is e-commerce, electronic commerce, an electronic transmission medium to engage in the exchange, including buying and selling, of products and services requiring transportation. Supply and demand still remains the same as the forces that control prices and quantities, but e-commerce changes how these forces appear themselves. E-commerce brings forth a tougher business competition, creation of new marketplaces, faster speed of transactions, and rapid growth in technologies, and also determines the nature of the leadership which it has put itself to become one of the must-haves for institutions these days.

Movement from the Industrial Age to the Information Age and later on shifting to the New Digital World, our economy has developed rapidly. Invention of EDI (Electronic Data Interchange), use to sends purchase invoices electronically, in the late 1970s accelerated the growth of e-commerce. However, real economic growth period was in the 1990s when Tim Berners-Lee introduced the "World Wide Web" to the economy. Soon after, e-commerce was introduced in a well organized way on the web. It served the web with secure connections with electronic data transferring, internet marketing, and electronic payment services. Today, e-commerce is being implemented to e-business. Electronic business' not only exchanges information between buying and selling of goods but also distributes information and provides support and services to consumers. More consumer demands appear in the internet than any other transmission mediums today. Nowadays, we prefer internet more because our old systems of economic are being replaced by the new technology. Our time value has gone up and our activities are more convenient, accurate, and faster. It does not require us to go to the store to buy any given product. One or two clicks do just enough to get the product shipped right to the door step. Traditional distribution of products had to go through many steps until consumer receives. E-commerce allowed skipping of many of these steps, getting us the profits that could have been lost in those steps.

According to Morgan Stanley U.S. Investment Research, the internet only takes four years to reach fifty million people while television take more than ten years and radio about 38 years. It demonstrates that the internet has a huge potential to grab many customers in a short amount of time, which in turn can become a target market for growing firms.

II. E-Commerce

E-commerce is defined as, "the use of electronic transmission medium (telecommunication to engage in exchange, including buying and selling of products and services requiring transportation, either physically or digitally, from location to location."[1] E-commerce relates to buying and selling of information, products and services via computer networks, i.e. it is a means of transacting business electronically through Internet. In other words, it is a means of conducting business/ trading /marketing online. Most of the transactions, since beginning of internet was online consumer shopping on the web.

E-commerce is beneficial for several reasons. For example, it provides convenient access to products that may otherwise not be accessible, which is

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[1] Greenstein, Marilyn and Todd M. Feinman, Electronic Commerce: Security, Risk Management and Control. USA: McGraw-Hill Companies, Inc., 2000.

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particularly important in rural areas. It is an efficient way of entering into transactions, both for consumers and e-retailers. Further, e-commerce has made possible low-value cross-border transactions on a scale that previously was unimaginable.

To a large extent, e-consumers have the same requirements and needs as traditional consumers. However, in many ways, e-consumers are more vulnerable as they typically cannot examine the product prior to purchasing it and may not know from whom they are buying. In light of this, it could be suggested that the need for "trust" is even greater in e-commerce than in offline trade. Yet businesses have been poor at creating trust in e-commerce, and in many jurisdictions consumer protection laws continue to be weak. With e-retailers failing to create the necessary trust, the law plays a crucial role in creating consumer trust in e-commerce-trust that will benefit businesses, consumers and society. As a result better e-consumer protection will increase consumer confidence leading to greater e-consumerism, which benefits the trio partners i.e. businesses, consumers and society.

The reception of e-commerce was immediate as it offered automation of e-commerce for instance, displaying products on the web, taking orders, processing payments online and co-ordinating inventory and delivery departments. The e-commerce industry is likely to evidence an upsurge in online consumer base new product categories and online retailer to optimize the online shopping experience. It has been predicted that e-commerce sales will increase at a steady rate of 19 percent year to year.2

E-Commerce is an evolution that helped our traditional economy adapt to the new digital world, using electronic technology through the internet, resulting in more competitions, more marketplaces, faster transactions, and more advanced technologies to make activities between customers and producers more active. Internet has changed economy so much that most of the business activities today are made in the web. Therefore, beside government's responsibility to protect e-consumers, we being consumers/customers and internet users are also responsible to keep our e-commerce healthy and safe so that e-business can be more reliable in the future so that every single person in the world will be able to take advantage of e-commerce.

III. E-Consumer

In general the rights of a consumer as provided by the domestic legislations like Sec. 6 of Consumer Protection Act, 1986 in India, are also available to electronic consumer because no special stipulation has been framed in most of the Consumer laws regarding applicability or non-applicability of electronic transactions. But due to difference in the nature and place of business or medium of business few unique practical problems like place of business, jurisdictional issues, non-availability of common dispute resolution system, as there is every possibility of cross border transaction in electronic system (e-shopping), i.e. the buyer of one nation purchase from seller of another nation or vice-versa etc., are indispensable in case of electronic transactions or e-commerce, which certainly requires special measures that are not provided in the existing consumer legislations. The right of consumers and e-consumers though equal in theory but different in operation or enjoyment. Thus, in case of act of buying and selling of products or services on the virtual electronic world the buyer is known as e-buyer, seller is known as e-seller, retailer is known as e-retailer, consumer is known as e-consumer and the transaction is known as e-transaction. Due to ease in transaction the number of e-consumer is growing at high rate and within a very short period it will defeat physical consumer[3]. Considering these aspects strong protective mechanisms are required to be set up and stringent measures in form of laws needed to be framed otherwise it will not only affect the e-consumers but respective Government shall also lose their state revenues.

a) Reasons of Growth of E-Consumer

E-consumer is nowadays, working as essential parts of day to day life due to its acceptability by a huge number of people throughout the globe. India is also not out of reach of this electronic fever. There are many reasons for the acceptability of e-consumers and electronic transactions which are discussed in brief hereunder:

i. *Affordability*

Normally shifting from one type of activity to another involves high costs in case if physical businesses but in case of electronic businesses the picture is certainly opposite one. The internet is a flexible platform that provides a greater value than offering alternative.

ii. *Convenience*

Today internet is common to most of the people over the globe as *Laura Rush* stated that e-commerce sale will increase at the rate of 19 percent per year[4] thus within a short period it will catch considerable number of family because of its user friendliness. Easy to use interface of the internet provide an additional incentive to change existing habits.

[2] Laura Rush, The Biggest E-commerce Trend of 2003, available at http://commerce.internet.com.

[3] Laura Rush, The Biggest E-commerce Trend of 2003, available at http://commerce.internet.com.

[4] Supra note.2

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iii. *Availability*

The all-pervasive nature of the technological platform makes it popular. The Internet is a platform that is not restricted by geographical or time periods. One can purchase/avail any products or services from any corner of the globe simply by few clips of mouse.

iv. *Wider Choice*

In traditional market to chose one goods or products one has to move from one shop to another shop or one place to another place and some time have to take unwilling products due to scarcity of the product in particular area because in traditional market options are lesser than the options available in electronic world.

v. *Better Bargain*

Due to lack of numerous varieties of products or numerous service providers in locality one has to opt for below quality products or services by paying a higher price sometimes as it is not possible to visit different places to have a good quality product or service but in case of electronic market the options are wide and thus one can not only chose as per their desire moreover can have more bargaining option.

vi. *Speedier and Cheaper Shopping*

In traditional market one has to travel from one place to another which not only waste valuable time but has to spent extra money for commuting from one place to another but in electronic shopping one can select best goods or services from one place without travelling from here and there which saves one's time as well as money.

b) Need of E-Consumer Protection

Number of e-consumer is growing like nothing these days due to its user-friendly nature but at the same time the risk factors for using internet for e-shopping is also increasing and about to catch danger mark if not restricted and regulated properly by a time bound regulation on the same. Numerous reasons are there for the protection of e-consumer like creations of hackers duplicate account, disclosure of private information without consent, masking, caching etc. but few problems make the protective measure indispensible in this respect and required speediest protective mechanism. It ranges from rules for opening bank accounts to standards for the manufacture and safety of goods. Government, from the local trading standards office to the regulators of the stock market and banks, ensure that these regulations are applied, and provide complaint procedures when things go wrong. Few of these are discussed below:

i. *Phishing*

Online identity theft of the consumer has long been an epidemic. An official definition of online identity theft is the practice of pretending to be someone else on the internet. The purpose can be quite harmless (like ordering to some product to someone under someone else's account), but when referred to in the media, it's often about the criminal activity of stealing someone's personal information for his or her own financial gain. More often than not, it involves phishing (online fraud) for a person's banking information and using that to order goods or transfer money to another bank account. There is a framework of legal regulations designed to provide protection as a consumer in physical or traditional modes means when shopping from a local shop. But, at present there is no similar framework that covers all situations where one purchase goods on Internet by electronic transactions. In India though the Government has promoted e-commerce aggressively which is indirectly a promotion to e-consumers activities, focusing especially on the delivery of services and legal controls for the online sale of goods have yet to catch up with those for conventional shopping.

ii. *Insecurity*

Another important factor is lack of guidelines for buying online with a degree of safety. It is important to realize that all computer systems cannot be one hundred percent secure, there is always a degree of risk involved in using the Internet for buying goods. Thus, it requires a strict and user-friendly law which should not only provides the security at the time of shopping but also protect the interest of the e-consumer for post transactional consequences.

iii. *Online Jurisdiction*

Third factor is that the Internet is a communications medium without geographical or national boundaries. By contrast, consumer protection legislation is based within national and local boundaries. To be protected by law under the present laws in India at the time of electronic shopping, the first thing an e-consumer need to be ensured is that all the parties involved in the transactions are based within national boundaries where his municipal consumer protection laws apply; in other words, that the organisations one is dealing with must come under the same legal jurisdiction as they do which is not possible in the process of e-shopping on internet because in internet the jurisdiction is borderless.

c) Measures for the Protection of E-Consumer

In this portion, the author will analyse an outline of his proposition that he suppose is needed to protect consumers' interest in this electronic age. The author finds out following areas of central importance for the effective protection of e-consumers.

i. *Apposite Information*

It has been said that an informed consumer is the asset of the nation and considerably better equipped to look after her/his own interests than is an uninformed consumer. Businesses must be required to make all relevant information available that can help the consumers to assess the benefits and risks of entering

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into a particular transaction. Having access to such information equips the consumer to decide whether to contract or not, and ensures that the consumer knows what to expect. Hence unnecessary disappointments, with subsequent disputes, are avoided.

E-consumers are particularly dependent on appropriate information being provided, because such information acts as a substitute for the real-life 'touch-and-feel' that occurs during offline transactions. In addition, e-commerce is a particularly suitable transaction form for the supply of information. While it would be virtually impossible to provide signage or printed information materials outlining the specifications of all items sold in physical shops, it is easy for an e-retailer to include links to detailed information about the products it sells. Thus, legal regulation requiring e-retailers to provide detailed information about their products, the sales process, etc. is not particularly onerous for the e-retailers.

The type of information that e-retailers should be required to provide can be broken down into six categories; information about the e-retailer, information about the product, information about the sales process, information about the terms of the contract, information about how the consumer's personal data will be dealt with and information about applicable dispute resolution processes.

a. Information about the E-Retailer

The Internet is a particularly suitable communications medium for those seeking to engage in fraud- a web shop with a professional look can be created in a couple of hours, it can be operated at distance and can be moved, and removed, as suits the needs of the criminal. Consequently, consumers need information that allows them to assess the reliability of the e-retailer. E-consumer protective regulation must require e-retailers to provide, at least the information regarding the e-retailer's identity, the e-retailer's place of registration, the e-retailer's physical location, and the e-retailer's contact details including physical address, postal address, e-mail address and telephone number.

b. Information about the Product

Perhaps the most obvious type of information needed by a consumer is such information that allows the consumer to assess the characteristics, quality and price of the product. E-consumer protection regulation must consequently require e-retailers to provide, at least, information regarding an accurate, and appropriately detailed, description of the product, its characteristics, uses, limitations, compatibility, as well as the need for services and maintenance, the full price of the product, including applicable taxes and surcharges (such as delivery costs); all costs itemized, the applicable currency, applicable warranties and guarantees, any applicable after-sales service provided by the seller, manufacturer or a third party, and safety-related information.

c. Information about the Sales Process

E-retailers have worked hard to ensure a streamlined sales process, making it as easy as possible for consumers to place their orders. However, the simplicity of the ordering process is typically coupled with complex terms and conditions governing the transaction. In other words, while it may be very easy to order a particular product, it may be very difficult for a consumer to understand the rules governing the sales process. It is consequently important that e-consumer protection regulation requires e-retailers to provide, the information about the sales process, at least, about the technical steps to be followed in order to conclude a contract; about any constraints placed on the sale; about the expected delivery time and method; about any applicable order tracking system in place; about the payment process; about the parties' rights to cancel, terminate or retract, as well as applicable refund, exchange and returns possibilities; about what will appear on credit card statements in case of sale by credit card; and about the security measures applied to the transaction. Furthermore, e-retailers must be required to ensure that any commercial communication (e.g. e-mail or website) is clearly identified as being of a commercial nature.

d. Information about the Terms of the Contract

It has been seen that that few consumers ever take the time to read the terms and conditions they agree when entering into contracts online. For example, in one study it shows that 90% of the respondents indicated that they never read the whole agreement, while at the same time 64% indicated that they always click "I agree". Furthermore, 55% did not believe that they entered into a legally binding contract when clicking "I agree".[5]

However, that should not be seen as an indication that e-retailers need not provide their consumers with information about the terms and conditions of the contract. Instead, the fact that few consumers ever take the time to read the terms and conditions they agree to highlights that: (1) businesses, including e-retailers, must be required to provide easily accessible information about the terms and conditions they stipulate in their contracts, and (2) the law must be structured to meet the consumers' legitimate expectations of protection.

Any jurisdiction aiming at providing useful consumer protection regulation must insist on e-retailers providing their consumers with, at least, the terms of the contract expressed in clear, unambiguous and simple language; information of any avenues for negotiating the

[5] A. Gatt, "The Enforceability of Click-wrap Agreements", 2002, 18 Computer Law & Security Report 408.

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terms of the contract; and technical facilities for the safekeeping of the terms (such as printing or downloading).

Furthermore, it is not enough that e-retailers are required to provide the types of information listed above. Satisfactory regulation must also demand that the information be presented in accessible language.

e. Information about the use of Consumers' Personal Data

A consumer's personal information is a significant resource, with a commercial value. As a consequence, e-retailers typically have an incentive to collect as much personal information as they can. This creates a conflict with the consumer's privacy interest. At a minimum, e-consumer protection regulation must require e-retailers to provide existing, and potential, consumers with detailed, yet accessible, information about how it collects data; what that data will be used for; who will have access to the data; and how the data will be kept safe etc

Such regulation should also require e-retailers to highlight the consumer's rights in relation to the data, such as access and correction rights. A further concern arises relating to the lack of power of consumers to negotiate terms, and the risk that e-retailers generally will make the sacrifice of privacy a condition of doing business.

f. Information about Applicable Dispute Resolution Processes

Few consumers take account of the availability of a dispute resolution process when deciding whether or not to purchase a particular product. However, consumer re-visits and customer loyalty will be greatly harmed by negative experiences, and aggrieved consumers and consumer advocacy organisations can be expected to generate critical media coverage of unfair behaviour by e-retailers. Moreover, if exposed to information about the applicable dispute resolution process, consumers are better placed to assess the risks of engaging in the transaction. Consequently, e-consumer protection regulations should require e-retailers to provide information about applicable dispute resolution process, at least, limitations to the consumer's legal rights, such as lawful exclusion, or limitation, of the seller's liability; limitations to the consumer's avenues for redress, such as binding choice of forum clauses; applicable choice of law clauses; arbitration clauses; options for mediation; applicable internal complaint systems; and applicable external complaints systems etc.

g. Accuracy and Validity of Information

In addition to requiring e-retailers to provide the above-mentioned information, consumer protection regulation should prescribe that the types of information listed above should be made available both before and after the transaction is entered into. Furthermore, such regulation should prescribe a time limit for how long the information must be accurate. In other words, it is not sufficient that the information in question is accurate at the time a consumer visits the e-retailers website, the information must also remain valid and accurate for a reasonable period of time after the visit. For example, it is of little comfort to an aggrieved consumer that the e-retailer's contact details were valid at the time of contracting, if the e-retailer then stops using those contact details so as to avoid being contacted by the consumer.

Unless a consumer can be sure that no alterations have been made to the information provided, consumers would have to read all the information at the start of each visit to a website. However, if an e-retailer indicates the date that the information was posted, and brings attention to changes where changes are made, a consumer can assess whether she/he needs to re-read parts of the information. Consequently, it is crucial that consumer protection regulation requires the use of version numbering on all information provided by e-retailers. Further, consumer protection regulation must require old versions of information to be stored by the e-retailers in a manner that make them accessible to the consumers for future reference in case of a dispute.

h. Confirmation of the Transaction

Consumer protection regulation should require e-retailers to provide consumers with a prompt confirmation of the transaction as soon as an order has been placed. That confirmation should contain information acknowledging that the order has been accepted, information regarding expected delivery time and method used, as well as information regarding payment and applicable cancellation rights and procedures. Furthermore, the confirmation should be printable and possible to store in electronic form (for example, e-mailed at consumer's option or made available as a downloadable file).

ii. *Fair Contracts*

It has also been seen that few consumers ever take the time to read the terms and conditions they agree to when entering into contracts online.[6] There are several reasons for this. First of all, some consumers simply do not think that the terms and conditions are legally binding.[7] Second, 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. They take a more or less calculated risk, hoping to be treated fairly by the law. If this is true, it could be argued that consumer protection laws have created lazy and irresponsible consumers who do not take the time to

[6] Gatt, "The Enforceability of Click-wrap Agreements" [2002] 18 Computer Law & Security Report 408.
[7] Ibid

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seek to protect their interests. Further, many standard contracts contain complex legal clauses, such as choice of forum clauses and exclusion clauses, that even legally trained people may struggle to fully comprehend. As a result, consumers in general do not read the terms and conditions of the contracts they enter into.

Different features have been discussed here under which any useful consumer protection regulation must possess. These features can be divided into two categories: features relating to the regulation of contract formation and features relating to the regulation of the terms of the contract. However, there is some degree of overlap between these two categories of features, such as the need for an adequate regulation of unconscionable conduct.

iii. *Adequate Regulation of Unconscionable Conduct*

Unconscionable conduct comes in many forms. For example, it is unconscionable for an e-retailer to put undue pressure on a consumer. It is also unconscionable for an e-retailer to take advantage of a consumer's mistake or other weakness. Satisfactory consumer protection regulations must adequately protect consumers against such unconscionable conduct. The following are some examples of unconscionable conduct that are typical, or particularly relevant, for the e-commerce context:

- Useful consumer protection regulation ensures that e-retailers cannot use sales processes that confuse consumers into entering into an agreement or appearing to accept unreasonable terms. All sales processes should contain a step at which the consumer is asked to verify the purchase, and at that step, the consumer should have access to an easy mechanism for correcting or cancelling the order;
- The impossibility of knowing who you contract with places a particular onus on e-retailers to avoid contracting with consumers who lack, or have limited, legal capacity. Consumer protection regulation should contain special rules protecting consumers who lack, or have limited, legal capacity, such as children and mentally ill, and their guardians;
- Unconscionability rules must also prevent e-retailers from holding a consumer liable for purchases not authorised by the consumer. For example, an e-retailer should not be allowed to seek payment from a consumer where the consumers' credit card has been used in an unauthorised manner; and
- E-retailers, like their offline counterparts, often include clauses in their standard contracts, giving them the right to unilaterally vary the terms of the contract. The scope of the unconscionability rules must be broad enough to ensure that such unilateral variation is not allowed.

iv. *Adequate Regulation of Product Quality and Suitability*

Consumer protections regulations must ensure that products sold meet an adequate quality and safety standards. Further, where a consumer has made clear the purpose for which a product will be used, the law must ensure that the e-retailer may only deliver products suitable for the purpose described by the consumer. Finally, products provided must correspond with any descriptions provided of the product.

a. Adequate Regulation of Liability Issues

A contract under which the e-retailer excludes all forms of liability would rarely be fair to the consumer. Consumer protection regulations must make clear that an e-retailer may only exclude liability in specific circumstances, where a reasonable balance of risks between buyer and seller has been prescribed by law.

b. Adequate Regulation of Return, Exchange and Refund Issues

Useful consumer protection regulation should include provisions protecting the consumer's right to return or exchange products where appropriate. Such regulations should also ensure that consumers have a right to a refund where it is reasonable to ask for one. For example, a right to refund should exist where a faulty product has had to be returned or where a payment error has occurred.

It is also important that consumer protection regulation provides for an adequate 'cooling off' period. In other words, such regulation must give consumers the right to return goods or cancel a service within a reasonable time of entering into the contract for that product. Where goods are returned to the seller, the cost for the return may fall on the consumer.

c. Adequate Regulation of the Rights in the Goods

Consumer protection regulations must include adequate rules regarding the consumer's legitimate right to title in, and quiet possession of, products they purchase. Furthermore, such regulation must address at what point the risk in the product passes from the e-retailer to the consumer.

d. In Dubio or Undetermined Rules

One way of ensuring that businesses take care to draft clear and accessible contracts is to implement rules stipulating that inconsistent or unclear clauses are interpreted in a manner favourable to the party that did not draft the contract. Useful consumer protection regulation must include such rules. In other ways the interpretation of the confusing / unclear / inconsistent words should be made in favour of subject i.e. for consumers.

e. Adequate Privacy Protection

Much has already been written about what is required, by way of regulation, to ensure a sufficient level of protection of consumers' privacy. Furthermore,

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the work of international organisations has resulted in a certain degree of international harmonisation of different countries' privacy regulation.[8] Here, the author will merely repeat and draw attention to the key elements required in any scheme aiming at providing appropriate protection of e-consumers' personal information.

The starting point of any attempt at protecting e-consumers' privacy must be an aim that as little data collection as possible takes place, and the data that necessarily must be collected ought to be non-personal where possible. Further, data protection schemes must ensure that where personal data is collected, the data subject is made aware of the collection, its purpose and uses, and has the right to access and correct that data. The data collector must also make sure that the data is kept safe, and is only used and disclosed for the purpose it was collected for. Finally, scheme aiming at providing useful protection of e-consumers must adequately protect e-consumers' engaging in cross-border trade and should provide particular protection for sensitive data like health related information etc.

v. Fair Dispute Resolution

Ensuring a fair resolution to a dispute between an e-retailer and a e-consumer requires a multi-facetted approach. The starting point must be a realisation of two fundamental considerations: (1) the combination of the small values typical of consumer e-commerce transactions and the complexities of, and costs associated with, litigation means that few consumer disputes are suitably handled by the legal system; and (2) a consumer's right to seek redress is an important incentive to businesses to not try to avoid their responsibilities. Taking account of these two considerations, the conclusion must be that any useful consumer protection regulation ought to 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.

a. A Realistic Avenue for Legal Action

Sometimes, when the litigations cross the borders mostly it becomes complex and typically very costly litigation. A consumer is usually better advised to accept the loss than to take legal action against the seller. Indeed, anecdotal evidence suggest that consumers often expect to be 'defrauded' in a number of online transactions, but that they consider the overall gain to outweigh the losses so caused.

This is detrimental to consumers, and consumer doubts about the fairness of e-trading represents an impediment to the adoption of efficient electronic mechanisms. Hence, consumers must always have a realistic avenue for taking legal action against the seller, as the existence of such avenues puts pressure on the e-retailers to not simply ignore consumer complaints. There are two key components in ensuring that consumers have some degree of access to taking legal action against a seller:

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. This main rule may be departed from where the consumer has actively and consciously misled the e-retailer on the matter. It may also be departed from where a consumer is located outside their country of habitual residence and, while entering into the transaction, specifically identified their actual location at the time of the transaction. In such a case, the consumer may reasonably be limited to take action at that location.

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. The same two limitations as are discussed in the context of where the consumer can sue would also be applicable in this context.

In addition, useful consumer protection regulation will also ensure that consumers have adequate access to advice and assistance where they take legal action. Meeting this requirement will typically involve the work of a governmental department or agency working with consumer protection questions. Such a department or agency ought to have the capacity to act on consumers' behalf in both local and cross-border litigation. Moreover, domestic consumer protection agencies should actively participate in international co-operation so as to maximise the chance of successfully protecting e-consumer interests in cross-border trade. Finally, taking account of the typical weakness of individual consumers, useful consumer protection regulation requires that consumers have the option of participating in class actions.

b. An Appropriate Alternative Dispute Resolution System

In civilised countries, nowadays ADR system has been adopted by corporate houses to resolve their disputes. The ADR scheme has been willfully accepted by both consumers as well as retailers/producers. Many sectors have developed a user friendly complaint handling system under ADR scheme and adopted mature dispute resolution mechanisms that operate administratively or as tribunals, with less strict rules and lower costs than the courts. The provision for ADR system should also be encouraged by legislation protection e-consumers right. For an alternative dispute resolution mechanism to be adequate, it must be cost-effective, easy to understand, accessible, credible, timely, transparent to the parties, fair and capable of providing effective remedies. Further, a consumer must

[8] Clarke R. (2005) 'Privacy Statement Template' Xamax Consultancy Pty Ltd, December 2005, available at http://www.rogerclarke.com/DV/PST.html.

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have the right to be represented, and or assisted, by a third party.

IV. Conclusions and Suggesions

Consumer protection issues in the context of e-commerce have gained a considerable amount of attention both from academics and policy-makers. Furthermore, governments[2] as well as inter-governmental organisations[3] have discussed the issues involved and developed various frameworks. Some of those instruments deal with e-commerce consumer issues specifically,[4] while others address consumer protection more generally.[5] Despite this attention, a review of existing legal frameworks shows that they have failed e-consumer needs. It has emerged within public policy frameworks dominated by commitments to economic progress, to freedom of corporations to do business as they choose, and to protect the interest of the consumers whose rights have been infringed p in traditional mode. It is not able to protect the consumers form infringement of their rights in electronic modes. Even those frameworks that have begun from the consumer perspective have been significantly become frozen in time due to technological advancement, or by a lack of will law making authority to make the existing law a dynamic one so that it can cover protective issues of both sots of violations of consumer rights which is really far-reaching in its present shape and provisions. In India we have lots of fragmented laws to cope up the challenges mentioned in the forgoing paragraphs apart from Consumer Protection Act, 1987. But we need a consolidated law to deal with all above mentioned situations so that the electronic consumers' right can be protected properly.

In the foregoing paragraphs, the author has outlined and discussed a range of features necessary for any useful e-consumer protective regulation. Few of the features, the author has discussed, are revolutionary or novel which will certainly useful for evaluating and designing consumer protection regimes in the electronic age.

The author is confident enough that the article shall not only be helpful to fight against the electronic violation of e-consumers rights but hope that it will be used by others as well, to spark and guide law reform leading to better consumer protective regulation in the context of e-commerce.

a) Suggestions

The electronic transactions in the present legal set up is full of insecurity and uncertainty because of absence of proper legal mechanism and that is due to a universal fact that technology developed faster than law though out the globe but it does not mean that law shall not be able to protect technological offences. To cope up with the technological advancement we have to take the help of technology as Charles Clark's renowned remark 'the answer to the machine is in the machine'[9] is perfectly suited in the modern situation. Indeed, the perfect reply to the technological abuses is the application of technological innovation.

The existing consumer laws of India is unable to protect e-consumers' right properly so the consumer have to be more cautious and careful about the use of e-market for e-shopping. The consumer should remember and observe following remarkable practice at the time of electronic transaction for smoother and safer transactions over internet:

- If things go wrong user will have more protection if user uses a credit card rather than a debit card. Company issuing Credit Cards are now issuing separate card security codes to protect credit card transactions from fraud. Maintaining a separate place for keeping credit card number far away from place for the security code which obviously indicates that even if the card number is disclosed on the Internet it cannot be used for purchases.
- If someone is purchasing from a site that is not a part of an India based accreditation scheme, one should make sure that the company is based within India. If the company is based outside the India then the user has the risk of losing money if the goods do not turn up or if they are defective, but one might also be surcharged for import duty and VAT before they are handed over to the purchaser. If the site purchasers are purchasing from does not provide information on the payment of VAT or duty, one should consult Customs and Excise or avoid transactions.
- One should never give credit card or personal information as part of any purchase by email, or via a web page that is not encrypted (a secure socket). E-mail addresses can be set up fraudulently, and so sending users details encrypted by email are still no guarantee of security. Sending once details via a web site form provides some extra security because of the more exacting requirements for the registration of Internet sites. One can ensure that the form with users' details is sent encrypted if the small padlock in the corner of users' browser is locked.
- One should keep all the details of once purchase (copies of the advertisement, for example, or details of the 'shopping basket' of goods you have collected to buy) by printing out each screen that contains details of the electronic purchase. If user needs to complain at a later date these pages will provide the information needed.
- One should not remain once account open for a long time after the transaction is over because hackers might get the opportunity to hack the

[9] Charles, Clark, 'The Answer to the Machine is in the Machine', in: P. Bernt Hugenholtz (ed.), The Future of Copyright in a Digital Environment, The Hague: Kluwer Law International, p. 139

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password or relevant information from users PC or destroy users important information.

Object of the Article

The article has described the necessary components of useful consumer protection protective measures. To achieve active results a particular jurisdiction's consumer protection regulation must contain all the components described hereunder. Present creation is of latent value to several parties, including students, academics, consumer protection professionals, consumer advocacy organisations, law reform agencies, and those regulatory agencies that are actually seeking to identify and address weaknesses in current consumer protections. The work may achieve twofold purpose i.e. ignite law reform act and be a valuable tool for studies of the various approaches to consumer protection. It will also fruitful for the jurisdictions in which no e-commerce consumer protection exists or the existing framework is inadequate and a new scheme is desired. Finally, this work provides a prospect for consumer marketing business houses to critically examine their relations with their customers, and work out ways to cost-effective project for tuning the customer-orientation superior attitude for their contenders.

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