

E-commercial Transactions in India- bane or boon to Consumer Protection

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Introduction:-

Now days Information Technology (IT) has become the need of everyone. At a point of time one need to go to market place for purchasing goods. But, now using Information Technology along with Internet anyone can purchase anything by sitting at home. No doubt this has benefited everyone but it has many drawbacks too. This system of purchasing goods online is popularly called as e-purchase which is one of the part of e-commercial transactions. E-commerce means practice of buying and selling of goods online through consumer service on the internet. The 'e' used before the word 'commerce' is a shortened form of 'electronic'. The effectiveness of E-Commerce is based on electronically made contracts known as E-Contracts. Although E-Contracts are legalized by Information Technology Act, 2000 but still majority feels insecure while dealing online. The reason being lack of transparency in the terms & conditions attached to the contract and the jurisdiction in case of a dispute that may arise during the pendency of a transaction with an offshore site.¹

Due to emergence of e-commercial transactions, a consumer can purchase anything within a fraction of second without going to market. On internet you will find hub of companies like flipkart, snapdeal, amazon etc. who are engaged in sale of goods to consumers. In India e-commercial transactions has increased rapidly since last two decades. Though consumers find it more convenient to purchase goods online but the problems which persist at the time of online purchase and after purchase cannot be overlooked. More particularly the problem of terms and conditions of sale are not legible and consumer clicks the button of Acceptance even without reading it. Again the problem of Jurisdiction in case dispute arises is another problem. This list is not exhaustive. In India The Consumer Protection Act, 1986 was enacted with an objective to protect the interest of Consumer. These problems have created a huge blow to the concept of Consumer protection. In this paper an attempt has been made to highlight how e-commercial transactions has dissatisfied and frustrated the Consumers in India.

Objectives of the Study:-

- 1) To understand the Concept of Consumer Protection
- 2) To identify complications created by increasing E-commercial Transactions
- 3) To understand adverse implications of e-commercial transactions on consumer Protection
- 4) To find out some solutions on complications created by e-commercial transaction

¹ Sachin Mishra, "Determining Jurisdiction over E-commerce disputes in India"

E-commerce – Concept and Foundation:-

The term E-Commerce stands for ‘Electronic Commerce’. There is no standard definition for the term ecommerce as such, it is said to be used in the sense of denoting a mode of conducting business through electronic means unlike through conventional physical means. Such electronic means include ‘click & buy’ methods using computers as well as ‘m-commerce’ which make use of various mobile devices or smart phones.² Electronic commerce or ecommerce 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 can be defined as business activities conducted using electronic data transmission via the Internet and WWW. Hence, E-commerce is business in the online environment.³ Thus, the business activity conducted through electronic means falls within e-commerce. Though there is no specific definition provided in any statute, it encompasses all business conducted by computer networks, be it B2B, B2C, C2C, C2B or B2B2C. E-commerce has defied the traditional structure of businesses trading with consumers bringing to the fore various business models which has empowered consumers.

The Organization for Economic Cooperation and Development (OECD) defines electronic commerce as a new way of conducting business, qualifying it as business occurring over networks which use non-proprietary protocols that are established through an open standard setting process such as the Internet.⁴ In the WTO Work Programme on Electronic Commerce, it is understood to mean the production, distribution, marketing, sale or delivery of goods and services by electronic means. A commercial transaction can be divided into three main stages: the advertising and searching stage, the ordering and payment stage and the delivery stage. Any or all of these may be carried out electronically and may, therefore, be covered by the concept of ‘electronic commerce’. Broadly defined, electronic commerce encompasses all kinds of commercial transactions that are concluded over an electronic medium or network, essentially, the Internet. E-commerce covers three main types of transactions, i.e. business-to-consumer (B2C), business-to-business (B2B), and business-to-government (B2G).⁵

E-commerce is generally described as a method of buying and selling products and services electronically. The main vehicle of e-commerce remains the Internet and the World Wide Web, but use of e-mail, fax and telephone orders is also prevalent. Electronic commerce is the application communication and information sharing technology among trading partners to the pursuit of business objectives. E-commerce can be defined as modern business methodology that addresses the needs of the organization, merchants and consumers to cut costs while improving the quality of goods and services and speed of service delivery. Ecommerce is associated with the buying and selling of information, products, and services

² Ibid at p.3

³ Dr. Devendra Vyas, “Social Dimensions of the E-commerce world in India”

⁴ OECD (1999).

⁵ Didar Singh, “Electronic Commerce: Issues of Policy and Strategy for India”

via computer networks. A key element of e-commerce is information processing. Ecommerce (or e-commerce) consists of buying and selling products and services over the Internet, as opposed to the standard commerce practices. It is a subset of a company's e-business strategy. Often e-commerce is used to add revenue streams to a standard business. E-commerce is a subset of business, where products and services are advertised, bought and sold electronically or over the Internet. Many businesses have become extremely profitable through online sales. Dell Computers is a prime example. Small companies and even individuals can also market their products or services on a worldwide basis through ecommerce. Large companies can reduce sales and stocking costs by selling online. E-commerce in India – what does it look like today? Indian ecommerce space percentage is getting higher as more and more online retailers enter the market. Although this level of entry in the e-commerce market is good from a long term perspective, the challenge is that most entrepreneurs don't have the resources or capital to wait for years before they can get profits. E-fulfillment is the physical delivery of those real orders in the virtual world. E-retailing should be understood as a service that delivers different goods, ordered through the Internet (as well as fax or phone), to a place defined by the customer. In this context shopping is a form of virtual retailing as opposed to the usual stationary business.⁶

The United Nations General Assembly adopted the United Nations Commission on International Trade Law (UNCITRAL) Model Law on E-Commerce through a Resolution passed on 30 January 1997, which recommends inter alia that all States give favorable consideration to the Model law when they enact or revise their laws in view of the need for uniformity of the law applicable to alternatives to paper-based methods of communication and storage of information. Recognizing the necessity to give effect to the Resolution, and with an objective of promoting efficient delivery of government services by means of reliable electronic records, the Government of India enacted the Information Technology Act in June 2000. The objectives of the Information Technology Act, as outlined in the preamble, are to provide legal recognition for E-commerce transactions, facilitate Electronic Governance and to amend the Indian Penal Code, Indian Evidence Act 1872, the Bankers' Book Evidence Act 1891 and the Reserve Bank of India Act 1934. The Act also establishes a regulatory framework for cyber laws and lays down punishment regimes for different cyber crimes and offences.⁷

What is Consumer Protection? :-

The Concept of Consumer Protection denotes an idea designed to ensure the rights of consumers as well as fair trade, competition and accurate information in the marketplace. This idea can only be achieved through an effective Law. In India the Consumer Protection Act, 1986 has been passed with an objective to achieve this goal of Consumer Protection. The idea of Consumer Protection prevents businesses that engage in fraud or specified unfair practices from gaining an undue advantage over competitors.

But in this era wherein E-commercial Transactions are increasing rapidly day by day felt need to overlook the Concept of Consumer Protection. What Consumer Protection is all about has been ignored in this competitive era. Hence, it has become dire need of an hour to create awareness in the society about the

⁶ Dr. Devendra Vyas, "Social Dimensions of the E-commerce world in India"

⁷ C. M. Abhilash, "E-commerce Law in Developing Countries: An Indian Perspective"

consumer protection. 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”. 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.⁸

Increasing E-commercial Transactions - How it is bane to Consumer Protection? :-

E-commerce is credited with empowering employees and knowledge workers, by giving them easy access to virtually unlimited information. E-commerce technologies have helped nations to accelerate their economic growth and to provide more opportunities for the businesses to grow. Meanwhile, it has also created many challenges and adverse effects, such as concerns over privacy, consumer protection, and security of credit card purchases, displacement of workers (especially low-status ones), and is charged with having a negative impact on quality of work life.⁹ In the age of revolutionized information technology and with the emergence of e-commerce related innovations the consumers are further deprived to a great extent. As a result buyer is being misled, duped and deceived day in and day out. Thus the birth of the new concept of “*Caveat Venditor*” has emerged as an answer to the problem.¹⁰

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 especially with the enactment of the various rules under the IT Act to deal with a host of issues emerging from the use of internet. Moreover the IP issues in e-commerce transactions have taken a new form with users finding loop holes to not only easily duplicate material but also mislead other users. Hence, much more is needed to effectively regulate the tangled web. 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.¹¹ Hence, here an attempt has been made to explain how these increasing e-commercial transactions have become a huge blow to the Consumer Protection. This can be summarized under the following heads.....

⁸ Nishith Desai Associates, “E-commerce in India- Legal, tax and Regulatory Analysis” P.17

⁹ Ibid

¹⁰ Prof. Gouri V. Naik & Mr. Peter Ladis F, “Legal Protection of Consumers against the misleading advertisements in India”

¹¹ Nishith Desai Associates, “E-commerce in India- Legal, tax and Regulatory Analysis” P.34

1) Illegibility of Terms and Conditions:-

The Problem of Illegibility associated with E-commerce has many times adversely affected Consumer Interest. The problem of terms and conditions of sale are not legible and consumer clicks the button of Acceptance even without reading it.

2) Privacy risks:-

Minimizing the risks related to the Internet security is of primary concern for any online business site. Internet security is very important and must be guarded severely at all costs. Minimizing the risks related to online security will ensure that you will be able to attract many customers to your online sites. Internet privacy is at risk due to the presence of different elements. The presence of spyware is one factor of risk for Internet privacy security.

3) Phishing:-

In the field of computer security, phishing is the criminally fraudulent process of attempting to acquire sensitive information such as usernames, passwords and credit card details by masquerading as a trustworthy entity in an electronic communication. Communications purporting to be from popular social web sites, auction sites, online payment processors or IT administrators are commonly used to lure the unsuspecting public. Phishing is typically carried out by e-mail or instant messaging.

4) Network Problem:-

This is another problem which most of the time consumers feel inconvenience while online purchasing. Most of the time Network Problem consumes a lot time of consumer. Under such existing circumstances he clicks on unwanted button.

5) Misleading Advertisements:-

Many a times while purchasing goods online misled the consumers. The goods he wanted to purchase can never be supplied to him but the other goods he receive. This misleading advertisement has led this system dissatisfied.

6) Jurisdictional Issues:-

Disputes are usually settled within the physical territory where one or both of the parties are located. However, with an online enterprise, customers could be located anywhere in the World. Now the biggest question that comes to one's mind is that how does an enterprise cope up with such broad exposure. To verify the consumer's location is virtually impossible. A consumer may even be able to pay for services anonymously using the digital equivalent of cash e.g. e-Cash. It is pertinent to note that where goods require a physical delivery, an online enterprise can restrict its customer base to those jurisdictions where it is delivered but with digital goods and services that are delivered online, this is almost impossible, and the enterprise may have to rely on the truthfulness of the customer's information regarding their location.

e.g. A motor vehicle manufacturer makes several online transactions such as buying tires, glass for windscreens, and rubber hoses for its vehicles. If the supplier fails to perform its obligation within the stipulated time limit this may lead to an e-commerce dispute.

The traditional approach to jurisdiction invites a court to ask whether it has the territorial, pecuniary, or subject matter jurisdiction to entertain the case brought before it. With the internet, the question of 'territorial' jurisdiction gets complicated largely on account of the fact that the internet is borderless. Therefore, while there are no borders between one region and the other within a country there are no borders even between countries.¹²

Solutions of the Problem:-

The researcher would like to provide some solutions of the problems involved in E-commercial Transactions so as to protect Consumer interest. These solutions are enlisted as under...

- 1) There is dire need to have separate legislation to deal with the cases of e-commercial disputes.
- 2) Technical Training to be provided by the Government which will entail knowledge of consumers.
- 3) Stringent punishment for misleading advertisements made online.

Concluding Remarks:-

The emergence of E-commerce has benefited in many respects but on the other hands we cannot overlook the adverse implications created by e-commerce. In the age of revolutionized information technology and with the emergence of e-commerce related innovations the consumers are further deprived to a great extent. What a consumer needs to do is to take precautions while making online transactions. With the rapid increase in e-commercial transactions, the risks involved in it are also increasing rapidly. To avoid this one has to consider the aforesaid solutions.

¹² Sachin Mishra, "Determining Jurisdiction over E-commerce disputes in India"