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CONSUMER RIGHTS AND RESPONSIBILITIES IN DIGITAL ERA

ASHITA JOSHI

ABSTRACT

We live in an era of plastic money. We like the flexibility of buying and selling the products and services online. Hence, some of us like to purchase goods and services from telemarketers. Consumers also like the fact that they can access money and do payments more easily than that in the past or compared to paper money or coins. We seek benefits from rapid technological advances to our vehicles, appliances, mobile phones and computers. Computers as well as mobile phones are very much responsible for expanding our circle of interactions in many ways that would have been unimaginable a decade ago. As digital technologies create new opportunities for consumers in business and selling and purchasing, they also make upholding the consumer rights more challenging. Digital products and services often come with the usage and restrictions about which consumers are not well informed and are kept ignorant. The online transactions often cross borders and make it difficult to resolve complaints and even to know what consumer laws, rights and policies apply. The data collection and data protection is a dangerous area the consumers are not aware of. In areas of banking, insurance, advertisements, and in general e-commerce the data is shared and collected with others for a consideration or other purposes until the consumer is faced with shocking bills and other obstacles on litigations and various other demands relating to it. Hence, the question is are the information received trustworthy and helpful and whether the consumer has access to any institutional support behind him? A consumer is exposed to risks and whether the products not suitable is delivered and can be returned or not delivered at all. Apparently, the legal process is evasive, expensive, complicated and tough. The development of internet has facilitated the expand of markets to each and every place and every area and cross-border e-commerce but also taken internet fraud to new levels. The Information and communication technologies (ICT) are known as key enablers for social and economic development and the regulators of it must give first priority to protecting consumers of the ICT services and applications. The Consumer Council shall continue advising consumers on their rights and responsibilities. If consumers need Council's assistance then they can visit their offices or call The National Consumers Helpline on toll free number 155 for advice.

KEYWORDS: Consumer Rights, Digitalization, Online Market Space

PROLOGUE

Consumer rights are now an integral part of our consumerist way of living. They have been well documented and much talked about. We have all used them at some point in our daily lives. Market resources and their influence in our lives are growing by the day and so is the awareness of one's consumer rights. Consumer Rights is a cognizance of what rights a consumer holds when it comes to seller which provide the goods. Connections between humans and technology are rapidly expanding. Like all new developments, there is potential for both increased opportunities and risks for consumers. And of course, these digital issues are not just limited to advanced economies. Although penetration levels differ, 2 billion of the 3.2 billion people online globally are in developing countries.¹ Making sure the foundations of a connected system are designed to benefit citizens and consumers in all locations will be essential.

Information Technology is an area that is drastically moving forward and transforming the traditional way of protecting the consumer. It helps in conducting regulatory process for consumers into digital area of the human race as a result of fast changes of technology. In today world, lifestyle is fast changing according to the convenience with increase in use of mobile phones, computers, internet, and purchasing locally and via international platforms overlooking the protection of the consumer and the economy due to the striking fast movement of the digital age.

¹ www.consumersinternational.org/media/1292/connection-and-protection-the-internet-of-things-and-challenges-for-consumer-protection.pdf.

CONSUMER IN DIGITAL ERA

A consumer is a person who buys goods or services for a price and uses them for his own. A person who buys goods or services for a commercial purpose will not be treated as consumer unless such goods or services are used for earning a livelihood by means of self-employment.² An online consumer who clicks and buys goods or services will also fall under the above definition. Business-to-consumer e-commerce has evolved dramatically since its birth in the late 1990s by putting consumers on centre stage. Consumer reviews and ratings not only shape the buying experiences of other consumers but also affect business reputation and product development. The line between consumers and businesses is further blurred by the financial opportunities which are opened for the consumers to sell, rent, and perform tasks for other consumers through Internet platforms. Such online activity generates a wealth of data used to sketch rich consumer profiles which have become elemental to e-commerce business models but also brings risks relating to privacy and security risks.

The Digital Revolution of the 21st century has brought a notable change in consumer behaviour. The recent changes comprise in demands and behavior of the customers. As a result, only those companies are succeeding who are able to understand these changing patterns of their customers need. Now a days, everything is available at a touch on your smart phones whether it's buying online clothes, ordering food, booking online tickets or any other service. Hence, the expectations of customers have reached a new level with the way customer service is provided. The consumer today is more prudent and looks for everything in detail before choosing up a service provider. Digital Marketing plays a dominant role in portraying a brand or a service in an effective manner to its consumers.

² Consumer protection act 1986 , s 2(d).

RIGHTS OF THE CONSUMERS

Consumer rights are now an integral part of our consumerist way of living. Hence, to promote that, Consumer Day is observed on March 15 every year. They have been well documented and much talked about. We have all used them at some point in our daily lives. Market resources and their influence in our lives are growing by the day and so is the awareness of one's consumer rights. Consumer rights are required to be known to every consumer which can help them buy the goods and services with no complication. The rights of the consumer are well-defined by the agencies like government, consumer courts and voluntary organisations that work towards safeguarding them. The rights are:

RIGHT TO SAFETY

A consumer has the right to safety against such goods and services which are hazardous to his health, life and property. For example, appliances made of low-quality raw material such as electric press, spurious and sub-standard drugs, pressure cooker and low-quality food products like bread, milk, jam, butter, etc. The consumers also have the right to safety against the loss caused by such products.

RIGHT TO BE INFORMED

A consumer also has the right that he should be provided with all the information on the basis of which he decides to buy goods and services. Such information relates to quality, purity, potency, standard, date of manufacture, date of expiry, method of use, ingredients, etc. of the commodity. Therefore, a producer is required to provide all such information in a proper manner which a consumer is bound to know, so that he is not cheated.

RIGHT TO CHOOSE

A consumer has the absolute right to buy any goods or services of his choice among the alternatives available in the marketplace. Hence, no seller can influence his choice in an unfair manner. If any seller does so, it is deemed as interference in his right to choose.

RIGHT TO BE HEARD

A consumer has the right that his complaint is heard. The consumer has the right to file a complaint against all those things which are detrimental to his interest. The rights which are mentioned above (Right to Safety; Right to be informed and Right to choose) have relevance only if the consumer has the right to file his complaint against them. These days, several large organisations have set up Consumer Service Cells which aims to provide the consumer with the right to be heard about the problems. The function of the cell is to hear the complaints of the consumers and to take adequate measures to rectify them. Many daily newspapers also have special columns to interest the complaints of the consumers.

RIGHT TO SEEK REDRESSAL

This right provides compensation to the consumers against unfair trade practices of the seller. For an instance, if the quantity and quality of the product do not confirm to those promised by the seller, the buyer has the right to claim compensation. Several redressals are available to the consumer by way of compensation, such as free repair of the product, return of the product with refund of money, change of the product by the seller.

RIGHT TO CONSUMER EDUCATION

Consumer education refers to educating the consumer with regard to their rights constantly. In other words, consumers must be aware of the rights they hold against the loss they suffer on account of goods and services purchased by them. Government has also taken several measures to educate the consumers. For example, Ministry of Civil Supplies publishes a quarterly magazine of title 'Upbhokta Jagran'. Doordarshan also telecasts a programme named "Sanrakshan Upbhokta Ka".

RIGHT TO BASIC NEEDS

The basic needs mean those goods and services which are necessary for a survival. Basic need includes adequate food, shelter, clothing, health care, energy, sanitization, education and transportation. All the consumers have the right to fulfil these basic needs.

RIGHT TO HEALTHY ENVIRONMENT:

This right provides the consumers with the protection against environmental pollution so that the quality of life is enhanced. Not only this, it also stresses on the need to protect the environment for the sustainability as well.

RESPONSIBILITIES OF THE CONSUMERS

TO ASK ONESELF:

1. Do I know my rights as a consumer?
2. Do I know the proper remedy in case of any problem?

TO BE AWARE:

The consumer must be alert and ask more and more questions from the trader.

TO BE INVOLVED:

The responsibility of the consumer is to be actively involved so that there are less chances to be exploited.

TO USE SECURED PAYMENT CHANNELS:

The payment gateways used by a consumer during an online transaction should be properly secured in order to prevent fraud.

TO BE ORGANIZED:

It is the responsibility of consumers to stand united and collectively bargain for their rights.

LAWS GOVERNING CONSUMER PROTECTION DIGITAL ERA IN INDIA

COSUMER PROTECTION ACT,1986

The Consumer Protection Act,1986 came into force on 24th December,1986. It was enacted to provide a simpler and quicker redressal to consumer grievances. The Act seeks to protect the interest of consumers against deficiencies and defects in goods or services. This Act also seeks to secure the rights of a consumer against unfair trade practices, which may be practiced by manufacturers and traders. This Act empower consumers to file complaints against unfair trade practices.

INDIAN CONTRACT ACT,1872

The same principles of the invitation to offer, offer and acceptance are applicable on online offers and online acceptance of terms offered by online sellers. For example, when a seller displays his product details on any digital forum, it is an invitation to offer. When consumer visits an E-Commerce website to buy the product and reads the details he offers to buy as per terms and conditions of such sale. When the online payment is made the sellers accepts the offer made by the customer simultaneously and communicates acceptance of the offer. A contract comes into existence by a click on the website.

INFORMATION TECHNOLOGY ACT,2000

Sec 3 of IT Act permits authentication of the digital signature. Sec 4 and sec 5 gives the recognition to electronic and digital records. All the electronic records are the evidences such as exchange of mails since the consequential amendments were made. Thus, a consumer should preserve the trail of transaction such as offer, confirmation of order and payment records through internet banking which can be used as evidences in case of disputes.

LIABILITIES OF ONLINE COMPANIES TOWARDS CONSUMERS

Online selling entails certain obligations to the consumer. Online sellers of goods or services, have responsibilities towards the buyers. Being aware of these obligations ensures that the seller is complying with the law and treating the buyer fairly.

Introduced in 2002, the E-commerce Regulations apply to anyone providing a service for payment at a distance (including websites) and requiring online sellers to provide specific information at certain points on commercial websites. The buyer should be informed:

- of the different technical steps to culminate the contract;
- of the technical process for identifying and correcting errors before placing an order;
- whether the final contract will be stored by the seller and whether the buyer will have access to it;
- about the languages offered to eventuate the contract;
- whether the seller is bound by any code of conduct and provide a link to view it;
- the price of goods including taxes and if not provided then how these are calculated;
- about all the additional charges in advance;
- the arrangement for payment, delivery, performance and the time by which you undertake to deliver goods or services;
- and most importantly, where a right to cancel exists, the conditions, time limit and procedures for exercising that right. Seller must state whether the consumer is to bear the cost of returning goods in case of cancellation (otherwise you will be responsible for payment for returns);
- when enhanced delivery is chosen by the consumer; and
- whether the value of goods is diminished by consumer handling.

CONSUMER PROTECTION IN DIGITAL ERA

The Government shall acknowledge that the growth of the economy depends on the purchasing power of the consumer. The series of legal reforms, with a view to protect consumer interest, some of which are as below:

- The Government introduced a new Consumer Protection Bill, 2018 in the Lok Sabha on January 5, 2018, with a view to overtake the current Consumer Protection Act, 1986. The bill proposes several measures considering the changing nature of the Indian economy, especially in the online sphere. These include the establishment of a Central Consumer Protection Authority, rigorous provisions for tackling misleading advertisements, class action suits, etc.
- The labelling and packaging guidelines under various laws, such as Drugs and Cosmetics Act, 1940; and Food Safety and Standards Act, 2006; Legal Metrology (Packaged Commodities) Rules, 2011; mandate declaration of certain basic information, such as maximum retail price, date of expiry, etc. to safeguard consumer interest.
- With the introduction of Goods and Service Tax (GST) is a more transparent system of taxation has been put in place, which in the long run is intended to promulgate consumer interests. GT has summed up the indirect taxes into one except for few, which made it easy for consumers to know the tax.
- The Bureau of Indian Standard Act (BIS) states in it that any commodity or service related to public or consumer interest can be brought under compulsory certification.
- The Real Estate Regulation & Development Act (RERA) has come as the rescuer for property and Real Estate consumers. RERA seeks to help and protect the home buyers from the builders. RERA authority is different for every state.
- In today's digital era, brands have the chance to leverage a wealth of data they hold to provide world-class customer experiences. Whilst doing so, organizations need to be mindful of the right of privacy of their customers. Customer's personal information should be kept confidential unless they have the consent or where such disclosure is required under law.

POSITION IN INDIA

The e-commerce has transformed its way for how business is done in India. The Indian e-commerce market is expected to grow to US\$ 200 billion by 2026 from US\$ 38.5 billion as of 2017.³ In December 2012 there was a news report for online commerce in India which pegged the market at roughly USD 14 billion, which is why some of the poster children of online retail in India are getting stratospheric valuations even though they are yet to show any major profits. For instance, Flipkart had a valuation of around USD 800 million in 2012 and was looking for an IPO in around three to four years. This news came in 2012 and in August 2018 U.S based retail chain Walmart acquired a 77% controlling stake in Flipkart for USD 26 billion, valuing it at 20 billion \$.⁴ The most growth of the industry has been triggered by increasing internet and smartphone penetration. According to survey, India's internet economy is expected to get doubled from US\$ 125 billion as of April 2017 to US\$ 250 billion by 2020 which is majorly backed by e-commerce. India's E-commerce revenue is expected to be growing at the highest in the world which is 51 percent. Such huge numbers give a sneak peek into the scope and size of the Indian e-commerce marketplace. It also begs the question for consumers that if there are so many transactions occurring in the online platform and most of the transactions of which are between retailers and domestic consumers then if there are any specific laws out there protecting the interests of consumers in the online world.

Apart from the Information Technology Act, 2000 and various circulars by Reserve Bank of India regarding money transfer activities and online banking trying to secure the online platform, there are limited number of laws that seek to perform the task of protecting the welfare of consumer in the online market space. That does not necessarily mean that the consumer is left without any recourse at all. One such law is the Consumer Protection Act, 1986 which protects the rights of the consumer in the online market space as well.

The main purpose of Consumer Protection Act, 1986 is to empower consumers to face the power of large populations and preventing unethical businessmen from taking uncalled for advantage of the weak position of the consumers in the antiquated Indian Judicial System.

³ E- Commerce industry in India

<https://www.ibef.org/industry/ecommerce.aspx#:~:text=India's%20internet%20economy%20is%20expected,the%20highest%20in%20the%20world> accessed June 05 2020

⁴ "Walmart and Flipkart Announce Completion of Walmart Investment in Flipkart, India's Leading Marketplace e-commerce Platform" 18 August 2018. Accessed June 05 2020

However, this act was enacted more than a quarter of a century ago and thus have some grey areas when it comes to protecting the rights of consumer in digital era. For any transaction to come under the purview of Consumer Protection Act,1986 it should have the following three essential requirements:⁵

1. There should be a 'good' or 'service' sold or provided to a consumer;
2. Such good or service must be 'sold' i.e. there must be a 'sale';
3. There should be a 'defect' in the good or 'deficiency' in the service.

⁵ Are Indian Consumer Laws Ready for the Digital Age?<cis-india.org/a2k/blogs/are-indian-consumers-laws-ready-for-digital-age#fn1> accessed March 10 2019

RECOMMENDATIONS AND SUGGESTIONS

In today's changing market scenario from offline to online, there is an important necessity of empowering consumers, moreover educating them and motivating them on their rights and responsibilities as an aware consumer. A consumer shall fully be vigilant so as to protect oneself from fraud or any wrongful act on the part of the seller or trader. The central as well as the state government should ensure the protection of consumer. International bodies must be established for the consumer protection and global trade. The major responsibility of the consumer and trader is to keep in mind the following suggestions:

- The companies whether national or international should be limited to the access and the use of the private information of the consumer.
- The terms and conditions stated by the company should be clear and transparent.
- The risk of trade activities done online as well as offline should be taught in school and colleges.
- There should be a better establishment of the international consumer protection agencies which can help consumer to gain more interest in international trade through digital channel.
- The government as well as companies should consider as a mandatory action to communicate the customer about their rights as a consumer.
- Consumers should purchase the products and indulge in trading activities with their complete scrutiny and not at cost of attractive advertisements.
- Consumer should check the print of MRP (Maximum Retail Price) on the product before buying it.
- Consumer should check the quantity of the product as per the figure printed on the packaging of the product.
- The customer should always collect the bill while purchasing the product.
- Consumers should check the expiry date of the product (particularly of medicines and eatables) before buying it.

CONCLUSION

Based on the research findings and information gathered, there seems to be an alarming need to inform as well as educate the consumers and create awareness. Because of the rapid digitalization of the marketplace, the consumers should not only be aware of the physical products and services but they need to be more fiercely protected from online scammers and fake products. Consumers fall prey to the deceiving schemes of online companies that are gaining popularity these days. It's very easy for a seller in this digital era to fool the consumers by deliberately mentioning half information or wrong information, although it is really hard for consumers to be aware of their rights in the digital scenario today. As a single click on a wrong site could lead to loss of a considerable amount of money, which is earned through the hard work of a consumer. At the subsequent time each and every possible business is bound to shift from manual market to online market. As we know due to Covid-19 markets are closed and every business has been shifted from offline to online. Hence, some of the trusted online platforms are safe but it is very difficult for a consumer to know what is safe and what is not. There are not enough redressal agencies set up by the government to resolve the issues of the consumer. The consumer has to fight tooth and nail for even a meagre amount or compensation.

All of these above issues hint at a bigger problem which must be resolved at the earliest. Therefore, I conclude by saying that there must be stronger and better laws as well as fast track consumer courts for the protection of the consumer from the might of large corporations and companies.

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