



MAJOR CONSUMER ISSUES IN E-COMMERCE, M-COMMERCE AND THE LIABILITY OF INTERMEDIARIES IN INDIA.

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Abstract : E-commerce is understood to mean the *production, distribution, marketing, sale or delivery of goods and services by electronic means*. The Asia Pacific Economic Co-operation (“APEC”) has adopted a wider definition of e-commerce to include *all business activity conducted using a combination of electronic communications and information processing technology*. The United Nations Economic and Social Commission for Asia and the Pacific (“UNESCAP”) has also defined e-commerce as *‘the process of using electronic methods and procedures to conduct all forms of business activity*. Development of information and communication technology in the last decade have significantly changed lives and provided new opportunities for consumers and business. The General Assembly, in its resolution 70/186 of 22 December 2015, considered that e-commerce, “which should be understood to include mobile commerce, has become increasingly relevant to consumers worldwide and that the opportunities it offers should be harnessed to help facilitate economic development and growth based on emerging network technologies, with computer, mobile phones and connected devices that promote consumer welfare” An increasing number of the consumer has access to the internet and engage in e-commerce, which provides easier and faster access to products and services. It also presents some challenges for consumers that differ from those encountered during offline commercial transactions.

Index Terms : *E-Commerce, M-Commerce, APEC, UNESCAP, Internet, Intermediaries.*

1. Introduction

An e-commerce transaction can be defined as “the sale or purchase of goods or services, conducted over a computer network by methods specifically designed for the purpose of receiving or placing of orders” E-commerce covers a wide range of transactions effected via mobile telephone and other devices such as personal computers and tablets, the further purchase is often made by using applications and platforms. E-commerce is normally thought of in consumer protection terms in relation to business-to-consumer transactions, yet it is not limited to such transactions.

The set of legal issues that arise in e-commerce transactions are Contracts, Security, Authentication, Privacy and Data Protection, Consumer Protection, Intellectual Property Rights, Domain Names, Jurisdiction, Liability, Taxation, Content Regulation, Advertisement, Electronic Payment Issues, Foreign Direct Investment, Corporate Structure and Funding etc. A business-to-consumer transaction requires the online presence of a trader to sell online and accept online orders. On the consumer side, the process requires internet access to review products and acquire them online. A

payment method needs to be specified such as credit card, electronic money, bank transfer or cash on delivery. Finally, the product must be delivered, either online for digital content products or to the consumers home or at a pickup point for goods.

2. Stages of the consumer-business relationship

There are three stages of the consumer-business relationship in which consumer protection issue in e-commerce can be identified, viz.

- i. Pre-Purchase
- ii. Purchase and
- iii. Post-Purchase

Some of the most common e-commerce challenges faced by consumers in developing countries are in the following areas:

1. Weak internet infrastructure, including low online connectivity, speed and reliability.
2. Unstable communication network.
3. Language barrier.
4. Deceptive information and marketing practices with respect to both goods and services and price.
5. Misleading advertising.
6. Lack of clear and sufficient information on both the identity and location of traders, as well as goods and services, prices and guarantees.
7. E-commerce offer made by anonymous traders.
8. Drip pricing practices, where the final amount due is not known until the whole process is complete.
9. Uncertainty on merchantability of goods.
10. Monetary refunds for non-satisfactory products.
11. Non-fulfilment of return or refund policies announced on trader websites.
12. Long and tedious refund process.
13. Expenses for returning goods to be covered by consumers.
14. Data security and online scams, identity theft and fraud.
15. Irreversibility of electronic payments.
16. Security of online and mobile payments and chargeback options.
17. Unclear information on chargebacks and withdrawal.
18. Denial by e-commerce website of responsibility for online payments that are blocked by banks or payment gateways.
19. Fraudulent and fly-by-night operators who take money from consumers without providing products or services.
20. Protection of personal data and privacy.
21. Electronic identification and authentication tools.
22. Late or non-delivery of products or delivery of defective, wrong or spurious products.
23. Non-provision of promised services or offered gifts.

24. Non-compliance with legally established cooling off periods.
25. Insufficient or non-existent customer care.
26. Denial of after-sales service.
27. Lack of consumer awareness of their rights and duties, as well as those of businesses.
28. Lack of basic information technology skills and financial literacy.
29. Concern about dispute resolution procedures.
30. Resistance to or delay in providing redress by financial institutions upon receiving consumer complaints, requiring intervention by consumer protection authorities.
31. Competent jurisdiction and applicable law with regard to cross-border e-commerce disputes.

3. Role of Internet intermediaries

In online intermediary services the entity that enters into contact with the service provider via the platform is generally a consumer. The relationship between service provider and intermediary is an agency contract the service provider is the principal and the intermediary is the agent. However, generally speaking, the agent is responsible towards its principal. Legal relationship that comes into existence once a client of a final service uses an intermediary to conclude such a contract. Examples in the form of hypothetical scenarios:

- a) The intermediary offers services that have been indicated (in quantity, price, and characteristics) by the provider. Through its platform it puts in contact the two parties of the deal receiving a fee from the provider without asking the consumer any fee.
- b) The intermediary informs the consumer that he/she will have to pay a fee for the service rendered by the platform.
- c) The intermediary limits itself providing commercial information concerning the service provider, but does not, generally, make it possible for a contract to be concluded between the latter and the consumer.

A valuable consideration is given by the client in the form of his/her personal data, to the intermediaries which we have seen are among the most valuable assets of online intermediaries. Those data are not only necessary in order to render the intermediary service, but have a further economic value, both for profiling that specific client, and for creating an aggregate data-bank.

4. Information Technology (Intermediaries Guidelines) Rules, 2011

These guidelines was published and notified in The Gazette of India: Extraordinary on 11 April 2011. Definition of intermediaries is imported from Section 2 (w) of the Information Technology Act, 2000. Which includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online market places and cyber cafes. Rule 3 of the above guidelines prescribes for the due diligence to be adhered by the intermediaries. However, Section 79 of the Information Technology Act, 2000 exempts intermediaries from liability in certain instances. It states that intermediaries will not be liable for any third party information, data or communication link made available by them. The Act extends “**safe harbour protection**” only to those instances where the intermediary merely acts a facilitator and does not play any part in creation or modification of the data or information. The provision also makes the safe-harbour protection contingent on the intermediary removing any unlawful content on its computer resource on being notified by the appropriate Government or its agency or upon receiving actual knowledge. Supreme Court of India in Shreya Singhal

V/S Union of India (2015 SCC 248) stated that “knowledge” under section 79(3) of the IT Act would only mean knowledge of the intermediaries pursuant to an order of a court of law and held that an intermediary would be liable if it does not expeditiously remove any objectionable content despite receipt of a court order directing removal of such content.

Conclusion

There is a rapid development of digital economy in the end of twentieth century, along with this development numerous challenges most particular to regulate this digital economy has become one of the major challenges among other issues. In such situation the only legislating dealing with the challenges brought by the digital revolution is Information Technology Act, 2000, which is an enactment of the Parliament of India which was further amended in the year 2008 to make it more stringent in the matter of Cyber Crime. However, the concern for Consumer Protection in online commercial activities has highly been ignored by this law. Since, OECD says, *the same level of protection provided by the laws and practices that apply to other forms of commerce should be afforded to the consumers participating in commercial activities through the use of global network.*

Government of India must provide the same level of protection to its citizens in the cases of online transactions for which separate legal framework is need of an hour.

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- [8] G.S.R. 314(E).—

In exercise of the powers conferred by clause (zg) of subsection (2) of section 87 read with sub-section (2) of section 79 of the Information Technology Act, 2000 (21 of 2000), the Central Government hereby makes the following rules, namely.- "intermediary" with respect to any particular electronic message means any person who on behalf of another person receives, stores or transmits that message or provides any service with respect to that message.

[9] R & A Associates is an integrated Corporate Secretarial & Legal Services Firm, **LIABILITY OF INTERMEDIARIES UNDER INFORMATION TECHNOLOGY ACT, 2000**, available at <http://www.rna-cs.com/>

