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REVIEW ARTICLE

Consumer Rights in the Virtual Marketplace: A Critical Assessment

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ABSTRACT

Consumers are the foundation of every economy. A healthy economy depends on this spending, production, and growth cycle. Money spent by consumers on goods and services generates demand for them, which in turn boosts output and propels economic expansion. Rights of Consumer have been an important area of discussion from a long time in the USA. In the year 1962, US President John F. Kennedy addressed the topic of consumer rights. Today, after the digital revolution, the nature of consumer is divided into two patters: Consumer at physical marketplace and consumer at virtual market place. This paper aims to discuss the rights of a consumer in the virtual marketplace.

KEYWORDS

• Consumer • eCommerce • eCommere platform • Digital economy • Fundamental rights

INTRODUCTION

A "consumer" is often defined as someone who buys things and services for his/ her own personal use or the personal enjoyment of other family members, as opposed to using them to make extra money or for resale. In the absence of consumers, an economy cannot continue to function. They are the foundation of every economy. A healthy economy depends on this spending, production, and growth cycle. Money spent by consumers on goods and services generates demand for them, which in turn boosts output and propels economic expansion. The demand for products and services is driven by consumers, who are essential to the economy. Their choices, purchases, etc. are referred to as consumer behaviour, have an impact on companies by influencing product offers and market trends. The term "consumer" acquired prominence during the late 18th-century Industrial Revolution, but consumers had been around for generations. People switched from making

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things for themselves to buying them from stores and marketplaces during this time due to the growth of mass manufacturing and urbanisation. As contemporary marketing strategies and technology emerged in the 20th century, the term "consumer" underwent additional development. Examining the development of consumer rights and how they are applied in online marketplaces is the goal of this research.

Consumer Rights - A Historical Backdrop: The "Consumer's Right" is, by definition, the right of a consumer to be adequately informed about the quality, amount, potency, purity, price, and standard of the product they are using, as well as the right to be shielded from any consumer malpractice.[1] World Consumer Rights Day was first marked on March 15, 1983, after President John F. Kennedy of the United States of America addressed the topic of consumer rights in 1962. American President John F. Kennedy stated in his 1962 speech that "if consumers are offered inferior products, if prices are exorbitant, if drugs are unsafe or worthless, if the consumer is unable to choose on an informed basis, then his dollar is wasted, his health and safety may be threatened, and the national interest suffers."[2] Kennedy listed four fundamental rights: the right to safety, the right to be informed, the right to choose, and the right to be heard. These privileges are regarded as the cornerstones of consumer law. In the 1980s, the international coalition of consumer groups added four more rights, including the right to remedy. The rights to consumer education, a healthy environment, and the fulfilment of fundamental needs. Since then, consumer organisations all around the world have continued to work on the basis of these eight rights. The essential consumer rights of an individual in India are as follows:

- ***Right to Safety:*** In order to protect their long-term interests, consumers have the right to verify the quality of the products that are offered for sale. India's product quality marks include the Indian Standards Institution (ISI) for industrial and electrical goods, the Agriculture Mark (AGMARK) for agricultural goods, the FPO mark for processed fruit products, and others. The Consumer Protection Act, 2019 defines "consumer rights" as the opportunity to be shielded from the promotion of commodities, products, or services that pose a risk to one's life or property.[3]
- ***Right to information:*** The customer has the right to demand that they g*et al*l relevant information about the products and safeguard themselves against unethical behaviour. The Consumer Protection Act of 2019 protects consumers from unfair commercial practices by granting them the right to information about the quality, amount, potency, purity, standard, and pricing of commodities, products, or services, as applicable.[4]
- ***Right to Choose:*** Every customer has the right to an assortment of reasonably priced goods that are readily available on the market. According to the 2019 Act, a consumer has the right to be guaranteed, wherever feasible, access to a range of commodities, products, or services at reasonable costs.[5]
- ***Right to be heard:*** The consumer will be given the right venue to voice their concerns and their interests will be properly taken into account. The Act of 2019 guarantees consumers the right to be heard and the assurance that their views will be given proper attention at the suitable forums.[6]
- ***Right to Seek Redressal:*** If a consumer feels exploited, they have the right to seek a just settlement and claim redress.[7] According to Section 2(9)(v) of the Act of 2019, customers have the right to file a complaint against unfair commercial practices, restricted trade practices, or dishonest consumer exploitation.[8]
- ***Right to consumer education:*** The right to consumer education refers to the ability to get the necessary knowledge and skills to be an educated consumer, as it is the consumer's obligation to be aware of their rights. The Act guarantees a customer's entitlement to consumer awareness.

Position of Consumers in Virtual World: Customers in the virtual world are referred to as "e-consumers". Traditional customers and e-consumers have comparable needs and wants. Internet commerce is defined by the OECD as "the sale or purchase of goods or services, whether between businesses, households, individuals, governments, and other public

or private organisations, conducted over the Internet."[9] In a nutshell, e-commerce is the activity of purchasing and selling products or services online. The decades-old Consumer Protection Act, 1986 was superseded by the new Consumer Protection Act, 2019 due to the boom in digitalisation, which went into effect on July 20, 2020. Furthermore, on July 23, 2020, the government announced the Consumer Protection (E-Commerce) Rules 2020 (E-Commerce Rules). A digital and electronic network is used to acquire and sell goods and services, including digital items, according to the Rule. According to section 2(v) (iii) of the FEMA1999, an e-commerce entity is a company that was incorporated under the Companies Act 1956 or the Companies Act 2013, a foreign company covered under section 2(42) of the Companies Act, 2013, or an office, branch, or agency in India that is owned or controlled by an individual who resides outside of India and conducts e-commerce. "E-commerce" is defined under the Act of 2019 as the purchase or sale of goods or services, including digital items, using an electronic or digital network.[10] The decades-old Consumer Protection Act, 1986 was superseded by the new Consumer Protection Act, 2019 due to the boom in digitalisation, which went into effect on July 20, 2020. In the case of *State of Delhi Vs. Mohd. Afzal and Others,*[11] the Delhi High Court held that," Electronic records are admissible as evidence." The Act defines "electronic service provider" as an individual who offers technologies or procedures that allow a product seller to advertise or sell goods or services to a consumer. This includes any online marketplace or sale site.[12] Laws and regulations must be created to guarantee the security of consumer transactions in e-commerce as consumers are seen as the market's kings. Even now, customers in e-commerce continue to confront a number of difficulties, such as beneath

- *Unfair trade practice and misleading advertisements:* The Consumer Protection Act of 2019 addressed the problem of unfair trade practices. The Act's Section 2(47) defines an "unfair trade practice" as a business conduct that uses unfair methods or deceptive techniques to promote the sale, usage, or supply of products or services. According to Section 94 of the Consumer Protection Act of 2019, the Central Government may take specific actions as directed in order to prohibit unfair trade practices in direct selling and e-commerce as well as to safeguard the rights and interests of consumers.
- *Language barriers:* At first, e-commerce platforms were accessible by means of English-language instructions. They have now begun to receive instructions in a variety of languages as time has gone on. The translation of terms and conditions in local languages, however, frequently seems to be hard to grasp.
- *E-commerce deals offered by unidentified traders:* Unidentified traders frequently use e-commerce platforms to advertise certain products or services. Potential customers are put in danger by this, which can occasionally result in fraud and personal data theft. In these situations, the owner of the platform utilised for such actions will be held liable under the vicarious responsibility concept.
- *Merchantability of goods:* Goods must be able to fulfil the typical expectations of a customer in order to be considered merchantable. The definition of "product" is found in Section 2 (33), Act of 2019.[13] Product liability, as defined by the Act, is the obligation of a product producer or seller to make up for any harm a customer may have suffered as a result of a faulty product that was created or sold, or from a lack of services related to that product.[14]
- *Refund policies:* Many e-commerce platforms have return procedures that are difficult to comprehend. Certain businesses use a drawn-out and laborious return process. According to the Reserve Bank of India's instructions or relevant regulations, the Ecommerce Rules, 2020 also require that refunds be given to customers when their claims are approved. It is anticipated that the system will be enhanced after the ONDC is implemented.
- *Insufficient seller information:* Online platforms used for e-commerce frequently do not disclose the location of the product's vendor. The issue arises on two fronts: first, the supplier's reputation and brand identification are called into question; second, the buyer has the right to know about the seller, but the customer

is kept in the dark. Additionally, even if the number of e-commerce businesses has decreased, occasionally they still lack identity. Accordingly, the Ecommerce Rules, 2020 mandate that the following information be displayed in a clear and understandable manner: the name of the e-commerce entity, the address (headquarters and all branches), the website, and the customer service contact information, including the grievance officer's name, email address, fax number, landline, and mobile number. Furthermore, the Rule requires that the platform provide the name and contact information of the importer (if it sells imported goods and services), the third party from whom it has acquired the goods or services, or the seller who imports and resells the products and services.

- *Goods delivered late or not at all, sending of alternative item, or defective items without a policy for exchange or refund:* In the past, we saw that customers' purchases frequently resulted in both defective and delayed deliveries. Furthermore, items bought online with promotions may include a disclaimer that states merchandise cannot be returned once it has been purchased, among other things. Because these items are frequently proven to be flawed, the parties that purchase them are unable to test them.
- *Lack of consumer knowledge of rights and obligations:* Customers with low levels of education have a harder time understanding their rights and obligations, which makes them less conscious of them. They are therefore the group most at risk from e-commerce.
- *Fraudulent companies that take money without delivering goods or services:* The Mohali Consumer Forum, which took up the issue after receiving a complaint, ordered Snapdeal, Pious Fashion, and courier service Blue Dart to pay Rs one lakh to civil engineer Parveen Kumar Sharma nearly two years after an engineer received soaps from the e-commerce platform Snapdeal instead of an iPhone 7 Plus.[15] (In the SnapDeal case)
- *Data security, protection of personal data, or privacy:* To enable the advancements and benefits of AI-enabled technologies, we must ensure that the technology platforms on which the data is captured, stored, processed, and retrieved adhere to the dual goals of security (ensuring that unauthorised parties cannot access the data) and privacy (ensuring that neither unauthorised nor authorised parties access and use the data for a non-permitted purpose). This will help to build and reinforce patient trust. The AI-based system can perform best when it offers both cognitive and emotional intelligence, a balance that can improve predictability and comprehension.[16] To achieve this goal, stringent validation and testing procedures must be put in place to guarantee that AI algorithms are secure, efficient, and function as planned. Those in charge must keep an eye out for biases and differing effects on various patient groups, and then iteratively enhance the algorithms in response to these discoveries. Tools and methods for communicating AI system outputs in a way that patients and healthcare practitioners can comprehend must be created. In this regard, a standard operating protocol may be created, which would ultimately serve to increase system trust.
- *Identity theft, and frauds or online scam:* The illegal act of using someone else's personal information, such as their social security number, credit card information, or login credentials, acquired through digital means, to carry out fraudulent activities online, frequently for financial gain, without the victim's knowledge or consent is known as "identity theft and fraud" or "online scam." In other words, it involves stealing someone's digital identity in order to impersonate them. Unfortunately, online fraud occurrences, including identity theft instances, have been occurring due to the e-commerce technology. Fraud mitigation measures are made more difficult by the complex strategies that cybercriminals have developed using stolen identity information.
- *Legal noncompliance:* These businesses frequently have yearly turnovers that exceed the GDP of the home nation. The organisations involved in e-commerce

were occasionally found to be in violation of the host nations' regulations.

- *Grievance redressal mechanism:* The Ecommerce Rules, 2020 mandate that a grievance redressal process be established. This mechanism must designate a grievance officer, whose name, contact information, and designation must be posted on the platform. It also mandates that any consumer complaint be acknowledged by the grievance officer within 48 hours of its receipt and that the issue be resolved within a month of then.

Apart from the matters already discussed, every e-commerce company on its platform shall undertake the following in accordance with the Consumer Protection (E-Commerce) Rules, 2020:[17]

- get the customer's express and affirmative agreement to buy any products or services on its platform, not through automated processes or pre-checked boxes.
- not tamper with the prices of the products or services sold on its platform in order to charge customers excessive prices,
- not classify customers in any way or discriminate against customers in the same class.
- not impose any cancellation fees on customers unless the e-commerce company likewise bears comparable fees for the customer's order cancellation.
- refrain from engaging in any unfair trading practices.

A historic decision was made by the U.S. States and local governments can require online retailers to collect sales taxes even if they don't have a physical presence or nexus in the state, according to the Supreme Court's ruling in *South Dakota v. Wayfair Inc.*[18]As the corporate headquarters would serve as a sufficient physical presence, the Court noted that the state in which the online business is established would always have the authority to collect sales tax from that businesses. Other than the largest online retailers, however, most of them may set up their operations to avoid having a physical presence, particularly in important regions where sales tax might be very high. In the case of *Amazon Seller Services Pvt Ltd vs. Modicare Ltd & Ors,*[19] the learnt single judge issued a decision issuing a temporary injunction prohibiting the defendants from selling any Amway goods on their website or mobile application. Moreover, defendants were allowed to approach Amway to prove the same whether the items were real, and they could be allowed to sell the goods provided they could secure Amway's written consent. On appeal, the justices' bench S. J. Muralidhar. & Singh, Talwant, J. rejected the requests for an interim injunction in the lawsuits. In accordance with the aforementioned provisions, the appeals are granted and the petitions are dismissed, each with a cost of Rs. 50,000. As demonstrated by the Delhi High Court in *Christian Louboutin SAS v. Nakul Bajaj & Ors.,*[20] any online marketplace or e-commerce platform that permits the storage of counterfeit products will be engaging in mark fraud. Any service provider who utilises the mark on an invoice to make the fake product look like the real one is also infringing on the mark. Displaying mark adverts on the internet to offer fake goods would be considered deception. Selling a fake product with its own packaging and putting it up for sale would also be considered deception. The e-commerce platform or online marketplace would be outside the exception granted by Section 79 of the IT Act as all of these actions would facilitate infringement or fabrication. In *Trimex International FZE Limited, Dubai v. Vedanta Aluminium, India*[21], the Supreme Court ruled that a contract is formed when the parties have communicated their acceptance in full and the terms, including the intention to arbitrate, can be determined from the various correspondences that have been exchanged. This bulletin examines the Court's ruling, its implications for the creation of contracts, and the validity of arbitration agreements established by letters. The Sangrur District Consumer Disputes Redressal Commission penalised Snapdeal Rs. 10,000 in *Nikhil Bansal v. Snapdeal*[22] for not fulfilling an offer on an iPhone 5s 16GB (gold) for Rs. 68, according to a listing that was posted on its website in July 2014. This 'technical glitch' was rejected by the forum. Nikhil Bansal, a Sangrur-based engineering student who filed the complaint, went to the State Consumer Dispute Redressal Commission in Sangrur, Punjab, after contacting the business several times without receiving a response. On March 26, 2015, the forum declared it a "clear cut case of deficiency in service" and ordered Snapdeal to pay Rs. 2,000 for compensation and litigation

costs. Snapdeal was also directed to give the complaint the Apple iPhone at the pricing that was imposed (Rs. 68). The firm was ordered to pay Rs. 10,000 as a fine to be placed in the consumer welfare fund for not delivering the merchandise, and Snapdeal's appeal against the judgement was denied in an order dated February 12. In *Consim Info Pvt. Pvt. Google India Ltd.*[23] The Court acknowledged that Consim could not be granted injunctive relief because it failed the triple test of (i) prima facie case, (ii) balance of convenience, and (iii) irreparable hardship. However, the fact that the contested trademarks were generic in nature had a significant impact on the court's decision in this case. "At the place of proposer where the acceptance is received shall have the jurisdiction for enforcement of contracts entered into by means of computer internet," the Supreme Court of India said in the *Bhagwandas Goverdhandas Kedia vs. Girdhari Lal Parshottamdas & Co. case.*[24]

Open Network for Digital Commerce (ONDC): A tech-based effort called the Open Network for Digital Commerce (ONDC) aims to revolutionise the nation's e-commerce industry by facilitating it via an open protocol built on open-source standards. The several stakeholders receive the following advantages from the ONDC:

- Sellers: Gain an equal chance to compete with major market participants and rank well on the internet.
- Customers may shop with ease from a large selection of items in several categories in a single checkout process.
- Tech companies are known for their quick product and service acceptance and successful go-to-market campaigns.
- FinTech Companies: These companies offer finance and credit solutions to all e-commerce firms.

Open Credit Enablement Network (OCEN): A single set of standards is used by the Open Credit Enablement Network (OCEN), an open network that codifies the credit flow between lenders, borrowers, and credit distributors. An infrastructure for credit protocols is called OCEN. A set of standards is what it is. In OCEN jargon, it establishes a common vocabulary for cooperation and collaborations between lenders and digital platforms known as lending service providers (LSPs).

CONCLUSIONS AND RECOMMENDATIONS

In conclusion, eCommerce has greatly facilitated the purchasing and selling of goods and services. In summary, a regulatory framework ought to be created with the goals of equity, dependability, privacy and security, inclusivity, openness, and accountability in order to foster patient trust in the system. The growing demand for logical frameworks supported by the government regarding the appropriate development and use of technology must be taken into consideration. The following actions will be taken in this respect by the government:

- Collection and processing of Data must be in accordance with national and international regulations.
- Information and communications technology (ICT) businesses operating in high-risk areas to comply with a shared due diligence strategy and take collective action;
- Promoting AI developers who take part in risk evaluations, public safety demonstrations, and multi-stakeholder engagements is necessary.
- Fixation of liabilities for the participants in the AI industry.
- Compliance with the national regulations while using AI products in India. The lawmaker should adhere to following actions in addition to the ones listed above:
  - At every level of AI development, a suitable due diligence provision should be included to reduce risk.
  - Regarding data transmission, the Biodiversity Act of 2002's guiding principles may be adhered to.
  - A SoP that takes into account the principle of forgetting and the minimum data requirements must be constructed.
  - Before the Payment option is shown, all online purchases and sales must go via ONDC. In this case, the ONDC will house the customer data and the eCommerce-related web platforms; however, a unique code will be generated for each client, which they will then use to access the eCommerce platforms. The eCommerce platform

utilising the same code will carry out the complete procedure relating to the eCommerce transaction. The ONDC will create the transaction invoice and forward it to the relevant eCommerce platform.

- Introduction of a standard operating procedure (SOP) that includes a policy for mandatory storage in the National Data Bank, which will be under the exclusive control of the government. This will include the mandatory application principle of forgetting with regard to the storage of customer data.

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