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Conference Special Issue

**ONE DAY NATIONAL LEVEL MULTIDISCIPLINARY
CONFERENCE**

ON

**“Protection of Consumer Rights During the
COVID-19 Pandemic”**

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EMERGING REGULATORY FRAMEWORK FOR E-COMMERCE IN INDIA SOME INSIGHTS

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ABSTRACT

The major changes of the last decades have resulted in the appearance of a new society, namely the information society, or the digital age, with flexibility, speed and technology as the main hallmarks. The Internet has indeed changed ‘the face’ of the business environment, both for companies and consumers. Nowadays’ a mouse click opens many means of information, fun, adventure, trade, and knowledge. e-Commerce has changed the way shopping as well as business was being done in India. The phenomenal increase in the number of internet and smart phone users both in urban and rural markets has contributed to exceptional enhancement in e-commerce. The India's e-commerce is likely to reach US \$ 84 Billion by 2021 and observe approximately 1200% growth by 2026. However, e-Commerce is riddled with many problems which are affecting consumers’ trust and confidence. There are security concerns relating to internet transactions among consumers, which involve concerns about theft of information, internet data breaches, cyber-crimes, online privacy and security. The research paper elaborates the problems faced by consumers with e-commerce, the existing regulatory framework for e-Commerce in India and its importance in protecting the consumers.

INTRODUCTION

In the 21st century, the information society is a reality that is shaping the whole globe. The “death of distance” that is intrinsic to information networking is probably the single most important economic force shaping society at the dawn of the 21st century. Both for individual citizens and for businesses, affordable access to the information infrastructure has become a necessity for effective participation in a knowledge-based economy and society. The major changes of the last decades have resulted in the appearance of a new society, namely the information society, or the digital age, with flexibility, speed and technology as the main hallmarks. Today the web is uniting the world and is the key driver for the changes taking place. The Internet has not only allowed a significant spread of knowledge and information in next to no time at a global scale but also created new interpersonal means of communication, with neither time nor space barriers; enhancing the limited perspective and making way for new possibilities to be explored both at an individual and at a social level.

Today is an age of Internet Economy which can be distinguished through three main traits “it is global, interconnected and renders intangible elements (ideas, information and knowledge”. The Internet has indeed changed ‘the face’ of the business environment, both companies and consumers adopting it as a means of better accomplishing their desired objectives. Organizations now operate in a changing and competitive business environment in which information has become one of the main context determinants. Internet’s heavy influence in everyday life has also changed the main determinants of the traditional consumer, companies now having to cope with well informed, selective and in control customer.

Nowadays’ a mouse click opens many means of information, fun, adventure, trade, and knowledge. The dramatic expansion of e-commerce has been facilitated by the expansion of access to computers and internet. The computers and internet are producing rapid changes in how goods and services are produced, the nature of goods and services being offered, and the mean by which goods and services are brought to market. Today the Internet users have new opportunities to enhance their power as consumers. They may obtain information regarding an immense range of relevant goods and services and benefit from the enormous possibilities available to participate in social networks, express their opinions on brand names, access independent sources of expertise, and interact and dialogue with firms and other service providers. They can play an active role in marketing communication processes and participate much more in the development and consumption of products. In such a shifting new market, companies have come up with new and by far more creative means of attracting the consumer. Online banners, pop up-s, text links, discussion forums, online chats, are all part of the “offensive” advertising to “reach the virtual consumer”.

E-Commerce

E-commerce means buying and selling over the Internet, or conducting any transaction involving the transfer of ownership or rights to use goods or services through a computer-mediated network. On September 25, 1998, the World Trade Organization (WTO) General Council adopted a broad view of electronic commerce and described it as: “production, distribution, marketing, sale or delivery of goods and services by electronic means”. E-commerce covers a range of different types of business-to-consumer (B2C) businesses and activities, such as

consumer-based retail sites and auction or music sites, and business-to-business (B2B) platforms in which businesses exchange goods and services.

Growth of e-Commerce in India

India has the fastest growing e-commerce market in the world. According to industry estimates Indian e-commerce is likely to reach US \$ 84 Billion by 2021. It is likely to observe approximately 1200 percent growth by 2026. Indian E-commerce market is expected to grow more than 5 times from 2017 to 2026 and reach US\$ 200 billion by 2026 from US\$ 38.5 billion as of 2017. With the present rate of digital transformation, India's total internet user base is expected to be 829 million by 2021 from 636.73 million in 2019. Not only internet user base but internet economy is also growing as fast pace. Internet economy is predicted to double from US\$ 125 billion as of April 2017 to US\$ 250 billion by 2020, backed primarily by e-commerce. India's e-commerce revenue growing at an annual rate of 51 percent, is likely to jump from US\$ 39 billion in 2017 to US\$ 120 billion in 2020. e-Commerce has changed the shopping patterns in India. This is to a great extent attributable to the phenomenal increase in number of smart phone users both in urban and rural markets. The younger generation especially millennials are major contributors to this tremendous growth in the online business.

e-Commerce & Covid 19: Resilience Strategies in New Normal

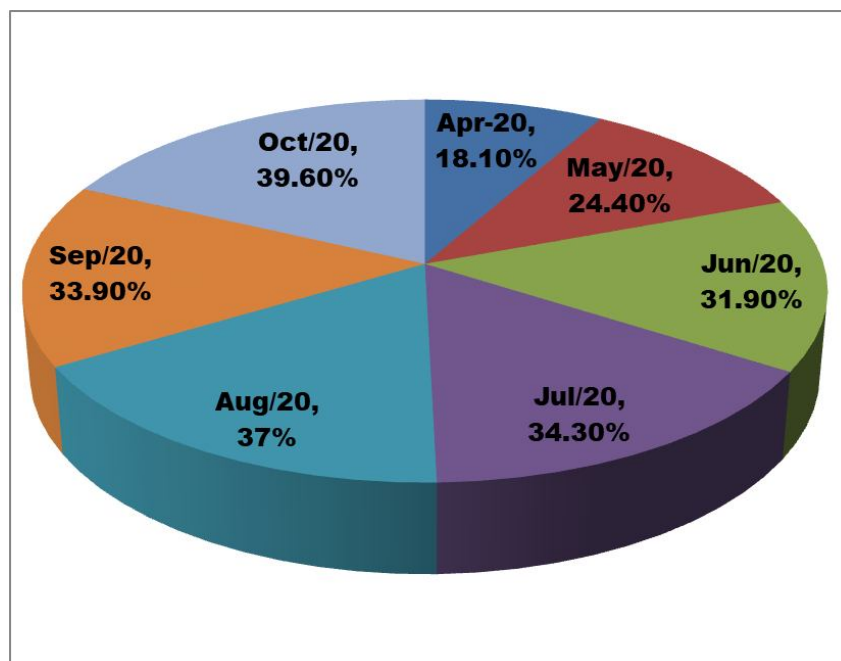
Due to the implementation of social distancing norms and lockdown measures due to Covid 19, there has been a sudden surge in consumer demand for e-commerce services, world over. This has resulted in spike in business-to-consumers (B2C) sales as well as business-to-business (B2B) e-commerce. As consumers could not step out, they shifted to online modes especially for grocery, daily staples and essentials. To contain the pandemic, these new norms are finding increasing acceptance amongst consumers over the traditional businesses. Segments such as on-demand delivery services related to fresh produce, online education, social engagement platforms, e-pharmacies, online consultations, online education are a few areas that may have found their turning point to a highway.

The United Nations Conference on Trade and Development (UNCTAD) conducted a survey "Covid 19 and E-commerce" of online consumers in 9 countries representing both developed and developing nations. The findings indicate that Consumers in emerging economies have made the greatest shift to online shopping during Covid times. The Covid 19 pandemic has accelerated the shift towards a more digital world. The biggest gainers are ICT/electronics, recreational engagements, pharmaceuticals, education, furniture/household products and cosmetics/personal care categories. However, average online monthly spending per shopper has dropped markedly. Consumers in both emerging and developed economies have postponed larger expenditures. Consumers in emerging economies mainly focused on essential products available online.

Tourism and travel sectors have suffered the strongest decline, with average spending per online shopper dropping by 75%. Women and people with tertiary education increased their online purchases more than others. People aged 25 to 44 reported a stronger increase compared with younger ones. Digital giants grow stronger; the most used communication platforms were WhatsApp, Instagram and Facebook Messenger, all owned by Facebook. Zoom and Microsoft Teams have benefitted the most from increases in the use of video calling applications in workplaces.

Nature of Grievances in e-Commerce during Pandemic

The National Consumer Helpline (NCH) is the grievance redressal mechanism of the Department of Consumer Affairs, Govt. of India, and operates from the Indian Institute of Public Administration (IIPA), New Delhi. NCH receives enquiries and grievances from consumers across the country, relating to defective products and deficient services. It provides a pre-litigation stage alternate dispute resolution mechanism to redress consumer complaints. During the period April to October 2020 e-commerce has major area of consumer grievances. 40 percent of consumer complaints during the month of October 2020 related to e-commerce.

E-commerce Complaints at NCH Apr-Oct 2020

Source: National Consumer Helpline

Table-1: Nature of Grievances in e-Commerce (2018-2019)

Sr. No.	Nature of Grievances	%
1	Paid amount not refunded	26.7
2	Non-Delivery of Product/Delay in Delivery of Product	21.7
3	Deficiency in Services	13.3
4	Delivery of Defective Product	9.5
5	Delivery of Wrong Product	9.2
6	Fraudulent Issue	4.6
7	Not providing replacement as per policy	3.2
8	Product / Product Accessories Missing	2.7
9	Sale of Spurious / Fake Products	2
10	Wrong Promises	2
11	Miscellaneous grievances	5.2
	Grand Total	100

Source: National Consumer Helpline

Though many e-platforms worked on war footing to fulfil the demands of the consumer during pandemic but faced issues like warehouse closures and big chunk of their workforce leaving the station. It was a like war time for these platforms as well. Initially the e-platforms also found it difficult to fulfil the consumers' demands. Such disruptions resulted in delivery delays or outright cancellation of orders and then non refund of money to consumers. Several other e-commerce-related challenges have arisen or been further amplified during this pandemic. These include increase in prices to unreasonably high levels), product safety concerns, deceptive practices, cyber security concerns, etc. the major chunk of complaints at NCH also highlight these issues being faced by consumers during the period from April till now. Around 27 percent complaints relate to non refund of money relating to the orders booked during the lockdown period and around 22 percent relate to non delivery or late delivery of product.

The pandemic has shown people that online ordering is the way forward and has increased acceptance rate for e-platforms. However, it remains to be seen whether the situation will bring long-term shifts in customers' habits or not. However, use of online services during COVID-19 pandemic has also highlighted certain challenges, which are as follows:

- **Consumer protection of online consumer-** For consumers, challenges related to internet connectivity, financial inclusion, skills, trust and confidence in the medium. Thus consumer protection is one of the major challenges to be addressed to maintain consumer confidence in the online modes. During the pandemic there have been reports of fraudulent and deceptive practices; sale of fake or unsafe products like hand sanitizers, surgical face masks or disinfectants, etc; increase in price of commodities beyond maximum retail prices to cash in and profit from the surge in demand; loss of personal data and frauds.
- **The development dimension-**
 - The pandemic has highlighted that there is urgent need to bridge the digital divide both within and across countries.
 - The capacities of small producers, sellers and consumers in developing countries need to be enhanced so that they can also gain from the opportunities that e-commerce provides.
 - The pandemic has exposed certain impediments in development of e-commerce like access to online payment solutions, reliable internet and electricity connections, prohibitive costs of trading across borders, advertising and sales platforms, and the difficulties in gaining consumer trust.
 - Need to address the challenges faced in accessing health and educational services especially in countries like India where the rural communities continue to have limited access to ICT.
- **Need to reduce regulatory uncertainty-** this is major obstruction for the firms and businesses to create new innovative business models to promote online sales strategies.
- Governments also need to ensure fair play, sufficient competition and an enabling environment for e-commerce.

e-Commerce: Need for a Regulatory Framework

The world of e-Commerce enables consumers' convenient option to shop where time and place are no longer the binding factors, now you can shop anytime anywhere. For many, the Internet has taken the place of Saturday afternoon window shopping at the mall. However, e-Commerce is riddled with many problems which are affecting consumers' trust and confidence. The online transactions are more impersonal, anonymous, and automated. There is lack of assurance as provided by the traditional settings through formal proceedings and receipts. Trust is an issue, which still presents a significant barrier for internet users to shop online and is crippling the e-commerce environment. Specifically, there are security concerns relating to internet transactions among consumers, which involve concerns about theft of information, internet data breaches, cyber-crimes, online privacy and security. These concerns lead to online consumers preferring to shop from recognized retailers rather than purchasing online.

Trust is a critical component of any business transaction and is particularly essential in the e-commerce environment because of paucity of laws and rules in regulating the field. Consumers expect merchants to not only make their products available on the Web, but to make purchasing a simple and secure process. However, the same things can go wrong while shopping in cyberspace as in the real world. Sometimes, it is simply a case of a computer glitch or poor customer service. Other times, shoppers are cheated by clever scam artists. Three important areas where action is required to boost e-Commerce are: information, redress and enforcement. No doubt trust and confidence will be greatly increased in online purchases if consumers are provided accurate and transparent information for domestic and cross border offers and the retailers wishing to sell online; promoting fast, efficient and cheap online dispute resolution mechanisms; as well as better enforcement mechanisms to ensure application of existing legislations concerning consumers and businesses in the field of e-Commerce.

Cross Border e-Commerce

With increase e-commerce entering new market, it faces new challenges in participants of cross border delivery. Generally in this case, the consumers and the merchants would not share the same currency or even the same language. This transaction, initiated virtually is then completed by transferring the physical product through various legal jurisdictions, customs, geographies and other factors. The idea is to truly expand the target market of a merchant to its limits. The leading cross border companies have varying strategies to reach customers worldwide. Cross Border e-commerce has taken the world by storm and it is mostly driven by sellers from China, USA and Europe. There is a good reason why sellers from these countries have identified the opportunity presented by this cross border online trade faster than sellers and manufacturers from, say, India. These countries in themselves are aggressive global leaders in manufacturing, innovation and have global ambitions to start with. So, it stands to reason that sellers from these countries would feel more comfortable

exploring the world in search for greener as well as unexplored markets. In comparison, India is a relatively less aggressive and newer entrant to race to become a global economic powerhouse. However, of late, we definitely have made great progress and it is time that sellers start taking advantage of the fruits of India's increased global presence.

In cross border e-commerce, there are four challenges namely: Regulatory issues, Payment methods and payment processing, Logistics and reverse logistics, and Organizational readiness. As regards the regulatory framework is concerned, there is inconsistency in regulations across countries. At the bare minimum, business requires consistency in regulation. Every country has its unique set of dos and don'ts about what can be sold to whom. Most countries consider transactions entered into by minors as unenforceable, but the exact age of legal adulthood varies by country. Likewise, several categories of products — food, alcohol, weapons, and antiques, among others — have specific requirements. Even as an e-commerce business, you can be held liable for not meeting those requirements. For instance, a customer's country might mandate that all packaged food must have the ingredients, nutritional values, manufacturing date, and expiration date printed on the label. If goods are being shipped from a country that does not meet these regulations, it could be in violation of local laws in the customer's country.

Further the local legal frameworks lack clarity and strength. It's not just about meeting local laws — it's also about having recourse to courts and competent authorities when the need arises. Several countries around the world have a rather weak legal framework. Even where the framework is sound, there is often a huge issue with delays in the judicial process. So, while an e-commerce player selling to another country will be bound to live up to the regulations of that country, for all practical purposes it may not be able to defend its legal rights there.

United Nations Guidelines on Consumer Protection

The United Nations Guidelines for Consumer Protection is set of important principles for effective consumer protection legislation, enforcement institutions and redress systems. The guidelines which were first adopted by the General Assembly in April 1985, have been revised and adopted in January 2016. In the revised guidelines have new provisions on privacy, e-commerce and financial services, as an explicit response to the eruption of the digital economy and instances of financial crisis.

E-commerce is one of the new areas in the revised guidelines for consumer protection (guidelines 63–65). One of the legitimate needs that the guidelines intend to meet is a level of protection for online consumers. The guidelines emphasize that the level of protection in e-commerce should not be less than that afforded in other forms of commerce. Member States should work for enhancing consumer confidence in e-commerce. The states should work for development of transparent and effective consumer protection policies to ensure adequate protection in online mode. The existing consumer protection policies be reviewed to accommodate the special features of electronic commerce. Member States may consider the relevant international guidelines and standards on electronic commerce as well as collaborate with other States for their implementation across borders. Consumer education and information programmes should cover such important aspects of consumer protection in e-commerce. {guideline 44 (g)}

Regulation of E-commerce in India

Information Technology Act, 2000

Parliament enacted Information Technology Act in 2000 based on the model law adopted by UNCITRAL, to give protection to the transactions carried by means of electronic communication. IT Act 2000 brought change in outdated laws and provided ways to deal with the e-commerce transactions. The Act has provided the much-needed legal and regulatory framework to internet based transactions. The Act has provided legal recognition for e-commerce and e-transactions. It has facilitated e-governance, created legal regime to prevent computer based crimes and ensure security practices and procedures in the context of widest possible use of information technology. Insufficiencies in the law resulted in the government amending the IT Act in 2008.

Information Technology (Amendment) Act, 2008 brought significant changes to IT Act and brought revolutionary changes in the existing Indian cyber law framework. There were insertions of new express provisions to bring more cyber offences within the purview of the Information Technology Act, 2000. Various provisions relating to data protection and privacy as well a provision to curb terrorism using the electronic and digital medium were inserted in the Act. The Amendment Act introduced provisions regarding, inter alia, validity of electronic contracts, security of electronic signatures, punishments for computer-related offences, identity theft, violation of privacy and publishing and transmission of obscene material in electronic form.

Consumer Protection Act, 2019

The Consumer Protection Act, 2019 is being seen as the next big game-changer for the common man, giving more effective and efficient protection in changed economic landscape and guard against the new emerging challenges. The Consumer Protection Act, 2019 received the assent of the President of India and was published in the official gazette on 9 August 2019. Barring few provisions, the New Act has come into force from 20th July 2020 with government notifying Rules and provisions like Consumer Protection Councils, Consumer Disputes Redressal Commissions, Mediation, Product Liability and punishment for manufacture or sale of products containing adulterant / spurious goods. The rest of the provisions have come into force with effect from July 24, 2020.

The New Act replaces the more than three-decade old Consumer Protection Act, 1986. The 1986 Act has been in operation for more than 33 years, still there were deficiencies and shortcomings with respect to its operation which made it difficult for the consumers to get relief. The 1986 Act failed to deal effectively changes brought about by liberalization, globalization and digitalization.

With the advent in technology, digitization has become norm of the day. e-Commerce, direct selling have redefined the market and provided a new dimension to consumer-seller relationship. These practices besides providing ease of transaction have also posed certain challenges for the consumers to deal with. The consumer has become more vulnerable due to the new technological developments. These new challenges forced by market are also required to be taken care of by the system. This new legislation aims at providing redressal to consumer related disputes in effective and timely manner, covering a broad spectrum of consumers and allied issues thereto.

Wider Ambit of Definition of Consumer

The CP Act, 2019 provides for a broader definition of consumer to include not only online transactions but also telemarketing and multi-level marketing which will impose responsibility at all levels. An explanation has been added to the definition of 'consumer' under section 2(7) which mentions, buying and selling, includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing.

Regulator for Consumer Protection

Among a slew of measures, the Act proposes to establish an investigating, prosecuting, reviewing and recommending body -- the Central Consumer Protection Authority, on the lines of the US Federal Trade Commission (FTC), headed by a Commissioner -- to launch inquiries, either *suo motu* or on a complaint or direction from the government, into violations of consumer rights and to launch prosecution in an appropriate court. Central Consumer Protection Authority has been set up by the Central Government with effect from July 24, 2020 with its headquarter at New Delhi. CCPA will regulate matters relating to: violation of rights of consumers, unfair trade practices and false or misleading advertisements which are prejudicial to the interests of public and consumers and to promote, protect and enforce the rights of consumers as a class.

Inclusion of e-Commerce

Keeping with the changing times, the Act defines e-commerce and electronic service provider. E-commerce has now been expressly defined under the Act of 2019 as buying or selling of goods or services including digital products over digital or electronic network. The Act thus ensures more accountability and liability of e-portals. The definition of unfair trade practice is being expanded to include certain aspects of e-transactions. The central government has been authorized to take measures and make rules to prevent unfair trade practices in e-commerce. The Act at same time empowers the Centre to make rules for preventing unfair trade practices in online trade. The government on July 23, 2020 has notified the Rules to regulate e-commerce which require every e-commerce entity to provide information relating to return, refund, exchange, warranty and guarantee, delivery and shipment, modes of payment, grievance redressal mechanism, payment methods, security of payment methods, charge-back options, etc. including country of origin which are necessary for enabling the consumer to make an informed decision at the pre-purchase stage on its platform. It also fixes liability of e-portals and intermediaries providing goods and services.

Consumer Protection (E-Commerce) Rules, 2020

The E-commerce rules notified on July 23, 2020 complement the Consumer Protection Act, 2019 providing protection to consumers from all type of unfair trade practices prevalent in e-commerce. These rules regulate all commercial transactions involving all goods and services bought or sold over digital or electronic network including digital products. All form of e-commerce- marketplace and inventory models of e-commerce come under purview of the rules. The rules specify separate duties and responsibilities for market place and inventory-based entities, and also for sellers who sell on the platform operated by a marketplace e-commerce entity. These

rules also apply to an e-commerce entity which is not established in India, but systematically offers goods or services to consumers in India. The rules mandate that the e-commerce entity must either be an incorporated company or a foreign company covered under clause (42) of section 2 of the Companies Act, 2013. Thus all foreign e-commerce companies selling goods or services to Indian consumers are regulated by the rules.

The E-commerce Rules mandate that every e-commerce entity must establish an adequate grievance redressal mechanism. They are required to appoint a grievance officer to handle consumer grievances and his details and contact information must be provided on the website. The grievance officer must acknowledge complaints within forty-eight hours and a ticket number is required to be generated. The complaint should be redressed within one month from the date of receipt of the complaint. Besides e-commerce entities, each individual seller on the platform is also required to have a grievance officer.

Where an e-commerce entity offers imported goods or services for sale, it shall mention the name and details of any importer from whom purchased such goods or services, or who may be a seller on its platform. The rules also prohibit an e-commerce entity from levying a charge for cancellation post confirmation, unless the e-commerce entity agrees to pay similar penal charges in case it cancels the order. Every e-commerce entity shall only record the consent of a consumer for the purchase of any good or service offered on its platform where such consent is expressed through an explicit and affirmative action.

To ensure transparency and boost consumer confidence, the rules require that information on number of aspects to be disclosed by the e-entity as well as sellers. Information relating to return, refund, exchange, warranty and guarantee, delivery and shipment of the goods or services being sold, including their country of origin, are required be disclosed on the platform. The entities are prohibited from manipulating the price of the goods or services to gain unreasonable profit.

The seller must disclose total price in single figure of any good or service, along with the breakup price on the e-platform. All relevant details about the goods and services offered for sale by the seller including country of origin must be disclosed which are necessary for enabling the consumer to make an informed decision at the pre-purchase stage.

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EVOLUTION OF CONSUMER RIGHTS AS HUMAN RIGHTS - AN ASSESSMENT

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ABSTRACT

The Rights of Consumer have attained Statutory Protection across the globe. The rights enjoyed as Consumers have transformed the manner in which trade and commerce are conducted by assuring quality standards in all stages of sale and consumption. The free trade movement has created border less market with consumers interacting with the sellers across the globe with regard to their purchases. Consumers Laws are part of the Private Laws and are country specific making it inapplicable for global transactions involving Consumer Rights. The legal systems across the globe have accorded legal recognition for Human Rights to guarantee its enforceability. The rights of Civil, Political, Social and Cultural nature have gained universal recognition as justifiable Human rights. Consumer Rights though of recent origin are also considered as Human Rights and this evolution has reinforced the legal commitment towards individual Liberty. There exists references in the International Legal Instruments about the Consumer Rights and the need for it's protection. It is desirable to have a separate Legal instrument with explicit recognition for Consumer Rights to achieve the uniform legal framework for their enforcement. This paper explores the evolution of Consumer Rights as Human Rights to suggest a separate legal instrument for Consumer Rights at the International Level for ensuring their implementation at the global level.

Key words : Consumers, Rights, Statues, Transnational Commercial activities, Uniform Legal framework, Human Rights

INTRODUCTION

Rights are considered as interests protected by Law and which can be enforced in the Courts of Law. Consumer Rights which aim to protect the Consumers from the commercial abuse in Sale Transactions enjoyed only Judicial recognition in various precedents. The Legal systems across the globe were later compelled to give the statutory recognition for the same. The analysis of the various available precedents on Consumer Rights reveal that the Courts had deployed various principles and doctrines of Common Law to recognise the Rights of a Consumer and grant adequate remedy in the event of their violation. Free Movement of Goods and services owing to FreeTrade has increased interaction of the consumers with the suppliers and this has compelled the Governments to enact Statues for recognising Consumer Rights and creating a Legal Frame work for the same. These Consumer Rights have been constantly expanded to cover the changing forms of Purchasing patterns in the society. Human rights occupy a place of great significance in the Legal System of any country and they regulate the interaction between the Citizens and the Governments. Human Rights affect the Public Rights of the individuals and have propelling force on the functioning of the society. It is worth noting that, Consumer Rights are characterised as Private Rights as it affects the rights and obligations of the Consumer and the Seller with regard to their mutual rights and obligations and has less impact on the functioning of the society. However in recent times it is now accepted that Consumer Rights are also a part of the Human Rights and thus are of some relevance in the functioning of the Governments. This development also can be inferred to mean that the Governments can also regulate the relation between the Sellers and the Consumers.

Consumer Rights as Human Rights

The recognition of Consumer Rights as Human Rights is of trajectory in nature. The difficulty of recognising various rights as human rights is due to the impact on the enforceability and relevance of the Human Rights in the Legal Frame work. There are many scholarly debates revolving on the point of admission of new rights and it's damaging climate in terms of the value and validity of existing human rights. It is generally accepted that the proclamation of new human rights is justified on the proof of it's general acceptance in the Rights Jurisprudence and it's utility of protection and enhancement of individual's lives. It is apposite herein to note that Consumer Rights satisfy the twin requirement of General Acceptance and the utility in the development of the Individual. The Statutory Rights of the Consumers in situations of it being vires of the Constitution, would fail the test of Constitutionality and would be held as inapplicable if they are in contradiction of the Constitutional Rights. This inhibition can be solved if the Consumer Rights are raised to the extent of Human Rights so that it would be equal with the Constitutional Rights. With the equation of Consumer Rights as Human Rights, it becomes competent with the other Constitutional Rights on an equal basis for recognition and enforcement.

It is worth mentioning that, there are references and discussion about the Consumer Rights in the International Legal Instruments relating to Human Rights. Hence they have a better chance of being identified as human rights than some of the "new" rights as it involves only the elaboration and expansion of recognized economic rights. In the present frame work of Legal system across the Globe, Consumer laws have been a mixture of Contract, Tort, Criminal, and Administrative Law and it is in recent times, they have obtained the status of being an separate Statue. The Consumer Law is a part of both private and public law and has features of both substantive and procedural law. It is believed that identification of Consumer Laws and the rights involved therein will have a direct effect on the public aspect of Consumer Rights in terms of their enforcement. It is pertinent to note that, categorisation of rights as Human Rights is based on Political Considerations and the decisions taken in this regard are questionable.

Consumer Rights in International Legal Instruments

The 1948 Universal Declaration of Human Rights(hereinafter called as UDHR), the 1966 International Covenant on Economic, Social and Cultural Rights (hereinafter called as ICESCR) and the 1985 United Nations Guidelines for Consumer Protection (hereinafter called as UNGCR) constitute the International Legal Instruments relating to Consumer Rights.

The recognition of Consumer Rights as Human Rights raises a Jurisprudential question about the impact of such recognition on the protection of Consumers. Even before we could analyse their utility, there is need for conceptualisation of term Human Rights.

There has never been a definition of Human Rights which has been accepted universally. Instead there is consensus about the characteristics or the essentials which act as prerequisites for the Right to be recognised as Human Rights. It is apposite herein to examine herein whether Consumer Right possess those qualifications to be called as Human Rights. If it is agreed that that the recognition of new human rights is possible on fulfillment of certain Criteria, then it is required to examine what are those criteria and the tests for classifying rights as human rights. The understanding of these tests will provide the guidelines toward a definition of human rights and this will assist in examining whether there is a justification to classify consumer rights as human rights

There are predominately two modes for any Right to be recognised as Human Right. The first mode mandates that the recognition/ declaration of a Right as Human Right by United Nations is necessary for it's acceptance. It is worth mentioning till date the Consumer Rights have not acknowledged by United Nations. However, Consumer Rights are recognised to be part of ICESCR under the category of Economical Rights. There exists scholarly debates on whether classification of Consumer Rights as Economic Rights under ICESCR can be deemed to be called as Recognition by United Nations. The second mode enlists the guidelines suggesting the characteristics of human rights and those Rights that fulfill these requirements will be considered to be human rights. It is matter of record that Consumer Rights have gained status of Human Rights since they have fulfilled the characteristics of Human rights. .

The International Legal Instruments such as, UDHR and ICESCR are considered as source of Human Rights. However it is believed that mere enumeration of Rights in International Legal instruments cannot be considered as acceptable recognition as Human Rights. Additionally there lies an unanswered question as to whether the covenants constitute an exhaustive definition of human rights. There is consensus among the Legal Fraternity that categorisation of human rights recognized in the International Covenants alone as Human Rights is conservative because Laws are susceptible for change owing to the societal demands which demand recognition of additional rights as Human Rights.

There are scholarly works which tend to suggest certain characteristics of Human Rights. It is relevant herein to examine what are those characteristics which are fulfilled by Consumer Rights to gain better understanding on the utility of these rights in the International Legal Framework. There lies no agreement on these universal acceptance of these characteristics. However these characteristics shed light on the nature of human rights and can be used to explore whether consumer rights meet such substantive criteria. The following are the generally accepted Guidelines to determine whether a Right can be qualified as Human Rights.

- (1) Human rights should pertain to the entire human community and not to any specific group;
- (2) Human rights are the characterization of the individual as a primary concern, emphasizing the individual's prosperity, honour, and development.

It is relevant herein to examine whether Consumer Rights can satisfy the above guidelines. The Consumer rights are related to Private Rights and thus constitute Individuals and not that of the group rights. The term,

'Consumers' do not constitute or refer to any section of people or to any separate group of people, since every person is a consumer from time to time. It is accepted that Consumers Rights are applicable to individually to each person and thus qualifies as Human Rights. The essence of Consumer Rights is the importance attached to the individual development by guaranteeing the Basic Rights to Fair Trade and Safe products or Services. The genesis of Consumer Rights is on the belief that every Consumer as an individual is entitled to protection with regard to Consumable and Services and from defective goods or hazardous products notwithstanding the importance of Cost-benefit analysis of the economy. In this regard also it is possible to infer that Consumer Rights are Human Rights as they emphasise on the development of individuals as opposed to collective rights.

The Consumer Rights which are statutorily recognised and enforced in the Courts of Law are directed towards protection of the individual's prosperity, honour, and development. It is argued that this feature makes Consumer Rights competent to be considered as Human Rights. The analysis of the Consumer Laws across the globe reveal that Consumer rights are similar to human rights as they intend to protect the individual from arbitrary infringements by Government and Sellers. The Consumer Rights guarantee protection against big business organizations, monopolies, cartels, and multinational corporations with regard to hazardous products and services. In this regard, it is argued that the Consumer Rights qualify the second requirement of Human Right.

Protection of Consumer Rights in Transnational Commercial transactions

The concept of Trade and Commerce has now become borderless and market has flattened leading to global interaction between Consumers and Sellers and this requires for enhancement of existing Legal Framework for global recognition of Consumer Rights. The problem of hazardous goods and defective products are not merely a national concern. This has initiated the demand for Uniform Legal Framework for Protection of Consumer Rights in respect of international transactions. The above mentioned analysis of twin test required for recognition of Human Rights along with the demand for Uniform Legal system for protection of Consumer Rights suggest that, the same is duly qualified to be recognised as Human Rights.

It is pertinent to note that, at the global level, Human Rights are classified into 3 categories popularly called as three generations of Human Rights. The First generation Human Rights include Civil and Political Rights while the Second generation includes Economic, Social, and Cultural rights.. The first and second generation Human Rights are characterized by intervention by way of active participation by the State rather than abstention of the State. These rights also include the right to decent working conditions, the right to social security, and the right to education and health. The Second generation Human Rights are positive in nature rather than negative and these are recognised in UDHR and ICESCR. Third generation Humanrights enlist those rights that have not been recognized as International human rights, but they are nevertheless approved by various organizations of the United Nations. It is in this category we come across the Human Rights which have the potential to be given wide interpretation to suit the rising demands for addition of new Human Rights. These rights attempt to extend the scope of human rights beyond those found in the International Legal Instruments. The Right to development, the Right to share the common heritage of humankind, and the Right to peace are considered to be part of the Third Generation of Human Rights. The Consumer Rights such as Freedom of Choice, Safety and Quality Standards in Products and Services and timely redress for violation of Consumer Rights are a part of the Third Generation Human Rights.

It is also accepted that Consumer Rights are part of Economic Rights and have their basis of UDHR and it is declared as Economic Rights of the Universal Declaration and the covenants. Although none of the International Legal Instruments explicitly mention the Consumer rights as Economic Rights, there is consensus among the International Legal Immunity that Consumer Rights belong to Economic Rights are in reality the modern form of Human Rights. It is worth to note herein that aims of Consumer Laws across the Globe is to assist people in securing appropriate and qualitative Products and Services at economical prices and protection of Consumer Rights against arbitrary actions on the part of the Government or from Private Individuals. Consumer protection is also concerned with the protection of the consumer's health and it will assist in enhancement of Standard of Living and in turn the well-being of the individual as consumer. The recognition of Consumer Rights as Human Rights show that basic Consumer Rights are deeply rooted in accepted category of International Human Rights and belong to Third Generation Human Rights. It is worth to note that though Consumer Rights are not explicitly mentioned in the ICESCR, it has been recognised as New Rights or Third Generation Human Rights. The recognition of Consumer Rights as International Rights also will help in attaining Uniform Legal Frame work for enforcement of Consumer Rights in respect to International consumer activities.

The United Nations Guidelines for Consumer Protection (hereinafter called as UNGCP) 1985 is the mile stone in attaining Uniform Legal Framework for protection of Consumer Rights at the global level. The UNGCP was unanimously approved by the United Nations General Assembly on 9 April 1985. The International Organization of Consumer Unions (IOCU) which constitutes of more than 170 leading consumer organizations and 60 countries has initiated activities for universal recognition and acceptance of Consumer Rights as Human Rights . The UNGCP aims to provide the consumers the right of access to non hazardous products, as well as the promote just, equitable and sustainable economic and social development. The UNGCP requires the Governments develop the Domestic Consumer protection policies in line with these principles to suit the Economic and Social circumstances of the country and her population.

The UNGCP states following six main needs or the aims for development of Uniform Legal Framework for recognition of Consumer Rights as Human Rights and for applicability towards the International transactions:

- (a) The protection of consumers from hazards to their health and safety,
- (b) The promotion and protection of the economic interests of consumers;
- (c) Access of consumers to adequate information ...;
- (d) Consumer education;
- (e) Availability of effective consumer redress; [and]
- (f) Freedom to form consumer ... organizations."

It is believed that equation of Consumer Rights as Human Rights is only the beginning step towards the Uniform Legal frame work for protection of Consumer Rights. The UNGCP and the recognition by the International community that consumer protection is not merely an issue of domestic interest rather a matter of global concern is a positive step towards having the Uniform Legal framework for protection and enforcement of Consumer Rights for transnational transactions. It is believed that this would also motivate the National Governments to have in place a robust legal framework for protection and enhancement of Consumer Rights in the country. In alternative, the existing Legal framework can also be amended to suit the changing demands for effective enforcement of Consumer Rights and timely readdress for their violations.

CONCLUSION

The economy of society derives its existential status from the commercial activities of selling and buying of consumer products and services. The Consumers and Producers/ Sellers constitute the main Stake Holders in the Society. The Government also constitutes an integral part of the Consumer Law framework in the society as it has to ensure the protection and enforcement of Consumer Rights. The statutory recognition of Consumer Rights reflects the commitment towards the protection against the probable deficient products or services and commercial exploitation of the Consumers. The Consumer Rights qualify the standards as required for the recognition as Human Rights as they aim at the development and enhancement of liberty and lives of consumer's individual or private rights against the arbitrary actions of the Commercial entities or from the State Machinery. The transnational commercial relations requires for a separate and uniform Legal Framework of Consumer Laws to protect the Consumers by providing the timely readdress of the violations of their rights. The categorisation of Consumer Rights as International Human Rights and the establishment of UNGCP is a step towards the uniform legal framework for protection of Consumer Rights in relation to transnational commercial activities. This development also bears the impact on the domestic laws for Consumer Protection in the form of amendments to suit the changing patterns of Consumer behavior and their rights.

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MEDICAL PROFESSION AND CONSUMER PROTECTION ACT, 2019- ARGUMENTS AND COUNTER ARGUMENTS

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ABSTRACT

E commerce in India was not under the consumer protection act 1986 medical professionals were included in 1986 act answer part of rendering services to the society as a medical professional under the 2019 act a controversial rather wrongdoing by the drafting committee of the consumer protection bill 2019 in consumer protection act 1930 2019 e commerce disputes has been placed under alternative dispute redressal mechanism the express verbal exclusion of doctors from the amendment act of 2019 under the purview of service this provision exculpate the doctor from liability from defective services and negligence of duty is a subject to uncertainty which is to be examined the careful examination of the law lets out that it means service any sort made available to users to encompass medical profession and healthcare services as well the interpretation of the enactment and traditions were made by the court are wide open in the case of Indian Medical Association v. VP Shantha in this case the honorable supreme court in the year 1996 warranted to be interpreted ab initio under this background this paper takes a legal poster on the impact of consumer protection act 2019 on the medical professionals and health care delivery systems in India. This paper discusses about the amendment of consumer protection act 2019 and it's rendering of justice towards patients as a consumer. The same is based on doctrinal work and the data are collected from books, journals and articles. This paper provides a strong platform to discuss the concept of the consumer's status as a patient in field of healthcare.

Keywords: Consumer, Medical Profession, Doctors, Patients, Healthcare Delivery Systems.

INTRODUCTION:

Consumer Protection Act of 2019 was passed on ninth of August, 2019, approximately one year back, but it came into force on 28 July, 2020. This presentation is focusing on medical profession and Consumer Protection Act, 2019. What is in there for doctors do they come under the ambit of Consumer Protection Act. That is what this research paper intend to deliberate. In this research paper, both argument and counter arguments are discussed. The argument is that there is no mention of the various terms which is discussed in the research paper are not precisely discussed in the perception of justice towards a patient as a consumer in the Consumer Protection Act, 2019. Because. Nowhere in the legislation has it mentioned about health, medicine, medical healthcare services under the definition of services. If looked at the whole legislation, hardly in one place, it is mentioned about medicine and health. Otherwise nowhere it is mentioned.

At the same time, in the initial draft. When the bill was prepared the health care was mentioned under the definition of services, but subsequently due to some un-disclosable circumstances the government had to remove the healthcare from the definition of services.

Of course, in the subsequent draft, the healthcare services, health care was removed from the definition of services. This is basically the government bid to pacify the medical fraternity which had expressed apprehension were the law being used adversely against the profession. Hence, these are the two strong arguments:

- 1) Telling that it's not been defined. It's not there, either mentioned are excluded.
- 2) The doctors feel that they're out of the Consumer Protection Act.

These are the arguments, and the doctors have a relief that they do not come under the ambit of Consumer Protection Act.

But however with equal force there are counter arguments:

Counter argument 1:**Service:**

Let us look at the definition of service means service of any description, which is made available to the potential users, and includes, but not limited, it is important to remember this emphasis, not limited to the provision of facilities in connection with banking financing insurance transport processing supply of electrical or other

energy telecom boarding or lodging, or both housing construction entertainment amusement, or the purveying of news, or other information.

Earlier healthcare was mentioned, but it is not there in the present legislature. But however, not limited to use a wider scope to be included, it does not include the rendering of any services free of charge, or under a contract of personal services.

Counter argument 2:

It has excluded only two things. That is services rendered free of charge. They are excluded under the consumer Act, or contract of personal services. That means, if a cook is hired at a residential premises, and the same cook is paid salary for that. A case under the consumer protection act cannot be filed in this situation, because there is an instance of master and slave relationship. The master and the other is the slave. So there is no consumer and vendor relationship here, the slave is not the service provider and consumer is not a master. It is a master slave relationship.

Counter argument 3:

The Hon'ble Supreme Court, if seen into the Consumer Protection Act of 1986. There also the health care professionals neither included nor excluded. However, in 1995 the supreme court judgment. In a case of IMA was V. P. Shanta¹. A landmark judgment was passed, in this case, the Supreme Court was very clear, and evidently articulated medical profession comes within the ambit of service. And it is in the definition of Consumer Protection Act. Since then, there are many judgments, which have come in to the Supreme Court, under the Consumer Protection Act. So it is there, whether the term exists under the law or not, that is under the legislation or not a consumer who has been offered a service for consideration it as the right approach the court if there is sufficient evidence that there is a breach of duty or medical negligence and consumer has all the right to move the commission. That's the weird course. And also the apex court clearly said that the relationship between the patient and the medical profession is, as a contractual in nature. It is important to remember that *contractual* word

Counter Argument 4:

Deficiency, deficiency means any fault imperfection shortcomings or inequity inadequacy in quality nature and manner of performance which is required to be maintained by or under any law for the time being in force. But however now you keep this point very clear, has been undertaken to be performed by a person in pursuance of a contract. So that means the earlier Supreme Court judgment i.e., IMA v. V. P. Shanta² clearly said that doctor and the consumer is a contractual in nature. So now, it's a contract, and it is a part of the Consumer Protection Act 2019. At the same time the deficiency is also been clearly cited said that any act of negligence or omission or commission, by which a person causes loss or injury to the consumer.

It's fair. At the same time, deliberately withholding relevant information by such person to the consumer. The doctor did not give information like for informed consent. The whole the deficiency, clear comes into the picture here also. So it all fits into the Consumer Protection Act under the

Counter Argument 5.

When checked the Consumer Protection Act mediation rules 2020 under the rule number four. It's very clearly as written that medical negligence related grievous injury or death should not be sent for mediation. Why it is so? Because medical negligence comes under the ambit of Consumer Protection Act.

Counter Argument 6.

The definition of consumer. The definition of consumer³ has become wide here in this legislation. It has two important things, buying any goods. Of course, the doctor may not provide goods. But the consumer is also who hires or avails any services, which includes both offline and online, or online transaction through electronic means, or by teli-shopping or direct selling or multi-level marketing. And this clearly clarifies the scope of Consumer Protection Act 2019, my dear friends. There is no doubt the counter argument is also very

¹ 1996 AIR 550

² *Supra*

³ A consumer is defined as a person who buys any good or avails a service for a consideration. It does not include a person who obtains a good for resale or a good or service for commercial purpose. It covers transactions through all modes including offline, and online through electronic means, teleshopping, multi-level marketing or direct selling

vehemently clearly says that because of the Hon'ble Supreme Court's judgment, and many judgments which clearly says that doctor and patient relationship is contractual in nature. And that is very clearly spelled out in Consumer Protection Act of 2019.

CONCLUSION:

Though, the doctors are arguing that they do not come into the ambit of Consumer Protection Act, because of the confusion that the health services have been removed from the definition of services. But however over the counter arguments are also equally impactful. This can be clearly by only two means:

- 1) The legislation should be amended clearly send telling that the health care services are included or excluded.
 - 2) Or else, the apex court should interpret the law by telling that healthcare is included or excluded.
- Till then, the doctors come under the ambit of Consumer Protection Act of 2019.

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PRODUCT LIABILITY AND CONSUMER PROTECTION ACT 2019

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INTRODUCTION:

Product Liability laws in India have evolved in the past few year by means of amendments and judicial interpretations, for ensuring the interest of the Consumers and providing socio-economic justice. Consumerism today promotes the right and safety of the consumers and consumers are the people who buy things and they are protected through various legislation. Consumer protection means consumer rights and consumer rights means that the consumers have an inherent right to basic health and safety. Consumer protection Act and various other legislations helps in shielding these rights. The Consumer Protection Act 2019 ensure consumer safeguard by administering product safety, and preventing deceptive marketing. Consumer protection is achieved through the legal doctrine of Product Liability. This is the legal responsibility imposed on a business for manufacturing and selling of defective goods. It revolves around the thought that the manufactures are aware of products more than the consumers. The paper tries to particularize the evolution of product liability laws in India and to outline the product liability under the Consumer Protection Act 2019.

Meaning of Product Liability:

Product Liability is a claim against the injury suffered because of a defective product. Traditionally there are three theories of recovery that is negligence, strict liability and breach of warranty[1]. As per the legal dictionary product liability means responsibility of a manufacturer or vendor of goods to compensate for injury caused by defective merchandise that it has provided for sale[2]. The Consumer Protection Act 2019 defines "product liability" means the responsibility of a product manufacturer or product seller, of any product or service, to compensate for any harm caused to a consumer by such defective product manufactured or sold or by deficiency in services relating thereto ;[3]. The responsibility of a manufacturer or vendor of the goods to compensate for injury caused by defective merchandise that it has provided for sale is the legal meaning of product liability. It finds its origin in common law concept Caveat Vendor- let the seller be aware but earlier to this it was on the principle of caveat emptor- let the buyer be aware that was followed until 20th century.

Evolution of Product Liability Law in India:

In India certain laws protected consumers from defective products. The legislations that articulated on Product Liability were Consumer Protection Act 1986, Indian Contract Act 1872, Sale of Goods act 1930, Drug and cosmetic Act 1954. Never the less they were not all inclusive. Because they were short of accommodating the information on whom the consumer should approach for redressal in the supply chain. The Product Liability were dealt with the principles of Negligence and Strict liability until the Consumer Protection Act 1986. As no statute spoke explicitly on the matter. There has been a exquisite growth in the dynamo of goods and services however there have had several amendments to the Consumer Protection Act 1986 which include amendments of 1993, 2002, but they failed to address the provision of Product Liability. Consumer Protection Bills of 2011, 2013 and 2018 proposed to the Government to formulate a law to back fill the inadequacy in the legislation. The gradual evolution the new enactment has has been on the lines of principles of law of tort and as what is laid down by courts[4]. The Act has categorically mentioned about the Product Liability. The Consumer Protection Act 2019 replacing the 1986 Act has made all the people who are directly or indirectly involved in the process of manufacture or sale of a product to be liable.

Product Liability under the Consumer Protection Act 2019:

The Act of 2019 was assented by the President of India on 9th August 2018, the Act intends to protect the consumers and to establish authorities to settle the continued disputes effectively. The Act talks about the Product Liability and referbush the process of dispute settlement by establishing central consumer protection authority as a central authorities and has broadened the definition of 'Consumer' under Sec 2(7)[5].

The Consumer Protection Act 2019 has brought in new concepts related to product liability. To understand the Act efficiently we need to analyze various definitions under Sec 2 of the Act such as :

Sec2(33) "product" means any article or goods or substance or raw material or any extended cycle of such product, which may be in gaseous, liquid, or solid state possessing intrinsic value which is capable of delivery either as wholly assembled or as a component part and is produced for introduction to trade or commerce, but does not include human tissues, blood, blood products and organs;

Sec2(34) "product liability" means the responsibility of a product manufacturer or product seller, of any product or service, to compensate for any harm caused to a consumer by such defective product manufactured or sold or by deficiency in services relating thereto;

Sec2 (35) "product liability action" means a complaint filed by a person before a District Commission or State Commission or National Commission, as the case may be, for claiming compensation for the harm caused to him;

Sec2 (36) "product manufacturer" means a person who—

- (i) makes any product or parts thereof; or
- (ii) assembles parts thereof made by others; or
- (iii) puts or causes to be put his own mark on any products made by any other person; or
- (iv) makes a product and sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains such product or is otherwise involved in placing such product for commercial purpose; or
- (v) designs, produces, fabricates, constructs or re-manufactures any product before its sale; or (vi) being a product seller of a product, is also a manufacturer of such product;

Sec 2 (37) "product seller", in relation to a product, means a person who, in the course of business, imports, sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains, or otherwise is involved in placing such product for commercial purpose and includes—

- (i) a manufacturer who is also a product seller; or
- (ii) a service provider, but does not include—
 - (a) a seller of immovable property, unless such person is engaged in the sale of constructed house or in the construction of homes or flats;
 - (b) a provider of professional services in any transaction in which, the sale or use of a product is only incidental thereto, but furnishing of opinion, skill or services being the essence of such transaction;
- (c) a person who—
 - (I) acts only in a financial capacity with respect to the sale of the product;
 - (II) is not a manufacturer, wholesaler, distributor, retailer, direct seller or an electronic service provider;
 - (III) leases a product, without having a reasonable opportunity to inspect and discover defects in the product, under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor;

Sec 2(38) "product service provider", in relation to a product, means a person who provides any service in respect of such product;[6]

Liability Under the Act :

Chapter VI of the Act enumerates about the Product Liability in Sec 82 and 83 .The consumer has the right under the Act for action against product manufacturer or seller for any harm caused to them for any product or service deficiency. The Consumer can raise the product liability action in National or State or District Commission.

Manufacturer Liability:

The Product manufacturer shall be held liable if the product manufactured by him has a defect or there is defect in the design or there has been a deviation in the specification of manufacturing or if it does not give warranty or if it does not specify the usage manual of the product i.e., the right usage and incorrect usage of product.

Liability of product Seller :

The Product seller is not the product manufacturer but he will be liable if he :

- (i) he has exercised substantial control over the designing, testing, manufacturing, packaging or labelling of a product that caused harm; or
- (ii) he has altered or modified the product and such alteration or modification was the substantial factor in causing the harm; or

(iii) he has made an express warranty of a product independent of any express warranty made by a manufacturer and the product failed to conform to such warranty; or

(iv) the product has been sold by him and the identity of product manufacturer of such product is not known, or if known, the service of notice or process or warrant cannot be effected on him or he is not subject to the law which is in force in India or the order, if any, passed or to be passed cannot be enforced against him; or

(v) he failed to exercise reasonable care in assembling, inspecting or maintaining such product[7].

Liability of Product Service Provider:

A product service provider shall be liable, service provided by him was faulty in quality, nature or manner of performance; and there was an act of negligence has caused harm to the consumer or if he did not issue adequate instructions or warnings to prevent any harm and if the service did not conform to express warranty or the terms and conditions of the contract.

Exceptions to Product Liability Action:

There are few exception to the product liability action under the Act . the exceptions apply if:

1.The product was purchased to be used at a workplace and the product manufacturer had provided warnings to such employer the product seller shall be exempted.

2.The product was sold as a component to be used in another product and necessary instructions and warnings had been given by the manufacturer, and the harm was caused to the complainant from the use of the end product.

3.The product was one which was legally meant to be used under the supervision of an expert or a class of experts and the product manufacturer had employed reasonable means to give warnings or instructions for usage to such expert or class of experts.

4.The complainant was under the influence of alcohol or any prescription drug while using the product which was not prescribed a medical practitioner.

5. Such instructions or warnings are obvious or commonly known to a user or a consumer of such product or which the consumer should have known, taking into account the characteristics of such product.

Redressal under the Act:

The Act empowers the District Commission under Sec 39 to investigate if there has been error in term of the product on part of manufacturer or seller and if the commission is satisfied that the harm caused to the Consumer is due to the defective product the Central Authority may order for:

1. withdrawal of the Products

2.Replacement with new goods but free from any defects

3.To return the money that the consumer has paid along with the interest

4.To remove the defects in the good

5.The District Commissioner shall have the power to give punitive damages in accordance with circumstance of the case

6. To pay Compensation to Consumer

7.To discontinue offering hazardous goods for sale and as well as to stop manufacture of such goods.

CONCLUSION:

The introduction of Product liability in the regime of Consumer Protection Act 2019 has given a clear shift in the principle of buyer be aware to seller be aware. The law has given a clear instruction on whom should the consumer approach for the remedy. The Central Authority is been given an authority under the Act to order for the withdrawal of the goods in case there has been any defects. Product manufacturers, sellers and service providers should take due diligence in delivering the products and services to the consumers. The inclusion of electronic service providers as product sellers clarifies that e-commerce aggregators are responsible for the products sold on their online marketplaces . The realm of the consumers rights has taken a different dimensions because of the new Consumer Protection Act of 2019 . But there are a few meager flaw which will be reformed as and when the need arises.

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ROLE OF CENTRAL CONSUMER PROTECTION AUTHORITY UNDER CONSUMER PROTECTION ACT, 2019

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ABSTRACT

The moment a person comes into this world, he starts consuming. He needs cloth, milk, oil, soap, water, and many more things and these needs keep taking one form or the other all along his life. Thus we all are consumers in the literal sense of the term. The Government understood the need to protect consumers from unscrupulous suppliers, and several laws have been made for this purpose. We have the Indian contract Act, the Sale of Goods Act, the Dangerous Drugs Act, the Agricultural Produce (Grading and Marketing) Act, the Indian Standards Institution (certification Marks) Act, the Prevention of Food Adulteration Act, the Standards of Weights and Measures Act, etc. which to some extent protect consumer interests. However, these laws require the consumer to initiate action by way of a civil suit involving lengthy legal process which is very expensive and time consuming. The consumer Protection Act provide a simple and quicker access to redressal of consumer grievances. With the advancement and the digitalization, the mode of shopping has shifted from offline to online and the consumer were facing the various problems with the provisions of the Act, 1986, which was not providing a proper platform to the consumers for the protection of their rights in the changed scenario of consumerism. The e-commerce and the new set of consumer expectations and challenges faced by consumers in the digital age, the new Act is enacted. The consumer Protection Act, 2019 is a positive step towards reformation and to the redressed the grievances of the consumers. By keeping in view of the problems faced by the consumers a new regulating authority known as Central Consumer Protection Authority is established by this Act, which is provided with a vast powers of investigation, with an investigation wing headed by Director General for conducting investigation or inquiry for violations of the rights of the consumers, with a power to take suo-moto cognizance in the matters of unfair trade practices or violations of rights of the consumers and with the power to punish the offenders under the Act.

Keywords: Consumer, Investigation, Dispute, Suo-Moto, Rights, Violations, Redressal.

INTRODUCTION

Every human being who consumes anything for survival is a consumer. However according to the Oxford English Dictionary, a consumer is one who purchases goods or pays for services. Consumption is a natural occurrence of the human life. When we approach the market as a consumer, we expect value for money, i.e., right quality, right quantity, right prices, information about the mode of use, etc. But there may be instances where a consumer is harassed or cheated. It is "Magna Carta" legislation aimed at protecting the interest of the consumers so that they do not fall victim of unfair trade practice and sub-standard services in the market place. It is enacted to provide a simple and quicker access to redressal of consumer grievances. It is interesting to note that the Act doesn't seek to protect every consumer within the literal meaning of the term. The protection is meant for the person who fits within the definition of 'consumer' given under this Act.

The consumer protection Act was enacted in the year 1986 which, provides for the better protection of consumers. Unlike existing laws which are punitive or preventive in nature, the provisions of this Act was compensatory in nature. The Act has been amended in 1991, 1993 and 2002 to extend its coverage and scope and to enhance the powers of the redressal machinery. Law is a dynamic concept, which must change according to the needs of the society. Due to the socio-economic development, the new Act, is a positive step towards the protection of the rights of the consumer. The enactment of the Consumer Protection Act, 2019 is a milestone in the history of socio-economic legislation in India, has considerably consolidated the process of consumer protection and has given rise, to a new consumer jurisprudence. The Act made the provisions for the establishment of Central Consumer Protection Authority to regulate the matters relating to violation of rights of consumers, unfair trade practices and false or misleading advertisements which effects the interest of the consumers and to promote, protect and enforce the rights of the consumers.¹

¹ Section 10(1) of the Consumer Protection Act, 2019.

ESTABLISHMENT OF CENTRAL CONSUMER PROTECTION AUTHORITY

An Act to provide for protection of the interests of consumers and for the said purpose, to establish authorities for timely and effective administration and settlement of consumers disputes and for matters connected therewith or incidental thereto.¹

By keeping in view of the Preamble of the Consumer Protection Act, 2019, had established a new regulating Authority for the effective protection of rights of the consumer in the form of Central Consumer Protection Authority. The objective for the establishment of this authority is to regulate the matters relating to violations of the rights of consumers and to protect the consumers from the unfair trade practices or false and misleading advertisements which are against the interests of the public and the consumers. The authority is to protect, promote and enforce the rights of the aggrieved consumers. The central authority is appointed by Central government by notification. The authority shall consists of a Chief Commissioner and other Commissioners. The qualifications and the method of recruitment, procedure for appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Chief Commissioner and other Commissioners are provided in the rules laid down by the central government by notification². Apart from the chief Commissioner and the Commissioner the central government may appoint such number of other officers and employees for the efficient performance of the functions under the Act. These officers may be appointed from the experts, professional of integrity and ability, who are having special knowledge and experience in the area of consumer rights and welfare, consumer policy, law, medicine, food safety, health, engineering, product safety, commerce, economics, public affairs or administration for the smooth functioning of the authority.

The headquarters of the Central Authority shall be at such place in the National Capital Region of Delhi, and also there shall be regional and other offices at any place in India as the central government may decide.³ The Chief Commissioner shall nominate a senior officer of the Central Authority as Secretary to the Central Authority to keep custody of common seal, register of attendance of the meetings, agenda, minutes' book, and any other documents or records pertaining to the meetings of the Central Authority. The Secretary shall arrange meetings, record minutes and generally ensure that these regulations are followed. The Secretary shall communicate the relevant extracts of the decisions made in meetings of the Central Authority to all concerned for necessary follow-up action, and compliance of such follow-up action shall be monitored by evolving a suitable reporting system. The Secretary shall submit periodic reports on follow-up action(s) referred to in sub-regulation (3) to the Central Authority for its information. If for any reason, the Secretary is unable to attend a meeting of the Central Authority, the Chief Commissioner shall nominate another officer of the Central Authority to act as the Secretary for such meeting.⁴ The Central Authority is empowered to punish if, whoever, fails to comply with any direction under section 20 and 21 of the Act, shall be punished with imprisonment for a term which may extends to 06 months or with fine which may extend to 20 lakhs rupees, or with both⁵. Any person who is aggrieved by the order passed by the Central Authority under section 20 and 21 of the Act may file an appeal to the National Commission within 30 days from the date of receipt of such order⁶.

PROCEDURE FOR TRANSACTION AND ALLOCATION OF BUSINESS

As provided in the Central Consumer Protection Authority (Allocation and Transaction of Business) Regulations, 2019, the central Authority shall follow the following procedure for the purpose of transaction and allocation of business:-

1. The transaction of business in respect of all the administrative matters of the Central Authority shall be carried out on the directions of the Chief Commissioner.
2. The Chief Commissioner shall allocate the business for the purpose of hearing or passing of orders under section 20 and 21 of the Act, the Central Authority between himself and the Commissioner.

¹ The Consumer Protection Act, 2019, Pg.1 (Statement of Objective & Reasons).

² Section 11 of the Consumer Protection Act, 2019.

³ Section 10(3) of the consumer protection Act, 2019.

⁴ Regulations 12 of the Central Consumer Protection Authority (Allocation and Transaction of Business) Regulations, 2019.

⁵ Section 88 of the Consumer Protection Act, 2019.

⁶ Section 24 of the Consumer Protection Act, 2019.

3. The Chief Commissioner shall have powers in respect of all administrative matters of the Central Authority and may delegate such powers as per sub-section (2) of section 14 of the Act.
4. Any decision taken by the Central Authority shall be published on the website of the Central Authority unless the Chief Commissioner determines otherwise on grounds of confidentiality.
5. For the purposes of allocation of business under sub-regulation (3), the items of
 - a. Business specified in the Schedule may be allocated with respect to any specific
 - b. Complaint, matter, sector, entity, industry or region, or to groups
6. Every decision and direction of the Central Authority shall be recorded in writing and be kept as a record.¹

ITEMS OF BUSINESS OF CENTRAL AUTHORITY

The authority shall have the following business to be transacted as per the Schedule²

1. Administration of any regional office
2. Advocacy and consumer rights awareness
3. Capacity building
4. Complaints filing, interventions and litigation
5. Complaints handling
6. Co-operation with other regulatory bodies
7. Development and issuance of consumer interest guidelines
8. Direction of investigations
9. Economic intelligence
10. Government advisory
11. International co-operation
12. Legal metrology
13. Monitoring of advertisements
14. Price monitoring
15. Research
16. Safety notices
17. Standardisation, identifiers and quality management

ROLE OF CENTRAL AUTHORITY ON INFORMATION, COMPLAINTS OR DIRECTIONS

If in the opinion of the Secretary on any complaint or directions received from Central government on violations of consumers rights or any unfair trade practice or any misleading advertisement, by any person, which is prejudicial to public interest or to the interest of consumers and a prima facie case is made out, may refer the same to central Authority as per the procedure laid down. The Secretary, may after receiving any information, complaint, or directions from the Central Government, as referred to under sub-section (1) of section 19 of the Act, place the same before the Central Authority to form its opinion on the existence of a prima-facie case. For the purpose of sub-regulation (1), the Central Authority shall, as far as possible, record its opinion on the existence of a prima facie case within 15 days. Provided that, where the Central Authority is to form its opinion on its own motion, it may do so within 15 days of a resolution passed in a meeting of the Central Authority to the effect that such opinion is to be formed.

¹ Regulations 5 of the Central Consumer Protection Authority (Allocation and Transaction of Business) Regulations, 2019.

² Schedule of the Central Consumer Protection Authority (Allocation and Transaction of Business) Regulations, 2019

Preliminary inquiry by Central Authority

The Central Authority may, if it deems necessary, conduct or cause to be conducted a preliminary inquiry as to whether there exists a prima facie case as under sub-section (1) of section 19. The Central Authority may call for any information or invite any person as may be necessary for the preliminary inquiry. A preliminary inquiry need not follow formal rules of procedure.

Issue of direction to cause investigation on prima facie case

Where the Central Authority is of the opinion that a prima facie case exists, the Secretary shall convey the directions of the Central Authority within five days to the Director General to investigate the matter. Where the Central Authority is of the opinion that such matter is to be dealt with by a Regulator established under any other law for the time being in force, the Secretary shall refer such matter to the concerned Regulator along with the report of the preliminary inquiry and the reasons for such referral are to be recorded in writing and the matter shall be considered to be closed for the purposes of the Central Authority. A direction of investigation to the Director General under sub-regulation (1) shall be deemed to be the commencement of an investigation under sub-section (1) of section 19 of the Act.

Communication of order when no prima facie case found:

If the Central Authority is of the opinion that there exists no prima facie case, the Secretary shall send a copy of the order of the Central Authority regarding closure of the matter forthwith to the Central Government or the person who provided information or filed a complaint in the matter, as the case may be.

POWER AND FUNCTIONS OF THE CENTRAL AUTHORITY

The central consumer protection authority enjoy a wide range of powers under the Consumer Protection Act, 2019. The Authority mainly discharge the functions as laid down under the Act.

❖ **Regulatory.**

❖ **Investigative.**

❖ **Adjudicatory**

The central authority shall exercise the following powers:-

- (a) The central Authority shall protect, promote and enforce the rights of the consumers, and to prevent violation of consumer's rights.
- (b) To prevent unfair trade practices
- (c) To ensure that no false or misleading advertisement for goods or services.
- (d) To enquire or investigate into matters of violations of consumers rights suo-moto or on a complaint received from any consumer or on the directions of the central government.¹
- (e) To file before the District Commission, State commission or the National Commission.
- (f) Intervene in any proceedings before the District Commission, State commission or the National Commission.
- (g) To review the matters relating's to consumers rights including the safeguards provide for the protection of consumers and also to enforce and recommend appropriate remedial measure for their effective implementation.
- (h) To recommend adoption of International Covenants on consumer rights.
- (i) To undertake and to promote the research in the field of consumer rights.
- (j) To spread awareness about consumer rights.
- (k) To encourage and co-operate with the NGO's and other agencies working in the field of consumer protection.
- (l) To issue safety notices and to alert consumers against hazardous or unsafe goods and services and also to advise the Ministries and the Departments of the central governments on consumer welfare measures.

¹ Section 18(1) of the consumer protection Act, 2019.

- (m) To conduct a preliminary inquiry for the violations of consumer rights or unfair trade practices. In case the authority is satisfied with the preliminary inquiry regarding prima-facie case is made out than cause investigation to be made by the Director General or by the District Collector for violations of the rights of the consumers or the unfair trade practices¹. The Director General or the District Collector, as the case may be has any reason to believe that the person has violated any rights of the consumers or committed any unfair trade practice or any false or misleading advertisement can enter into in any premises at any reasonable time for search and seizure of any document, record or article or such evidence.²
- (n) To recall goods or withdraw services if it found that they are hazardous, dangerous or unsafe and can direct for reimbursement of the price of goods and services after giving an opportunity of being heard to the such person³.
- (o) To issue directions after investigation, to trader or manufacturer or endorser or advertiser or publisher to discontinue false or misleading advertisements which are prejudicial to the interest of the consumers and also can impose a fine up to Rs.10 lakhs⁴.

INVESTIGATION WING OF CENTRAL AUTHORITY

For the purpose of conducting inquiry or investigation the central consumer protection authority shall have an investigation wing. The main purpose of this wing is to conduct the enquiry and investigations on the direction of the central authority. The investigating wing will work under the direction of the central authority. The investigation wing consists of:-

- Director General
- Additional Director General
- Director
- Joint Director
- Deputy Director
- Assistant Director

The appointment of the above officials shall be done by the central government amongst the persons who have experience in investigation and possess such qualifications in such manner, as may be prescribed. Every Additional Director General, Director, Joint Director, Deputy Director, Assistant Director shall exercise their powers, and discharge their functions, subject to the general control, supervision and direction of the Director General. The Director General may delegate all or any of his powers to the Additional Director General, Director, Joint Director, Deputy Director, Assistant Director, as the case may be, while conducting inquiry's or investigation under the Act,2019. The such inquiry or investigations made by the Director General shall be submitted to the central Authority as specified by the regulations.

PROCEDURE FOR INVESTIGATION BY DIRECTOR GENERAL

The Central Authority is of the opinion that a prima facie case exists, the Secretary shall convey the directions of the Central Authority within five days to the Director General to investigate the matter and on receiving such direction the Director General shall start the investigation as under-

- 1) The Secretary while conveying the directions of the Central Authority under regulation 5, shall send to the Director General:
 - a) a copy of the information, complaint, or direction, as the case may be;
 - b) all other documents or materials or affidavits or statements which have been filed either along with the said information, complaint, or direction or at the time of the preliminary inquiry; and
 - c) A copy of the report of the preliminary inquiry.

¹ Section 19 of the consumer protection Act,2019

² Section 22 of the consumer protection Act,2019

³ Section 20 of the consumer protection Act,2019

⁴ Section 21 of the consumer protection Act,2019

- 2) The Central Authority shall direct the Director General to submit a report on the basis of the investigation conducted by him within such time as may be specified by the Central Authority which ordinarily shall not exceed 30 days from the date of receipt of the directions of the Central Authority.
- 3) The Central Authority may, on an application by the Director General giving sufficient reasons, extend the time for submission of the report by such period as it may consider reasonable.
- 4) report of the Director General shall contain his findings on each of the allegations made in the information, complaint or direction, as the case may be, together with all evidences or documents or statements or analyses collected during the investigation. Provided that when considered necessary, the Director General may, for maintaining confidentiality, submit his report in two parts, one of which shall contain the documents to which access may be accorded to the Central Government or the person who provided information or filed a complaint in the matter, and the other part, which shall contain confidential and commercially sensitive information and documents to which access may be partially or totally restricted.
- 5) Ten copies of the report of the Director General, along with a softcopy in document format, shall be forwarded to the Secretary within the time specified by the Central Authority. Provided that the Secretary may ask for more copies of the report as and when required.
- 6) If the Central Authority, upon consideration of the report, is of the opinion that further investigation is called for, it may direct the Director General to make further investigation and submit a supplementary report on specific issues within such time as may be specified by the Central Authority, but not later than forty-five days.

CONCLUSIONS

Change is the rule of nature. Law is a Dynamic concept, it must change according to the needs of the society. By keeping this notion in mind the Central Government enacted a new Act by replacing the Consumer Protection Act, 1986. This Act is a welcome change in favour of consumers. A regulatory, investigative and adjudicatory authority in the form of Central Authority appointed under the consumer protection Act, 2019 for the smooth and effective protection on violations of consumers rights or any unfair trade practice or any misleading advertisement, by any person, which is prejudicial to public interest or to the interest of consumers. The Central Authority will work as bridge a between the Central Government and the various redressal Commissions and the Consumers. The Central Authority may cause a preliminary inquiry and on that inquiry a prima facie case is made out, may refer the same to Director General for investigation on above matters. If in the market any deceptive trade practice or unethical trade practice is noticed the Central Consumer Protection Authority can initiate preventive action. This Authority will take prompt action where the government fails to address the consumer issues. The Central Authority granted wide powers to take suo-moto actions, recall products, order reimbursement and file the class action suits. The Consumer Protection Act, 2019 is a positive step towards reformation and providing a full proof protection to the consumers for protection of their rights but the real implementation test of this Act will be seen in the coming years by analysing that whether in reality the consumers are benefited or not.

A STUDY RELATED IMPACT ON CONSUMERISM OF FOOD AND FOOD PRODUCTS DURING COVID PANDEMIC AND ITS LEGAL REGULATION

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ABSTRACT

Consumers have a right to expect that the foods they purchase and consume will be safe and of high quality. They have a right to information about the food control procedures, standards and activities that governments and industry use to ascertain that the food supply has these characteristics. COVID-19 is amplifying the risk of a worldwide food-price spike, reports of panic buying and food hoarding, Labour problem, transportation problems. This article addresses all these issues of food production during COVID pandemic.

INTRODUCTION

Consumer protection is the practice of safeguarding buyers of goods and services, and the public against unfair practices in the market place. Consumer protection measures are often established by law. Such laws are intended to prevent businesses from engaging in fraud or specified unfair practices in order to gain an advantage over competitors or to mislead consumers. They may also provide additional protection for the general public which may be impacted by a product (or its production) even when they are not the direct purchaser or consumer of that product. For example, government regulations may require businesses to disclose detailed information about their products, particularly in areas where public health or safety is an issue, such as with food or automobiles.

A consumer is defined as someone who acquires goods or services for direct use or ownership rather than for resale or use in production and manufacturing.

Consumers have a right to expect that the foods they purchase and consume will be safe and of high quality. They have a right to information about the food control procedures, standards and activities that governments and industry use to ascertain that the food supply has these characteristics. The consumers, governments and others play an important part in ensuring food safety and quality, in free-market societies the ultimate responsibility for investing the physical and managerial resources that are necessary for implementing appropriate controls lies with the food industry. The food industry involves in growing, processing, manufacturing or distributing food, from the farm to retail shops and restaurants.

The profitability versus consumer satisfaction, quality versus rate, product safety versus product identity plays important role in the consumerism.

Food industry's view of food control

The food industry takes a broad view of the term food control, which includes a large number of factors such as:

Safety - setting standards for toxicological and microbiological hazards and instituting procedures and practices to ensure that the standards are achieved;

Nutrition - maintaining nutrient levels in food ingredients and formulating foods with nutritional profiles that contribute to consumer interest in healthful diets;

Quality - providing sensory characteristics such as taste, aroma, palatability and appearance;

Value - providing characteristics of consumer utility and economic advantage, involving attributes such as convenience, packaging and shelf-life. Some of these factors, such as value, are exclusively in the domain of industry and consumers; while others, such as safety, are shared interests of government, industry and consumers.

Setting and implementing food standards

The food control activities is the establishment of safety, quality and labeling standards as food production and marketing is global industry, thus recognition is necessary. Governments and intergovernmental organizations such as the Codex Alimentarius Commission have the principal role in establishing certain food control standards. It is the role of national governments to establish uniform safety standards so that all consumers receive equal levels of protection; all food producers, whether domestic or foreign, are equitably treated through application of the same levels of safety; consumers are informed about the standards of protection that are being applied.

The standard and guidelines should meet the changing technology and scientific temper needs to be implemented through public. Governments need to have a good research base because food controls should only be imposed on a sound scientific basis. Second, governments need to audit industry performance to ensure that companies are complying with standards and that standards are being uniformly applied. This involves training inspection personnel so that they have a good understanding of the technologies and processes involved, as well as conducting inspections in an even-handed and fair manner. Third, governments must communicate with industry and consumers about food controls.

Consumers and industry must have an opportunity to raise questions and comment about the appropriateness of food control standards. In those areas in which governments exercise premarket approval, this should be done in a timely manner in order to facilitate the application of new technology.

In the United States and a number of other developed countries, food ingredients that are regulated as food additives, e.g. preservatives, emulsifiers and colors, require government approval before they may be used in foods. The manufacturers of such food additives must submit scientific data that demonstrate that these substances are safe. The standards of safety are established by laws and regulations and include considerations of various types of toxicity, ranging from carcinogenicity and reproductive effects to effects on digestion. According to Title 21, Part 170 of the United States Code of Federal Regulations, a substance may be termed safe when there is "a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use". Once a food additive is determined to be safe, it may be used in any food application for which it is approved.

A number of food control issues are currently being debated at the national and international levels, regarding for example pathogenic microorganisms, allergens, genetically modified foods, contaminants (including pesticides), irradiation and nutrition labeling. These are important and complicated matters that require attention. The control issues are at various stages of resolution and considerable effort will be required to resolve them in a scientific, practical and uniform manner. Industry recognizes that consumers play an active, important role in the food control process through their participation in the standard setting process and discussions on scientific and technical issues.

Nomura's Food Vulnerability Index ranks 110 countries based on their exposure to large food-price swings, taking into account their nominal GDP per capita, the share of food in household consumption, and net food imports. The study shows that of the 50 countries most vulnerable to a sustained rise in food prices, nearly all are developing economies that account for nearly three-fifths of the world's population.

In fact, surging food prices would be a global problem, because they are highly regressive everywhere. Even in developed economies, a jump in food prices would drive a bigger wedge between the rich and poor, exacerbating already severe wealth inequality. No one should ignore the age-old connection between food crises and social unrest.

Issues of food production during COVID Pandemic

COVID-19 is amplifying the risk of a worldwide food-price spike, which would trigger crises in many developing countries.

While lockdowns have led to a collapse in demand for durable goods and discretionary services, the opposite is true of food. In cities around the world, reports of panic buying and food hoarding have proliferated since the pandemic began.

On the supply side, global grain stockpiles are healthy but could quickly be depleted as the virus disrupts food production and distribution. And shortages of animal feed, fertilizers, and pesticides have increased both the costs of farming and the risk of bad harvests.

Moreover, from harvesting fruits and vegetables in India to operating meat plants in the US, labor shortages are becoming increasingly apparent as cross-border travel restrictions in much of the world disrupt the normal seasonal cycle of migrant farm workers. And transportation shortages are making it more challenging to get produce to market.

Farmers need to reconfigure their supply chains away from bulk wholesale to (currently closed) restaurants, hotels, and schools, and toward grocery stores and home delivery. But that takes time, not least because commercial and consumer food products are prepared and packaged differently. In the meantime, fresh produce has had to be destroyed.

Furthermore, some major food-producing countries have already imposed export bans or quotas in response to the pandemic, as Russia and Kazakhstan have done for grain, and India and Vietnam have done for rice. Meanwhile, other countries are stockpiling food through accelerated imports, as is true of the Philippines (rice) and Egypt (wheat).

Labor constraints in the food supply chain regulatory requirements for farmers to access seasonal labor through migration programmes.

Access to an alternative workforce packing and processing facilities put them at a heightened risk for contracting COVID-19.

Facilitating the movement of perishable products across borders would reduce food loss and waste related to handling difficulties, while facilitating border checks could ease access to essential agricultural inputs such as pesticides and veterinary medicines. Digital tools may help to facilitate border procedures, for example, by allowing electronic copies of sanitary and phytosanitary certificates.

Legal regulation of food products during COVID Pandemic

Consumer Health Laws are laws that ensure that health products are safe and effective and that health professionals are competent; that government agencies enforce the laws and keep the public informed; professional, voluntary, and business organizations that serve as consumer advocates, monitor government agencies that issue safety regulations, and provide trustworthy information about health products and services; education of the consumer to permit freedom of choice based on an understanding of scientific data rather than misleading information; action by individuals to register complaints when they have been deceived, misled, overcharged, or victimized by frauds.

United States

Pure Food and Drug Act (1906) – Also known as the Wiley Act, It was passed in response to public concern about food and drug safety. Administered by the Bureau of Chemistry, it required that food be pure and wholesome and drug ingredients to be listed and prohibited interstate commerce in food, drinks, and drugs that did not meet these requirements.

Sherley Amendment to the Food and Drug Act (1912) – prohibited labeling medicines with false therapeutic claims intended to defraud the purchaser.

Federal Food, Drug, and Cosmetic Act (1938) – Replaced the 1906 Pure Food and Drugs Act with new and stronger provisions including:

- Extending control to cosmetics and therapeutic devices.
- Requiring new drugs to be shown safe before marketing-starting a new system of drug regulation.
- Eliminating the Sherley Amendment requirement to prove intent to defraud in drug misbranding cases.
- Providing that safe tolerances be set for unavoidable poisonous substances.
- Authorizing standards of identity, quality, and fill-of-container for foods.
- Authorizing factory inspections.
- Adding the remedy of court injunctions to the previous penalties of seizures and prosecutions.

Public Health Service Act (1944) – Safety, purity, and potency of biologic products such as vaccines, sera, and blood for interstate sale, Safety of pasteurized milk and shellfish, along with the sanitation of food, water, food services and facilities on trains, airplanes, and buses.

Durham-Humphrey Amendment (1951) – Drugs cannot be safely used without medical supervision,

- Must be labeled and dispensed only by prescription of a licensed health practitioner,
- The distinction between over-the-counter and prescription drugs was made.

Food Additives Amendment (1958) – Prohibited used of food additives until the manufacturer established their safety. The Delaney proviso prohibits the approval of any food additives shown to induce cancer in humans or animals.

Color Additive Amendments (1960) – FDA regulation for the safe use of color additives in foods, drugs, and cosmetics required manufacturers to make necessary scientific investigations to establish safety. The Delaney proviso prohibits the approval of any color additive shown to induce cancer in humans or animals.

Federal Hazardous Substances Labeling Act (1960) – Required labels to display warnings regarding household products with hazardous chemicals.

Kefauver-Harris Drug Amendment (1962) – Was passed to ensure drug efficacy and greater drug safety. Drug manufacturers are required to prove to the FDA the effectiveness of their products before marketing them.

Drug Abuse Control Amendments (1965) – Control the manufacture and distribution of depressants, stimulants, and hallucinogens required wholesalers and jobbers of these drugs to register annually with the FDA. Gave FDA authorization to seize illegal supplies, serve warrants, arrest violators, and require all legal handlers of controlled drugs to keep records of their supplies and sales.

Fair Packaging and Labeling Act (1966) – Provided additional support for the FDA to ensure that food, drugs, medical devices, and cosmetics were honestly and informatively labeled.

Radiation Control for Health and Safety Act (1968) – Protected the public from unnecessary exposure to radiation from electronic products such as televisions, microwaves, and x-ray machines.

Poison Prevention Act (1970) – Required special packaging to protect children from accidentally ingesting toxic substances.

Medical Device Amendments (1976) – Supplemented the FD&C Act of 1938 permitted action only if a defect in a product was discovered after the product was in use.

Proxmire Amendment (1976) – Prohibited the FDA from limiting the potency of ingredients of vitamin and mineral products that are not inherently dangerous.

Infant Formula Act (1980) – Required strict controls to ensure the nutritional content and safety of commercial baby foods.

Orphan Drug Act (1983) – Facilitated the development of new drugs for more than 5000 rare diseases affecting as many as 20 million Americans.

Drug Price Competition and Patent Term Restoration Act (1984) – Allows the FDA to approve generic versions of previously approved new drugs without requiring their sponsors to duplicate the costly human tests required for the original drugs.

- Prescription Drug Marketing Act (1988) – Allows selling, buying, trading, or offering to sell, buy or trade prescription drug samples.
- Safe Medical Devices Act (1990) – FDA power to obtain earlier knowledge of serious device problems and order recalls to quickly removing defective products from the market.
- Nutrition Labeling and Education Act (1990) – Provided for:
 - Mandatory labeling on most food products
 - Standardization of portion sizes
 - More appropriate disclosure of fat and cholesterol contents
 - Determination of whether disease-prevention claims can be made for various nutrients
 - Voluntary guidelines to retailers for nutrition information of raw fruits, vegetables and fish.
- Dietary Supplement Health and Education Act (DSHEA) (1994) – Broadened the term “dietary supplements” to include herbs and many other substances that lack nutritional value,
 - Shifted the burden of proof of safety of the FDA
 - Set standards for the distribution of their-party literature
 - Allows statements of “nutritional support” under certain circumstances
 - Specified the ingredient and nutritional label information
 - Required goods manufacturing practices
 - Established the NIH Office of Dietary Supplements of oversee research and provide advice to other federal agencies.

- Food Quality Protection Act (1996) – Replaced the Delaney Clause with a more flexible requirement that additives be safe.
- FDA Modernization Act (1997) – Extended regulations intended to:
 - Accelerate review of new drugs and devices. Increase patient access to experimental drugs and devices.
 - Permit pharmacists to compound certain categories of drug products not commercially available.

Legal regulation of Consumer Laws

Consumer protection law or consumer law is considered as an area of law that regulates private law relationships between individual consumers and the businesses that sell those goods and services. Consumer protection covers a wide range of topics, including but not necessarily limited to product liability, privacy rights, unfair business practices, fraud, misrepresentation, and other consumers/business interactions. It is a way of preventing frauds and scams from service and sales contracts, eligible fraud, bill collector regulation, pricing, utility turnoffs, consolidation, personal loans that may lead to bankruptcy. The following lists consumer legislation at the nation-state level.

Australia

In Australia, the corresponding agency is the Australian Competition and Consumer Commission or the individual State Consumer Affairs agencies. The Australian Securities and Investments Commission has responsibility for consumer protection regulation of financial services and products. However, in practice, it does so through privately run EDR schemes such as the Financial Ombudsman Service (Australia).

Brazil

In Brazil, consumer protection is regulated by the Consumer's Defense Code (Código de Defesa do Consumidor), as mandated by the 1988 Constitution of Brazil. Brazilian law mandates "The offer and presentation of products or services must ensure correct, clear, accurate and conspicuous information in the Portuguese language about their characteristics, qualities, quantity, composition, price, guarantee, validity and origin, among other data, as well as the risks they pose to the health and safety of consumers." In Brazil, the consumer does not have to bring forward evidence that the defender is guilty. Instead, the defense has to bring forward evidence that they are innocent. In the case of Brazil, they narrowly define what a consumer, supplier, product, and services are, so that they can protect consumers from international trade laws and protect them from negligence and misconduct from international suppliers.

Germany

Germany, as a member state of the European Union, is bound by the consumer protection directives of the European Union; residents may be directly bound by EU regulations. A minister of the federal cabinet is responsible for consumer rights and protection. When issuing public warnings about products and services, the issuing authority has to take into account that this affects the supplier's constitutionally protected economic liberty.

India

In India, consumer protection is specified in The Consumer Protection Act, 2019. Under this law, Separate Consumer Dispute Redress Forums have been set up throughout India in each and every district in which a consumer can file his/her complaint on a simple paper with nominal court fees and his/her complaint will be decided by the Presiding Officer of the District Level. The complaint can be filed by both the consumer of goods as well as of the services. An appeal could be filed to the State Consumer Disputes Redress Commissions and after that to the National Consumer Disputes Redressal Commission (NCDRC). The procedures in these tribunals are relatively less formal and more people friendly and they also take less time to decide upon a consumer dispute when compared to the years-long time taken by the traditional Indian judiciary. In recent years, many effective judgments have been passed by some state and National Consumer Forums.

Indian Contract Act, 1872 lays down the conditions in which promises made by parties to a contract will be legally binding on each other. It also lays down the remedies available to aggregate party if the other party fails to honor his promise.

The Sale of Goods Act of 1930 act provides some safeguards to buyers of goods if goods purchased do not fulfill the express or implied conditions and warranties.

The Agriculture Produce Act of 1937 act provides grade standards for agricultural commodities and livestock products. It specifies the conditions which govern the use of standards and lays down the procedure for grading,

marking and packaging of agricultural produce. The quality mark provided under the act is known as AGMARK-Agricultural Marketing.

Nigeria

The Nigerian government has a duty to protect its people from any form of harm to human health through the use and purchase of items to meet daily needs. In light of this, the Federal Competition and Consumer Protection Commission (FCCPC), whose aim is to protect and enhance consumers' interest through information, education, and enforcement of the rights of consumers was established by an Act of Parliament to promote and protect the interest of consumers over all products and services. In a nutshell, it is empowered to eliminate hazardous & substandard goods from the market. Provide speedy redress to consumer complaints and petition arisen from fraud, unfair practice and exploitation of the consumer.

On 5th February 2019, the President of Nigeria, Muhammadu Buhari, assented to the new Federal Competition and Consumer Protection Commission Bill, 2018. Thus, the bill became a law of the Federal Republic of Nigeria and binding on entities and organizations so specified in the Act.

The long title of the Act reads: "This Act establishes the Federal Competition and Consumer Protection Commission and the Competition and Consumer Protection Tribunal for the promotion of competition in the Nigerian market at all levels by eliminating monopolies, prohibiting abuse of dominant market position and penalizing other restrictive trade and business practices." The Act further repealed the hitherto Nigerian Consumer Protection Council Act and transferred its core mandate to the new Commission.

Taiwan

Modern Taiwanese law has been heavily influenced by European civil law systems, particularly German and Swiss law. The Civil Code in Taiwan contains five books: General Principles, Obligations, Rights over Things, Family and Succession. The second book of the Code, the Book of Obligations, provided the basis from which consumers could bring products liability actions prior to the enactment of the CPL.

The Consumer Protection Law (CPL) in Taiwan, as promulgated on 11 January 1994, and effective on 13 January 1993, specifically protects the interests and safety of customers using the products or services provided by business operators. The Consumer Protection Commission of Executive Yuan serves as an ombudsman supervising, coordinating, reporting any unsafe products/services and periodically reviewing the legislation.

According to the Pacific Rim Law & Policy Association and the American Chamber of Commerce, in a 1997 critical study, the law has been criticized by stating that "although many agree that the intent of the CPL is fair, the CPL's various problems, such as ambiguous terminology, favoritism towards consumer protection groups, and the compensation liability defense, must be addressed before the CPL becomes a truly effective piece of legislation that will protect consumers"

United Kingdom

The United Kingdom, is not in the European Union, but is in the transition period (until end of 2020) still bound by directives of the European Union specifics of the division of labor between the EU and the UK. Domestic (UK) laws originated within the ambit of contract and tort but, with the influence of EU law, it is emerging as an independent area of law. In many circumstances, where domestic law is in question, the matter is judicially treated as tort, contract, restitution or even criminal law.

Consumer Protection issues were dealt with by the Office of Fair Trading before 2014. Since then, the Competition and Markets Authority has taken on this role.

United States

Consumer protection laws often mandate the posting of notices, such as this one which appears in all automotive repair shops in California.

In the United States a variety of laws at both the federal and state levels regulate consumer affairs. Among them are the Federal Food, Drug, and Cosmetic Act, Fair Debt Collection Practices Act, the Fair Credit Reporting Act, Truth in Lending Act, Fair Credit Billing Act, and the Gramm–Leach–Bliley Act. Federal consumer protection laws are mainly enforced by the Federal Trade Commission, the Consumer Financial Protection Bureau, the Food and Drug Administration, and the U.S. Department of Justice.

At the state level, many states have adopted the Uniform Deceptive Trade Practices Act including, but not limited to, Delaware, Illinois, Maine, and Nebraska. The deceptive trade practices prohibited by the Uniform Act can be roughly subdivided into conduct involving either a) unfair or fraudulent business practice and b) untrue or misleading advertising. The Uniform Act contains a private remedy with attorney's fees for prevailing

parties where the losing party "willfully engaged in the trade practice knowing it to be deceptive". Uniform Act 3(b), Missouri has a similar statute called the Merchandising Practices Act. This statute allows local prosecutors or the Attorney General to press charges against people who knowingly use deceptive business practices in a consumer transaction and authorizes consumers to hire a private attorney to bring an action seeking their actual damages, punitive damages, and attorney's fees.

Also, the majority of states have a Department of Consumer Affairs devoted to regulating certain industries and protecting consumers who use goods and services from those industries. For example, in California, the California Department of Consumer Affairs regulates about 2.3 million professionals in over 230 different professions, through its forty regulatory entities. In addition, California encourages its consumers to act as private attorneys general through the liberal provisions of its Consumers Legal Remedies Act.

California has the strongest consumer protection laws of any US state, partly because of rigorous advocacy and lobbying by groups such as Utility Consumers' Action Network, Consumer Federation of California, and Privacy Rights Clearinghouse. For example, California provides for "cooling off" periods giving consumers the right to cancel contracts within a certain time period for several specified types of transactions, such as home secured transactions, and warranty and repair services contracts.

Other states have been the leaders in specific aspects of consumer protection. For example, Florida, Delaware, and Minnesota have legislated requirements that contracts be written at reasonable readability levels as a large proportion of contracts cannot be understood by most consumers who sign them.

Considering the state of Massachusetts, the Massachusetts Consumer Protection Law, MGL 93A, clearly highlights the rights and violations of consumer protection law in the state. The chapter explains what actions are considered illegal under the law for which a party can seek money damages from the other party at fault. Some examples of practices that constitute a Chapter 93A violation would be when:

1. A Business charges a consumer higher rates than the marked price
2. The refund policy is not clearly posted where it can be readily noticed and understood
3. A business fails to tell you relevant information regarding your product or service misleads you in any way.^[21]

The laws under MGL 93A prohibits activities that relate to overpricing to a consumer and use of "Bait and Switch" techniques. A court will award the plaintiff the damages if they can prove the (1) defendant knowingly and intentionally violated the MGL 93A agreement or (2) the defendant would not "grant relief in bad faith" knowing that the actions violated the MGL 93A agreement. Additionally, failure to disclose refund/ return policy, warranties and critical information about the product/service are all in violation of the legislation, and can result in triple damages and lawyer fees.

Constitutional laws

47 national constitutions currently include and enforce some sort of consumer right. The Constitution project lists the text of each of these provisions Kenya's provision, for example, suggests that citizens have the right to

- a) goods and services of "reasonable quality."
- b) information about the product, and
- c) protection of their health and safety in the use of the product.

The Kenyan rule also stipulates that citizens would have legal recourse in the case of injury or product defects.

United Kingdom

- Consumer Protection (Distance Selling) Regulations 2000
- Consumer Rights Act 2015
- Electronic Commerce Regulations 2002
- Enterprise Act 2002
- General Product Safety Regulations 2005
- Sale and Supply of Goods to Consumers Regulations 2002/3045
- Supply of Goods (Implied Terms) Act 1973

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- Supply of Goods and Services Act 1982
 - Unfair Contract Terms Act 1977
 - Unfair Terms in Consumer Contracts Regulations 1999

United States

- Consumer Product Safety Act – gives the Consumer Product Safety Commission the power to develop safety standards and pursue recalls for products
- Federal Trade Commission Act – created the Federal Trade Commission (FTC) to prevent unfair competition, deceptive acts, regulate trade, etc.

Privacy laws

- United States National Do Not Call Registry – allows US consumers to limit telemarketing calls they receive.

Food and drug

- Pure Food and Drug Act – led to the creation of the U.S. Food and Drug Administration (FDA) to regulate foods, drugs, and more.

Communications

- Communications Act of 1934 – created the Federal Communications Commission (FCC) to regulate all radio and interstate cable, phone, and satellite communications.

Banking

- Fair Credit Reporting Act (FRCA) – regulates the collection, dissemination, and use of consumer credit information
- Fair Debt Collection Practices Act (FDCPA) – eliminates abusive consumer practices, ensure fairness, etc.
- Truth in Lending Act (TILA) – requires clear disclosure of key terms of the lending arrangement and all costs.

Real estate

- Real Estate Settlement Procedures Act (RESPA) – prohibits kickbacks and requires lenders to provide a good faith estimate of costs

Health insurance

- Health Insurance Portability and Accountability Act (HIPAA) – provides consumer protection for health information

Digital media

- Digital Millennium Copyright Act – prohibits production or sale of devices or services intended to circumvent copyright measures.
- Digital Media Consumers' Rights Act (proposed) – would repeal the Digital Millennium Copyright Act

Australia

- The Australian Consumer Law
- Division 2 of Part 2 of the Australian Securities and Investments Commission Act 2001 in relation to financial services and products.

Other Measures

New non-tariff measures (SPS and TBT measures) are already being put in place that could have disruptive impacts on global food value chains. While such measures can be necessary to manage sanitary risks, they could also significantly increase costs for food exporters, particularly if requirements differ between markets. There is thus a need to reduce unnecessary costs associated with such measures, with a view to keeping safe and affordable food available globally. Indeed, some WTO Members have notified that they are implementing measures to facilitate trade through, for example, the use of expedited submission of electronic documentation.

Ensure that SPS and TBT measures implemented in response to the risk of COVID-19 are science-based, transparent, non-discriminatory and do not unnecessarily disrupt trade or increase trade costs. The need for such measures should also be re-evaluated as evidence about risks becomes available.

Ensure sharing of best practices and, to the extent possible, harmonization of measures between countries to smooth processes at the border. Regionally coordinated strategies that allow flexibility within existing regulatory frameworks and build trust among trading partners can also help ensure that food is able to move to where it is needed. Multilateral institutions have mobilized quickly during the crisis to provide emergency loans to a record number of developing countries, while G20 creditors have agreed to a temporary suspension of debt-service payments from poor countries that request forbearance. But because the risks posed by surging food prices do not apply only to the most vulnerable economies, temporary debt relief may need to be extended to other countries as well.

CONCLUSIONS

With the pandemic threatening to wreak even more economic havoc, governments must work together to address the risk of disruptions to food supply chains. More broadly, some modicum of global policy coordination is essential to prevent food protectionism from becoming the post-pandemic new normal.

- To the extent possible, in order to facilitate the movement of food products and ensure farmers' access to input and output markets.
- Explore co-operative global solutions to address the needs of the poorest countries and ensure that COVID-19 does not result in a food crisis in these countries
- Governments are also working with non-governmental organizations to enable the provision of emergency food via food banks.
- Governments can co-ordinate with private stakeholders to restore and communicate trust in local food chains.

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CAVEAT EMPTOR V. PRODUCT LIABILITY UNDER CONSUMER PROTECTION LAW

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ABSTRACT

Consumer is a king because the goods are manufactured and supplied on his demands. He can choose products of his choice, but he should be very careful while choosing the same. All the manufacturers compete among themselves to woo consumers by providing goods at cheaper price and sometime the consumers have to pay a heavy price after purchasing such products which will be defective. In the present scenario, many instances have taken place where the defective goods causing damage to consumers in many aspects. Previously, before passing the new Consumer Protection Act 2019, there was no effective legislation to impose liability on the manufacturers for supplying defective goods. But under 2019 Act, strict liability can be imposed on manufacturer, supplier and seller of defective goods which causes injury to consumers. Product liability is a new principle incorporated in 2019 Act and any disputes relating to product liability can be referred to consumer forum and the consumers will get damages caused by the defective goods.

Keywords: Consumer, Product liability, Manufacturer, Damages, Defective goods

INTRODUCTION

The marketing strategies for products have undergone a drastic change after enacting consumer law specially the new Consumer Protection Act 2019 which protects the interest of consumers against defective goods in an effective manner. The global market is expanded through e-commerce platforms which are facilitating the hassle-free delivery of goods specially during this pandemic situation. E-commerce, misleading advertisement, tele marketing, multilevel marketing, direct selling, are posing many challenges in the present situation. To cope up with such situations, the new the Act has brought many provisions relating to product liability, misleading advertisements, etc to protect the interest of consumers. The biggest challenge in this digital era is the misleading advertisement which are posing health hazardous to consumers and the same should be tackled immediately otherwise consumers lose faith in dispute redressal mechanism.¹

Consumer is a person who buys product or avail services for consideration and consumes the same.² The consumers are entitled for rights which are as follows under sec 2 (9):

- The right to be protected against the marketing of goods, products or services which are hazardous to life and property through misleading advertisements.
- The right to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services to protect consumers against unfair trade practices.
- Right to choose product in the competitive market specially in global market.
- Opportunity of hearing to protect his interest through redressal platforms.
- Right of redressal against exploitation by the manufacturers, seller, etc.
- Right to awareness about the rights available to consumers which can be done by governmental and non-governmental agencies.

Traditional approach of protection consumer rights

The principle of caveat emptor which says 'let the buyer beware' while purchasing any product in market which imposes a responsibility on them to check the goods before purchasing it and there was no liability on the manufacturer or seller for selling the defective goods because of which many times, consumers have suffered injuries after consuming the defective goods and the buyer had no right to recover damages in absence of goods warranty.³ The traditional rule of caveat emptor had imposed a responsibility on a consumer to be careful as a prudent man while purchasing goods. The government must take the responsibility of protecting the above mentioned rights through effective implementation mechanism which is lacking in India. When consumers

¹ Ratan Lal & Dheeraj Lal, Law of Torts, ED 2018, p167

² Sec 2 of Consumer Protection Act 2019

³ Winfield and Jolowicz on Tort, Ed 19, Sweet & Maxwell, South Asian Edition, 2015, p 167

purchase goods relying on advertisements which misleads them, can bring action against such misleading advertisements. As per the Act, a misleading advertisement in relation to goods or service means falsely describing the goods or services, false descriptions about the quantity, quality, warranty, nature and substance of the product and also includes intentionally hiding relevant information about the product while selling. Against this, a consumer can bring action for product liability which says the manufacturer or seller of goods or services will be liable to compensate the consumer for suffering injuries from defective goods.

Product liability laws in India

The legislations dealing with product liability are Indian Contract Act and Consumer Protection Act 2019. Under contract law if conditions/warranty may be implied or express about the nature of the goods are not fulfilled, the seller or the manufacturer will be liable to pay damages to consumers. But the issue with the warranty is it is like a privity of contract which means only buyer can bring action against the seller. If goods are used by some other person he cannot claim compensation against the seller/ manufacturer, in such circumstances action can be brought under sec of 82 the new Act.

As already mentions above, another piece of legislation to protect the interest of consumer is new Consumer Protection Act 2019 which is based on the common law principles. If goods sold are defective, as a result of which if consumer suffers any injuries, action for negligent can be brought against manufacture/seller and the principle of strict liability is applicable. Any person who uses defective goods need not to be the purchaser to bring action for negligent act.

The negligent act means a reasonable care has not been taken while manufacturing the goods. The plea of negligent and breach of warranty can be taken up by consumers, if it is failed the principle of strict liability is made applicable and manufacturer, supplier, seller all will be made liable for selling defective goods.¹

In *Wheels World v. Pradeep Kumar Khurana*,² the complainant filed a complaint against the petitioner for not providing the services during the warranty period due to which the complainant suffered loss both professionally and personally, the national commission awarded the compensation amount.

In India, criminal liability for supplying the defective goods can be imposed under many legislations such as food safety law, food adulteration law, Indian Penal Code, Dugs & Cosmetic law, BIS Act. Under these legislations, huge amount of fine with or without imprisonment can be imposed.

Sections 82-87 of the Act deals with product liability action which can be taken by consumer by filing complaint before an appropriate authority against manufacture, seller or service provider providing defective goods/ services.

Grounds for product liability action

- Product containing manufacturing defect
- Defective design
- Deviation from manufacturing specifications
- Product not confirming the express warranty
- Not containing the correct information about the usage of the goods
- Insufficient or deficiency in service
- Wrongful act of omission or commission or negligent acts
- Not issuing adequate information with respect to warning to prevent any harm by use of goods

Defences available in product liability actions

- The product is misused, altered or modified
- Product purchased by an employer to use in workplace and instructions are given to employer but same is not given to employees while using in workplace

¹ Chakraborty's 'Law of Consumer Protection', Dwivedi Law Agency, Ed 2015, p 256

² I (2008), CPJ, 234 NC

- Product sold as component to be used with other product
- Consumer shall not be under the influence of alcohol or drugs not prescribed by the medical practitioner while using the product
- The instructions to use the product is commonly known to consumer by the nature of the characteristics of the product

Case laws analysis

The basic principles regulating the product liability is negligence and strict liability evolved in Common Law. The principle laid down in *Donoghue v. Stevenson*¹ says the personal liability can be imposed not just on manufacturers but also on repairers, fitters, erectors, suppliers and assemblers.² The above said principle was incorporated in the old legislation and subsequently incorporated in new Act 2019. Sometimes a claimant can rely on the common law principles when the limitation period is expired to claim damages.³

The principle of strict liability has been followed by Indian courts to protect the interest of consumers if they suffer any injuries due to defective goods or services.

In India the product liability is imposed as per the principle of strict liability applied in *A.S. Mittal v. State of UP*⁴ is imposed by the honorable Supreme Court of India held that the liability depends upon the facts of the each case.

In *Airbus Industrie v. Laura Howell Linton*, in 1994 the High Court of Karnataka held that the appellants are liable on the basis of common law concepts of causation ad negligence in absence of strict law. But now after enactment of new 2019 Act these types of cases can decided under consumer law.

Reliefs for product liability are as follows:

- To remove defect
- To replace the goods with new goods of a similar description which shall be free from any defect
- To return the price or consideration to the complaint
- To pay such amount as may be awarded as compensation to the consumer for the loss or injury suffered by the consumer due to the negligence of the other party and in a fit case to award punitive damages
- To discontinue unfair trade manufacture
- To cease and stop the manufacture of hazardous goods
- Stop selling hazardous goods

Criminal liability

Under various laws, court can impose criminal liability of imprisonment from 6 months to life imprisonment depending upon the nature of injuries suffered by consumers and fine amount. The expiry of the warranty period may not prevent the awarding of damages. In some cases the consumer courts have extended the period of warranty for the period of distress also which was held in *Balaji Motors v. Devendra & Another*.⁵

Misleading advertisements

Many of us know that the promise made by companies in their product advertisements will not meet our expectations and promise made them. Pictures of flawlessly beautiful models in cosmetics goods advertisements and weight-loss products advertisements are the examples in the present situations which deceive public. Hidden fees & surcharges and terms & conditions in advertisements of financial products often speak what their ads do not. Yet, we cannot deny the fact that misleading advertisements continue to influence us and many a times persuade us into making a purchase. In digital era, it is easy for manufacturer to market

¹ (1932) UKHL 100

² Winfield and Jolowicz on Tort, Ed 19, Sweet & Maxwell, South Asian Edition, 2015, p 296

³ Winfield and Jolowicz on Tort, Ed 19, Sweet & Maxwell, South Asian Edition, 2015, p 297

⁴ AIR 1989 SC

⁵ 2013 CPL 534 (NC)

their goods through advertisements. Consumers easily carried away with attractive advertisements and purchase goods, but these advertisements should not mislead by giving false description and features of the goods. After consuming the goods, the consumers feel deceived most of the time because goods will not as it is shown in an advertisement and they suffer injuries. At present as per the study conducted by online community platform in New Delhi, 80 % of the consumers does not believe advertisements while purchasing goods.¹ In pandemic situation, Pathanjali product (Coronil) promoted as medicine to cure corona virus against which the union government issued an order banning the sale of the product, is an another incident. As per the study during May & June 2020 conducted in 220 districts across India, collecting 67, 000 responses which says that the consumers come across with misleading advertisement endorsed by celebrities, 23 % responses said they do not trust advertisement while purchasing product. Maximum number of consumers rely on theses misleading advertisements as a result of which demand has been made to the government to take actions against such advertisements. In such situation, action can be brought against misleading advertisements as per the law. As per the new Act 2019, strict action can be taken by imposing criminal liability and to pay compensation to injured consumers. Celebrities endorsing goods through misleading advertisements should have moral & social responsibility and stop endorsing and giving false assurity about the goods. In Indian society people follow celebrities blindly and same is enchased by manufacture in marketing their products. The new Act 2019, has provided protection to consumers and traditional rule of caveat emptor does not play any role.

The new Act 2019 provides for establishment of the Central Consumer Protection authority under sections 10-27 to protect and promote the interest of consumer in digital era. The investigation authority has been constituted to investigate into the complaint made by consumers about misleading advertisements leading to unfair trade practices.

Role of Advertising Standards Council of India (ASCI)

ASCI is a self regulatory body established in the year 1985, regulating advertisement entities in India. It has the responsibility of self regulations to protect the interest of consumers against the misleading advertisements. All the advertisements must compile with codes such as honest, decent, lawful, truthful and not hazardous & harmful,

ASCI which can regulate advertisements in the market. As per ASCI, many complaints about misleading advertisements have been received with respect to the following products/ services:²

- 102 related to health care
- 20 related to education
- 7 related to personal care
- 6 related to food & beverages
- 8 in miscellaneous category

Redressal mechanism for misleading advertisement

As per Section 15(1) of the 2019 Act, the Central Authority shall have an Investigation Wing headed by a Director General for the purpose of conducting inquiry or investigation as may be directed by the Central Authority. A consumer can file a complaint with the Central Consumer Protection Authority against any advertisement which gives or conveys false description of a product or service or contains a representation constituting an unfair trade practice etc.

Pursuant to Section 17 of the Act, a complaint relating to violation of consumer rights or unfair trade practices or false or misleading advertisements which are prejudicial to the interests of consumers can be forwarded the District Collector or the Commissioner of regional office or the Central Authority.

The District Collector on the basis of a complaint or on a reference made to him by the Central Authority or the Commissioner of a regional office, inquire into or investigate complaints relating to violations of consumer

¹ www.livemint.com/industry/advertising/indian-consumers-, date-4/11/20 @ 4.00 pm

² www.scoopwhoop.com/advertising-council-says-these-brands date:4/11/20, @ 4.20 pm

rights, unfair trade practices and false or misleading advertisements and submit a report to the Central Authority or to the Commissioner of a regional office.¹

Section 21 of 2019 Act deals with the Power of Central Authority to issue directions and penalties against false or misleading advertisements which are as follows:

(1) If the Central Authority is satisfied after investigation that any advertisement is false or misleading or prejudicial to the interest of consumers or violating the consumer rights may issue directions asking the manufacturer or advertiser or publisher to discontinue such advertisement or to modify it within a prescribed time period specified in the order.

(2) The Central Authority is of the opinion that it is necessary to impose a criminal liability in respect of any false or misleading advertisement by a manufacturer or publisher imposing a penalty which may extend to 10 lakh rupees and for every subsequent contravention by a manufacturer or publisher can impose a penalty extend to 50 lakh rupees.

(3) If the Central Authority feels it necessary, it may prohibit the endorser of a false or misleading advertisement from making endorsement of any product or service for a period which may extend to 1 year and for subsequent offence Central Authority may impose imprisonment which may extend to 3 years.

(4) Where the Central Authority is satisfied after investigation that any person is found to publish or is a party to the publication of a misleading advertisement it may impose on such person a penalty which may extend to 10 lakh rupees.

No person shall be liable to such penalty if he proves that he had published or arranged for the publication of such advertisement in the ordinary course of his business, but such defence shall be available to such person if he had previous knowledge of the order passed by the Central Authority for withdrawal or modification of such advertisement.

Appeal against the order of Central Authority

As per Section 24 of 2019 Act, a person aggrieved by any order passed by the Central Authority under sections 20 and 21 may file an appeal to the National Commission within a period of 30 days from the date of receipt of such order.

The authority has created a user friendly web portal to help consumers and it has facilitated e-filing of complaint by the consumers, till now around 31590 complaints have been filed and 30591 cases have been resolved by the authority.²

CONCLUSION

As per the legal provisions (new Act 2019), the product liability cases will be dealt very strictly and in the coming days new principles would evolved through judicial decisions to protect consumers' right. The new consumer law empowers consumers to fight back against all the unfair trade practices adopted by manufacturers and sellers when they are exploited by them. Consumer education is very much important and awareness about same to be created among them, the government and non governmental organizations must take initiative to meet this objective through initiating class action suits against unfair trade practices. Jago Grahak Jago is an initiative which highlights the right to consumer education through informational programmes and materials which enable all the consumers to take correct decision in purchasing goods and availing best services. As a social responsible citizen we need take up the task of consumer education from the grass root level and include about the same in school syllabus because in the digital era even small kid without having the legal capacity is opting for online purchasing without knowing the its consequences and it should be monitored effectively. At global level, world consumer movements have initiated many times but every individual must take first step to protect his right as a consumer and little care while purchasing any goods or availing services because precaution is better than cure.

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¹ Sec 16 of CP Act 2019

² www.consumercomplaintinfo.com, 12/11/2020, @ 3.50pm

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A NEED FOR EFFECTIVE REGULATORY MECHANISM IN E-COMMERCE: A CRITICAL STUDY OF CONSUMER PROTECTION ACT 2019

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ABSTRACT

!!! E- Commerce a New dimension in era of trending business requirements and strategy infusing in to the Indian mixed economy, the traversing of the local rural market economy to e-commerce is a new milestone with major draw backs in enforcement and implementing process, the economy, the better off business will be and by extension, society as a whole. Laissez-faire economics are a key part of free market capitalism and also in the regulatory mechanism distraction, further the context of current socio- economic thinking which places the general interest of the community above the personal interest of the individual and believes that the business or undertaking of the product of the combined efforts of the employer and employer and where there is sufficiently large profit...

The latest modes of business like telemarketing, direct selling, multilevel marketing and e-commerce which were not foreseen almost three decades back but the same have made consumers more vulnerable to unfair trade practices. The earlier Consumer Protection Act 1986 covered all goods & services and all modes of transactions including e- commerce.

E-commerce is one of the fastest growing sectors in Indian economy. E-commerce playing a pivotal role in the economy and all of us need to know important aspects to understand some of the risks involved. According to government data, tremendous 475% increase of e-commerce frauds between august 2016 and 2019, were registered under the e-commerce platform of National Consumer Helpline.

The regulatory mechanism are not built in accordance to the need of the business filed and cannot counter the heavy weight of corporate bout of the wrestling ring as it is apparent and ever known, the law has failed to need the economic justice to citizens, depriving the constitutional guarantee Hence, the study.

Keywords: e- commerce, consumer, telemarketing, unfair trade practice, economy

I- INTRODUCTION

Laissez-faire economics are a key part of free market capitalism and also in the regulatory mechanism distraction, further the context of current socio- economic thinking which places the general interest of the community above the personal interest of the individual and believes that the business or undertaking of the product of the combined efforts of the employer and employer and where there is sufficiently large profit¹, the New modes of business like tele marketing, direct selling, multilevel marketing and e-commerce which were not foreseen almost three decades back but the same have made consumers more vulnerable to unfair trade practices. The old Act of 1986² and the consumer Ministry had failed to address the emerging issues and have failed in not keeping pace with the new market conditions, technologies and processes for instituting accountability of sellers through online platform. As a result of it, consumer complainants in e-commerce have continued to grow by each year, most of which have been for non-delivery of product, defective products, delivery of wrong product, deficiency in services, etc. and hence new approach towards consumer issues is required.

Electronic identification and authentication are crucial to promote trust through online transactions, in that respect UNICITRAL³ has played a crucial role and worked to establish legal framework for enabling legal protection for enabling protection for electronic and digital signatures.⁴ The Etymological meaning of e-commerce is the business transaction of buying and selling of products and services by consumers through

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(1977) 3 SCC 432 Para -4

² Consumer Protection Act, 1986

³ UNCITRAL Model Law on International Commercial Arbitration 1985

⁴ <https://Uncitral.UN.org.in/en/text>, accessed the website on 16/11/2020 at 8.45pm

electronic medium without using any paper documents. OECD defines e-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 process such as the internet. E-Commerce transaction is the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders¹ are without a proper mechanism of regulations in the new Act.

II- THE DEFINITIONS

WTO² has defined the term '*electronic commerce*' which means the product distribution, marketing, sale or delivery of goods and services by electric means Work (Programme on electronic commerce, 1998) According to MEITY³, "*e-commerce*" is a type of business model or segment of a larger business model, that enables or affirm individuals to conduct business over an electronic network, typically the internet. Electronic commerce operates in all four of the major market segments which include business to business, business to consumer, consumer to consumer and consumer to business⁴.

UNICITRAL is formulating modern fair and harmonized rules on commercial transactions. These includes conventions, model laws and rules which are acceptable worldwide, legal and practical value updated information on case law and enactments of uniform commercial law technical assistance in law reform projects, regional and national seminars on uniform commercial law.⁵

The rapid popularity and acceptance of e-commerce throughout the world is given by the greater customer choice and improved convenience in commercial transactions with the help of internet where the vendor or merchant can sell his products of services directly to the customer and the payment can be made electronic fund transfer system through debit card, credit card or net banking, etc. Out of the conveniences and easy doing business the e-commerce market and its holding in the whole trade and commercial transactions is increasing in demand as well as expanding very fast replacing non e-commerce transactions in so many sectors. E-commerce is already appearing in all areas of business and customer services.⁶

Model law on electronic commerce (MLEC) purports to enable and facilitate commerce conducted using electronic means by providing national legislators with a set of internationally acceptable rules aimed at removing legal obstacles and increasing legal predictability for electronic commerce.

In particular it is intended to overcome obstacles arising from statutory provisions that may not be varied contractually by providing equal treatment to paper based and electronic information. Such equal treatment is essential for enabling the use of paperless communication thus fostering effectively in international trade.

All e-commerce entities carrying out or intending to carry out e-commerce business in India shall have to be registered legal entity and shall be required to comply with the conditions mentioned in the guidelines. E-Commerce companies or entities to comply with the provisions of the information technology⁷ and in case of facilitation of any payments for sale guidelines of reserve bank of India shall be complied with. All details about the sellers supplying the goods and services on an e-commerce platform (including identity of their business, legal name, principal geographic address, and name of website and contact details, the products they sell) shall be displayed by an e commerce entity on their website.

The e-commerce entity shall not indulge in any unfair trade practice that may influence the transactional decisions of consumers in relation to products and services or influence the price of the goods and services shall at no point be exaggerated or misrepresented to the customers by the e commerce entity.

Any seller who is advertising his products or services through e-commerce platforms shall have the following liabilities. To have a written contract with the e-commerce entity prior to such sale or advertisement. To provide all information regarding the contract with the e-commerce entity as required either by law or by any

¹ OECD Glossary <https://stats.oecd.org/glossary/detail.asp?=4721>.

² World Trade Organization

³ Ministry of Electronics and Information Technology (Government of India)

⁴ <http://meity.gov.in/e-commerce>

⁵ <https://uncitral.org.in>

⁶ Rajendra madukar sarode, future of e-commerce in india, challenges and opportunities1(12)IJAR646(2015)

⁷ The Information Technology (Intermediaries guidelines) Rules, 2011.

other similar regime. To provide both single figure total and also a break up price for the goods or services being sold. Such a display of all compulsory charges such as delivery, postage taxes and handling and conveyance charge. To ensure that each consumer shall be mandatorily provided with the safety and health care warnings of the goods or services and also the shelf life of any.

Consumer markets for goods and services have undergone profound transformation since the enactment of the consumer protection Act in 1986. Prior to the Consumer Protection Act 2019 and the rules made there under, there was uncertainty and ambiguity in the Indian legal framework. The amendment to the Consumer Protection Act 1986 in 1993 and 2002 failed to contemplate provisions in relation to product liability and other aspects.

The New Act has defined the term consumer in a wider perspective, consumer is a person who buys any goods and hires or avails any services', which includes offline or online transactions through electronic means or by teleshopping or direct selling or multilevel marketing sec 2(7)(b) of the act. It is according to sec 2(16)¹ E-Commerce means buying or selling of goods or services including digital products over digital or electronic network.

Sec.94 of the new Act provides that for the purposes of preventing unfair trade practices in e-commerce, direct selling and also to protect the interest and rights of consumers, sec.101 of the new act gives the power to the central government to make rules, by notification, for the measures to be taken by the central govt to prevent unfair trade practices in e-commerce, direct selling under sec.94.

The act includes establishment of the central consumer protection Authority to promote, protect and enforce the rights of consumers. The CCPA will be empowered to conduct investigations into violations of consumer rights and institute complainants/ prosecution order recall of unsafe, unsafe goods and services, order discontinuance of unfair.

III- E-COMMERCE AND FRAUD:

Fraud and justice never dwell together² (*Fraus et jus nunquam cohabitant*) and the present E-commerce fraud, whopping nearly 500% jump in online shopping fraud cases in just three years, cyber security fraud cases also increased as years, it is based on the number of cases registered under the e-commerce platform of the national consumer helpline between August 2016 and November 2019, it shows tremendous increase of 475% increase of e-commerce frauds.

There are three categories of frauds each with distinct and multiple modes operandi.

- a. Online transaction fraud and misleading as well fraudulent modus operandi
- b. Buyer frauds where buyers file fraudulent claims,
- c. Chargebacks or compromised payment cards fake buyer accounts are created with the intention of utilizing a compromised payment card to purchase.

In India, as across the globe, the Electronic Commerce market has been witnessing consistent growth in recent years. The Indian B2C e-commerce market was valued at USD 38.5 billion in 2017 and is estimated to rise to USD 200 billion in 2026,³ while B2B e-commerce was estimated to be around USD 300 billion. Despite the high rate of growth of e-commerce in India, the sector is still at a nascent stage and according to some estimates; it is about 3 per cent of the retail market worth USD 860 billion, excluding travel and tourism.

IV- NATIONAL E-COMMERCE

The National e-Commerce Policy⁴ aims to create a framework for achieving Holistic growth of the e-commerce sector along with existing policies of Make in India and Digital India. Inclusive growth of the sector will be important catalyst for achieving economic growth and other public policy objectives. The e-Commerce sector is driven by technology and data. Continuously evolving technologies and volumes of data generated in a consumer-oriented country like India require an enabling regulatory framework for empowering domestic

¹ The consumer protection Act 2019

² (2000) 3 SCC 581

³ <https://www.ibef.org/industry/commerce/presentation>

⁴ The National e-Commerce draft Policy 2020

entrepreneurs, leveraging access to data, connecting MSMEs, vendors, traders, etc. to the digital ecosystem as well as empowering consumers to retain control of the data generated and owned by them.¹

Existing statutes and laws need to evolve to take into account the changing ways of doing business and changing business models. This includes IoT, network effects, latest technologies, modes of delivery, treatment of data, online placing of orders, online marketplaces, free ancillary services like logistics etc,

With the constant evolution of digital economy, the nature of regulatory Challenges also changes. The authorities are, therefore, expected to be aware of these changes and it is expected that policy responses are prompt to ensure that the spirit behind policies is not violated. 4.2 Given the inter-disciplinary nature of e-commerce, the tackling of specific issues that emerge may be the subject matter of different statutes-the Information Technology Act and Rules, the Competition Act, the Consumer Protection Act etc. The Standing Group of Secretaries on e-commerce (SGoS) shall give recommendations to address policy challenges. The SGoS is an important avenue of ensuring that the policy keep space with the digital environment. It will continue to be important in administering the e-commerce policy.

VI- OTHER LAWS RELATING TO E-COMMERCE

- a. Indian Contracts Act, 1872 read with Information Technology Act, 2000.
- b. General Data Protection Regulations (GDPR).
- c. Payment and Settlements Systems Act, 2007 and other RBI regulations on payment mechanisms.
- d. Legal Metrology Act, 2009 read with Legal Metrology (Packaged Commodity) Rules, 2011.
- e. Laws relating to Sales, Shipping, Refunds and Returns.
- f. Competition Issues
- g. GST Applicability
- h. Other Local laws and Sector Specific Laws: The premises from which the business is run, and the manufacturing, warehousing, and other aspects of the business will be continued to governed by sector specific laws and local laws as applicable. Due adherence to such laws must also be ensured.
- i. Etc

VII- CONCLUSION:

The contribution of data flows to global GDP continues to increase and the size of digital economy in India is expected to grow substantially in the near future vast opportunities by way of job creation, productivity improvement and enhanced consumer choices will result from these developments. However, for India to fully benefit from the opportunities, it is important that policy is contemporaneous with the underlying challenges of e-commerce ecosystem and is forward looking.

The new Act of 2019 , does not cover all the comprehensive issues relating the connected laws incidentally and the application of execution in relation to regulatory is not comprehensive and *no economic justice is as well delivered*.....

¹ [Httos://dipp.gov.in/sites/default files//draft national policy on e- commerce policy](https://dipp.gov.in/sites/default/files//draft%20national%20policy%20on%20e-commerce%20policy)

AN ANALYSIS OF CONSUMER PROTECTION ACT, 2019

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INTRODUCTION

Finally a 3 decade old Consumer Protection Act 1986 has been replaced by Consumer Protection Act, 2019. The Consumer Protection Act, 2019 (“**New Act**”) heralds the beginning of a new era of consumer rights in India that are in sync with new-age consumer expectations. It carries forward the rich legacy of The Consumer Protection Act, 1986 (“**Act**”) that was considered path-breaking at the time of its enactment, but which was unable to meet the challenges of a rapidly growing, sophisticated and inter-dependent market for goods and services. This replacement was the need of modern Indian consumer. New consumer protection bill has many new provisions for customers. It is designed to help customers and it tries to overcome problems in providing basic rights to consumers of a major sector called e-commerce.

DEFINITION OF CONSUMER

In Old consumer protection act definition of consumer was only limited to buying goods or services, it did not talk about online purchase or offline purchase or teleshopping etc. New act has expanded the definition of consumer it includes description about online transactions and offline transactions, teleshopping and multi-level marketing and direct selling. Now new act also covers online transactions old act was also covering online transactions but there was not description included about online and offline transaction in old consumer protection Act.

What is Consumers Protection Act

Consumers Protection Act is formed to save the interest of the consumers by establishing authorities for timely and effective administration and settlement of consumer disputes.

Salient Features of the Consumer Protection Act, 2019

- Consumer Protection Councils
- Central Consumer Protection Authority (CCPA)
- Simplified Dispute Resolution Process
- Mediation
- Product Liability
- Rules on e-commerce and direct selling
- Penalty for adulteration of products/spurious goods

Key Points of New Consumer Protection Act 2019 :-**1. Consumer Protection Authority**

The New Act proposes the establishment of a regulatory authority known as the Central Consumer Protection Authority (CCPA), with wide powers of enforcement. The CCPA will have an investigation wing, headed by a Director-General, which may conduct inquiry or investigation into consumer law violations. The CCPA has been granted wide powers to take suo-moto actions, recall products, order reimbursement of the price of goods/services, cancel licenses and file class action suits, if a consumer complaint affects more than 1 (one) individual.

2. Pecuniary Jurisdiction

The word Pecuniary means amount, CDSR will have the following Jurisdiction according to the price of goods or services related to which a complaint is made :-

1. District Level – Upto Rs 1 Crore
2. State Level – From Rs 1 Crore to 10 Crores
3. National Level – Above Rs 10 Crores

3. Product Liability

A manufacturer or product service provider or product seller to be responsible to compensate for injury or damage caused by defective product or deficiency in services

- Basis for product liability action –
- Manufacturing defect
- Design defect
- Deviation from manufacturing specifications
- Not conforming to express warranty
- Failing to contain adequate instructions for correct use of Service provided-faulty, .

4. Contracts

An unfair contract shall mean a contract between manufacturer/trader/service provider and a consumer which causes harm to the consumer or significant change in the rights of the consumer. One of such examples can be unilateral termination of the contract without any prior information. For the same purpose a complaint can, be filed in the State Commission up to 10 Crore INR and in National Commission above 10 Crore INR.

5. Unfair Trading Practices

One of the biggest improvement is that new act has broaden the definition of unfair trading practices. New act tells that customer's private data such should not be disclosed to any other person or organization without discloser from the customer.

6. E-Commerce and false advertisement

The definition of "consumer" under the new Act i.e. 2019 Act includes the consumers who make purchases through e-commerce platform. The earlier Act did not include the consumers who buy products online and this lacuna has been filled by the 2019 Act. There is a separate provision for endorsement of goods and se services, which are normally endorsed by the celebrities are covered under the provision of false and misleading advertisement. The onus on the celebrities is additional to the liability placed on the manufacturers and service providers. Mis-leading advertisement shall also mean deliberately hiding important information. CCPA which shall be discussed later also regulates false and mis-leading advertisement.

7. Simplified Dispute Resolution Process

- Deemed admissibility after 21 days of filing
- Empowerment of Consumer Commissions to enforce their orders
- State Commission & District Commission can now review their own orders
- Appeals only on question of law after second stage
- Ease of approaching Consumer Commissions

8. Provision for Alternate Dispute Resolution

The New Act provides for mediation as an Alternate Dispute Resolution mechanism, making the process of dispute adjudication simpler and quicker. This will help with the speedier resolution of disputes and reduce pressure on consumer courts, who already have numerous cases pending before them.

With the New Act all set to become the law, gone are the days, where the 'consumer was asked to beware'. A consumer is now the one who assumes to be treated like a King. Hence, it is important for consumer driven businesses (such as, retail, e-commerce) to be mindful of the changes in the legal landscape and have robust policies dealing with consumer redressal in place. Consumer driven businesses must also strive to take extra precautions against unfair trade practices and unethical business practices.

9. Punishment for Misleading Advertisement

The New has been come up with the punishments for the misleading advertisements which is 2 Years Imprisonment and Fine up to Rs 10 Lakhs and for subsequent offence 5 Years imprisonment and up to Rs 50 Lakh fine.

CONCLUSION:

Finally the new Act touches on many aspects such as Mediation and E-commerce which was unaware in 1986. Government has taken consumers seriously. If we look at the new consumer protection act then we can see that many new terms have been added to law. Government is taking online frauds seriously. Certainly 2019 Act is a positive step towards reformation, development and enhancing consumer rights. Socio-economic developments are taking place every year and we can aspect new amendments to 2019 act as well.

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CONSUMER PROTECTION (E-COMMERCE RULES), 2020 – A CRITICAL ANALYSIS

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ABSTRACT

The world has moved towards e-commerce owing to internet access, ease in operating computing devices, cheaper pricing on online portals, shopping patterns, wide variety of goods and services and changing mindsets of consumers has significantly increased e-commerce. E-commerce has gained momentum especially during covid-19 encompassing a wide range of goods and services. The raging Covid-19 pandemic has compelled the individuals and businesses to resort to online transactions. The compulsory imposition of social-distancing norms and the necessity of contact-free buying and selling have resulted in enormous popularity of on-line platforms for business. E-commerce platforms allow for internet-enabled trade in unprecedented ways. Owing to the enormous reach of e-commerce, it has provided a collaborative platform for consumers and traders. Consumers get to choose wide range of goods and services across the world from anywhere at any time. However, due to lack of transparency, accountability and absence of grievance redressal mechanism the consumers have become vulnerable as they are subjected to various unfair trade practices. The Central Government has laid down Consumer Protection (E-Commerce) Rules, 2020 to impose liabilities and duties on sellers and market entities in order to better protect the interests of consumers on online platforms. It provides a regulatory framework to regulate marketing, sale and purchase of goods and services online. Duties and liabilities are imposed on all e-commerce entities and sellers. However the Rules are in the stage of infancy and proper guidelines would clarify the grey areas. The clarifications and removal of ambiguities in the Rules would lead to robust growth of e-commerce in India.

Keywords: E-Commerce, Consumer, Seller, Marketplace Entity

I. INTRODUCTION

In the age of internet, India has over 500 million people who use internet.¹ The wide internet access, ease in operating computing devices, cheaper pricing on online portals, paucity of time and availability of surplus income has significantly increased the share of e-commerce in total retail market. The rapid popularity and acceptance of e-commerce has brought a paradigm shift in the realm of marketing and trading in India. The market study on E-commerce published by Competition Commission of India in January 2020 has highlighted upward trend in revenue growth of the sector from USD 39 billion in 2017 to USD 120 billion in 2020, making India one of the fastest growing e-markets in the world. Beginning with mere surfing of internet to online shopping and making online payments, consumers fall prey to scams, frauds, false and misleading advertisements and unfair trade practices. However the advent of e-commerce has posed new challenges such as legal validity of e-contracts, jurisdictional issues to resolve disputes, privacy concerns and pricing regulations. Due to enormous growth of e-commerce, it was quintessential for the government to revamp the archaic Consumer Protection Act of 1986 by introducing the E-Commerce rules to meet the needs of consumers. A vibrant and effective regulatory mechanism was crucial for the success of e-commerce in India. Hence the Central Government notified² Consumer Protection (E-Commerce) Rules, 2020³. Although rules are in existence, enforcement and implementation suffers in the Indian scenario. The legal and regulatory challenges are acting as hindrance to the growth of e-commerce in India. It would be disastrous if the regulatory haze and maze brings this vibrant business to halt. At this juncture, an attempt is made to understand the meaning of e-commerce along with the enforcement and regulatory provisions in Consumer Protection (E-Commerce) Rules. It is important to critically analyze the existing legal provisions by pointing out the lacunae and make necessary

¹ Sandhya Keelery, 'Number of Internet Users in India, 2015-23', Statista (July 7, 2020) available at <https://www.statista.com/statistics/255146/number-of-internet-users-in-india> (accessed on 19/10/2020 at 7.01 pm)

² According to S. 101(2) (zg) of Consumer Protection Act, 2019, the Central Government is conferred with the power to make rules. Accordingly, Ministry of Consumer Affairs, Food and Public Distribution notified Consumer Protection (E-Commerce) Rules 2020 on 23rd July, 2020.

³ Preliminary Draft of the Rules was released in November 2019 and consultation from various stakeholders was invited by December 2019. The present version of rules is an upgraded version of 2019 Draft Rules which replaced Electronic Guidelines for Consumer Protection, 2019

suggestions for a better legal and regulatory framework to ensure consumer-friendly e-commerce environment in India.

II. Meaning of E-Commerce

E-commerce is a new way of conducting business over networks which use non-proprietary protocols that are established through an open standard-setting process such as the internet.¹

United Nations Commission of International Trade Law on E-commerce refers to E-commerce as transactions carried out by means of electronic data interchange and other means of electronic communication, which involve the use of alternatives to paper-based methods of communication and storage of information.²

World Trade Organization Programme on E-commerce defined E-commerce as production, distribution, marketing, sale or delivery of goods and services by electronic means.³

Department of Industrial Policy and Promotion in its Guidelines for FDI on E-commerce provided that “E-commerce is buying and selling of goods and services including digital products over digital and electronic network.”⁴

III. Salient Features of the Consumer Protection (E-Commerce) Rules, 2020

The E-commerce Rules are applicable to e-commerce entities. ‘E-commerce entities are any person who owns, operates, or manages a digital or electronic facility or platform (i.e., an online interface in the form of any software including a website or mobile applications) for electronic commerce. It is to be noted that it does not include sellers offering their goods or services on e-commerce platforms. The e-commerce entities are generally categorized into two models:

- a) Inventory E-Commerce entity- These entities own the inventory of goods and services and sell them directly to consumers. They include single-brand retailers such as Nike, Reebok, or multi-channel single-brand retailers such as Urban Ladder.
- b) Marketplace E-Commerce entity- These entities provide information technology on a digital or electronic network to facilitate transactions between buyers and sellers. Amazon, Snapdeal and Flipkart are some of the examples for the same.⁵

The following are the highlights of the Consumer Protection E-Commerce Rules, 2020:

a) Scope and Applicability⁶

The E-commerce rules are applicable to all kinds of goods and services sold over digital or electronic network including digital products to consumers in India. It extends to all models of e-commerce, including marketplace e-commerce entities and inventory e-commerce entities. It covers all e-commerce retail, including multi-channel single brand retailers and single brand retailers and single brand retailers in single and multiple formats such as single brand retailers who use multiple distribution channels such as offline retail stores in addition to e-commerce. It extends to all apps/websites which offer any good or service for sale to consumers in India. It also applies to offshore apps/websites that systematically offer goods or services in India.⁷

¹ Definition is given by Organization for Economic Co-operation and Development.

² Didar Singh, ‘Electronic Commerce: Issues of Policy and Strategy for India’, Working Paper No. 86 (September, 2002) Indian council for Research on International Economic Relations, available at www.icrier.org > pdf (visited on 14/09/2020 at 4.30 pm)

³ Jonathan Hill, *Cross Border Consumer Contracts*, Oxford University Press

⁴ Norbert Reich, *Consumerism and Citizenship in the Information Society*, Thomas Wilhelmson, Salla Tuominen & Heil Tuomola (ed.) The Hague/London/Boston: Kluwer Law International

⁵ Sumit Kumar Gupta, ‘Consumer Protection (E-Commerce) Rules, 2020: An Analysis’, available at indiacorplaw.in > 2020/08 > consumer-protection-e-co (visited on 1/10/2020 at 9.00 pm)

⁶ Rule 2 of Consumer Protection(E-Commerce) Rules, 2020

⁷ Krimul Malhotra and Anchit Nayyar, ‘Flipping the Cart: Consumer Protection (E-Commerce) Rules, 2020’ available at www.nlujlawreview.in > flipping-the-cart-consumer-pr (visited on 3/10/2020 at 3.00 pm)

b) Presence in India

According to E-commerce Rules, the e-commerce entity should either be a company incorporated in India under Companies Act, 1956 or a foreign company incorporated outside India but having place of business in India, including through electronic mode as per the provisions of Companies Act, 2013. It also extends to the office, branch or agency outside India owned or controlled by a person resident in India as per the provisions of Foreign Exchange Management Act, 1999. The E-Commerce entities should appoint an Indian resident as a nodal officer as a person of contact to ensure compliance with CPA, 2019.¹ This ensures effective regulation of foreign entities.²

c) Implications on B2C and B2B entities

The consumer purchases are governed by both CPA, 2019 and E-Commerce Rules, 2020. According to CPA, 2019, 'consumer' is a person who buys goods or services for consideration but excludes a person who purchases for 'commercial purposes'. However, if goods or services are availed for earning livelihood or self-employment, they are not regarded as consumers. Therefore, the CPA and E-Commerce Rules do not typically apply to purchases made by companies for their commercial operations. Hence, sole partnerships and entrepreneurs are not excluded from the definition of consumer. If any customer purchases goods and services on a purely B2B platform for self-employment, they shall be considered as 'consumers' and the B2B platform would be liable under the E-Commerce Rules to the extent of such a sale.³

d) Duties and Liabilities of E-Commerce Entities⁴

- i. Every E-commerce entity shall provide details about the sellers including identity, geographical address, contact details and complete information about the business identity and types of products.
- ii. In case of imported goods for sale, the e-commerce entity shall mention the name and details of the importer from whom goods are purchased. This helps to trace those selling spurious goods.
- iii. The marketplace e-commerce entity shall take reasonable efforts to maintain a record of relevant information relating to identification of all sellers who have repeatedly offered goods or services but have been disabled or removed according to Copyright, Trade Marks and Information Technology Acts.⁵

e) Liabilities of Marketplace Entities⁶

Apart from the general duties, the Rules impose specific requirements on marketplace entities:

- i. Reiterate that the intermediaries exercise due diligence.
- ii. Ensure that description of goods and services are accurate and correspond to the features expressed by the seller in the undertaking.
- iii. Describe differential treatment given to goods, services or sellers of same category. This may include options available for a seller to offer sponsored advertisements on the platform.
- iv. To take reasonable efforts to maintain a record of sellers who had repeatedly offered goods or services that have been removed or disabled by the platform due to violation of IP or IT laws.⁷

¹ Legality Simplified, 'New Rules for E-commerce Companies in India', available at taxguru.in > corporate-law > e-commerce-rules-consum (visited on 9/10/2020 at 7.55 pm)

² Similar provisions are made in Data Protection Bill, 2019 wherein regulatory and enforcement provisions extend to foreign entities.

³ Trilegal, 'Consumer Protection (E-Commerce) Rules, 2020 – India', available at www.mondaq.com > india > consumer-protection-e-co (visited on 30/10/2020 at 6.15 pm)

⁴ Rule 4 of Consumer Protection(E-Commerce) Rules, 2020

⁵ Priya Rao, 'Legal Provisions For Protection From Purchasing Spurious Goods Through E-Commerce Under The Consumer Protection Act, 2019 And Consumer Protection (E-Commerce) Rules, 2020', K&S Partners, www.legal500.com > developments > thought-leadership, (accessed on 31/09/2020)

⁶ Rule 5 of Consumer Protection (E-Commerce) Rules, 2020

⁷ Dr. Gargai Rajvanshi, 'Consumer Protection (E-Commerce) Rules, 2020 : An Analysis', ICSI, available at www.icsi.edu > media > webmodules > Consumer_Protection, (visited on 30/10/2020 at 7.30 pm)

The E-commerce entities are also supposed to provide certain information so that the consumers can make informed decisions such as:

- i. The details provided by sellers to marketplace entities should be displayed on the platform.
- ii. The information relating to available payment methods, return, refund, exchange, delivery, shipment and grievance redressal mechanism.
- iii. Any aggregated ranking or feedback about the seller of goods along with parameters to determine such a ranking and relative importance.

These provisions are also applicable to inventory entities.

f) Duties of Sellers using Marketplace Entities¹

The sellers should provide information to market entity regarding seller entity, price including break-up price and other relevant details such as country of origin, guarantees and also information about importer, manufacturer and mode of delivery. There should be an express pre-written undertaking given by the seller to the inventory e-commerce entities expressing the terms of contractual relationship with the entity and the same should be displayed for users. The undertaking should also mention that the features, images and descriptions are accurate and authentic. They shall appoint a grievance redressal officer and refrain from resorting to unfair trade practices.²

They should not post fake or misleading reviews, or represent themselves as customers of their own products and shall not adopt any such unfair trade practices. Provisions should be made for refund or taking back of defective, deficient and false goods or services. If the goods or services do not match with the correspondent item on an e-commerce platform or that the delivery got delayed, then the goods or services may be rejected and refund may be claimed. They should not indulge in misleading advertisements as the products and services should correspond with what is displayed and promised. The E-Commerce entities shall not discriminate between consumers of same class and refrain from making arbitrary classifications so as to affect their rights under CPA.³

g) Measures against Unfair Trade Practices

Lack of transparency and accountability in e-businesses has placed consumers in a weak bargaining position and also are subjected to unfair trade practices. The Rules prevent the e-commerce entities from selling counterfeit and pirated goods. The E-commerce entities shall ensure that consumer should express consent and cannot be implied in an automatic manner such as pre-ticked boxes. The goods and services purchased or promised to be purchased shall not be withdrawn or the production shall not be stopped.⁴ The cancellation fee shall be borne by both seller as well as e-commerce entity. The price specified shall not be manipulated to gain unreasonable or unjustified⁵ profits.⁶

h) Grievance Redressal Mechanism

In e-commerce there is no face to face transaction between consumer and e-tailer. To provide quick relief, every digital commerce platform should set up grievance redressal mechanism headed by nodal grievance officer or an alternative senior officer. Every consumer complaint shall be issued a ticket number so that the consumer can himself track the status of the complaint. The grievance must be acknowledged within 48 hours of the receipt

¹ Rule 6 of Consumer Protection(E-Commerce) Rules, 2020

² Trilegal, 'Consumer Protection (E-Commerce) Rules, 2020 – India', available at www.mondaq.com/india/consumer-protection-e-co (visited on 30/10/2020 at 6.15 pm)

³ Soumyarendra Barik, 'New Draft Consumer Protection Rules for E-Commerce require Platforms to show Country of Origin and explain how Product Listings work', available at www.medianama.com/2020/07/223-consumer-prot/ (visited on 30/10/2020 at 4.00 pm)

⁴ Rule 5 (3), 'The Consumer Protection (E-Commerce) Rules, 2020

⁵ Rule 4 (11)(a), 'The Consumer Protection (E-Commerce) Rules, 2020

⁶ Tanveer Kaur, 'Highlights of the Consumer Protection (E-Commerce) Rules, 2020', Metacept – InfoTech and IPR, accessible at <https://metacept.com/highlights-of-the-consumer-protection-e-commerce-rules-2020/> (visited on 3/10/2020 at 4.15 pm)

and must be resolved within one month of receipt of it. The e-commerce entities shall make best efforts to participate in the national Consumer Helpline, for quick resolution of consumer complaints.¹

IV. Critical Evaluation of Consumer Protection (E-Commerce) Rules, 2020

An analysis of the Rules clearly point towards certain grey areas. They are:

1. Country of origin- According to the E-commerce Rules, the seller offering goods or service through a marketplace e-commerce entity should mandatorily provide information about 'country of origin' and the same shall be displayed on the platform or website. But the Rules have not provided any guidance to determine the country of origin. Moreover it is not made applicable uniformly as the inventory-based e-commerce entities are excluded. It may mean that where seller is the e-commerce entity or an e-commerce entity which is not market place, the consumer do not get an opportunity to know the country of origin at pre-purchase stage to make an informed decision.
2. Prohibition of price manipulation- E-commerce entities are prohibited from manipulating price of goods or services offered on its platform in such a manner as to gain 'unreasonable profit' by imposing on consumers 'unjustified price' having regard to prevailing market conditions and essential nature of good or service among other things. The provision would serve better the interests the consumers if proper guidelines are laid down as to what may be construed as 'unreasonable profit' and 'unjustified price'. For instance several e-commerce entities use algorithms to determine price based on various factors. Whether the profits arising out of such pricing mechanisms can be considered as unreasonable is debatable. For instance the ride-hailing apps such as Uber or Ola use 'price surging' based on demand at particular time and place. Although, it is data-driven, still it gives scope to the consumers to challenge the e-commerce entities for such price modifications. The e-commerce entities should justify their algorithm-based pricing actions by internal compliance and price justification. Another consequence of this provision is that it may result in discrepancy in the regulation of same products across different distribution channels. As it would mean that offline is governed by free market but online shall be subject to strict pricing restrictions and thus impedes the growth of e-commerce.

Data-driven pricing may also become an issue when it is used to provide offers or discounts to specific classes of consumers. There is no clarity as to what is the 'reasonable basis' for such classification. It leads to uncertainty when algorithms are used to target specific categories of customers or customize the offers.

3. Disclosure of contractual information- Any seller offering goods or services through a marketplace e-commerce entity and inventory e-commerce entity must disclose all contractual information required to be disclosed by law to the e-commerce entity which must then be displayed on website on platform. There is no clarity as to what kind of contract is being referred to. Whether it is the contract between seller and marketplace e-commerce entity and what kind of contract in case of inventory-based e-commerce entity since the seller is the e-commerce entity itself.
4. Timeline for compliance- The E-commerce Rules are effective from July 23, 2020 and no grace period is given for compliance especially for the off-shore e-commerce companies that systematically offer goods and services to consumers in India. Generally, when regulations bring under their purview new categories of regulated entities, a grace period for compliance is usually provided to ensure the businesses manage their affairs and comply with the norms. The off-shore e-commerce entities would have to incorporate a company in India and appoint nodal officers but they may be regarded as non-compliant from day one of the notification of E-commerce Rules.²
5. Both e-tailers and sellers should appoint grievance officers to address any complaints. This would prove to be an additional burden on small sellers. It would be a difficult challenge. It may far exceed the benefit of selling online.
6. The Confederation of All India Traders (CAIT) protested against allowing 49% foreign stake in the inventory model of e-commerce firms. They accused e-commerce firms of violating norms by offering

¹ Rule 4 (5), 'Consumer Protection (E-Commerce) Rules, 2020'

² Kaushalya Venkataraman, 'Consumer Protection in Indian Ecommerce: 5 Grey Areas Which Needs Government's Attention', Chandhiok & Mahajan Advocates & Solicitors, available at [trak.in>Business](http://trak.in/Business) (visited on 7/10/2020 at 11.30 pm)

deep discounts and directly selling goods to customers. Mandatory provision of storing data in India was opposed by companies like Amazon and Facebook.¹

7. Most of the entities are run as limited liability partnerships and other business forms. The mandatory requirement that all e-commerce entities in India should be run as a company may cause significant disruptions in the market.
8. Subjecting the prohibition on price manipulation by e-commerce entities to 'market considerations' creates an ambiguity in its enforcement. Most of the e-commerce entities such as Zomato, Swiggy, Ola and Uber may conveniently justify hike in prices on the grounds of market demands.
9. The consumer redressal authorities are further burdened to assess the market conditions. It leads to jurisdictional conflict between Competition Commission of India and consumer redressal authorities.
10. There is a need to prohibit promotional reviews and ratings from unverified purchasers. Unfortunately the rules only prohibit e-commerce entities and sellers from posting such reviews themselves. However, it does not provide for regulation of paid reviews and instances where sellers incentivize consumers in exchange for paid reviews. There is no mechanism to prevent fraudulent reviews and ratings by the sellers as well as their affiliates.²
11. The application and implementation of these rules raises an important question as to the ultra vires nature of provision, since it is applicable to e-commerce entities situated outside India if having business within India.
12. Certain obligations extend to those operating on platforms even though they do not fall within the ambit of consumer and seller.
13. There is no clarity as to whether the rules apply to business to business platforms or kinds of digital product offerings that are covered under the rules.³
14. There are many marketplace entities providing add-on services such as warehousing, logistics, order fulfillment, payment collection so on and so forth. The concept of 'product seller' under CPA, 2019 includes entities that market, prepare, maintain or place a product for commercial purpose and provide necessary services for the same. Such entities may be held liable for violating the rights of consumers. However, the Rules are silent on the add-on services being provided by marketplace entities and the consequence is that they are classified as product sellers for the purpose of product liability claims. However, this is counter-intuitive to their classification as intermediaries in the sale process. The same need to be clarified.⁴
15. The rules do not provide for consumer data protection or storage of confidential information, especially for e-commerce entities operating as payment aggregators.
16. The enforceability of the provisions of the rules to the foreign businesses also remain to be clarified given that handling a dispute involving a foreign entity may have territorial and jurisdictional constraints.

V. CONCLUSION

The analysis of various provisions of the Rules nevertheless point out that it is a path-breaking legislation which regulates the previously unchecked practices of e-commerce entities and also secures consumer interest in the digital economy. The E-Commerce Rules provides a level-playing field to sellers, enhance protection to consumers and also enable healthy growth of e-commerce sector in India. The extent of information that the sellers, marketplace and inventory entities are supposed to disclose would definitely afford better protection to

¹ **Rahul Choudhury**, 'India's national policy framework on e-commerce: Issues and Challenges'

available at www.researchgate.net/publication/328926438_India's (visited on 10/10/2020 at 7.15 pm)

² Krimul Malhotra and Anchit Nayyar, 'Flipping the Cart: Consumer Protection (E-Commerce) Rules', NLUJ Law Review, Journal and Blog, ISSN2326-5320 available at www.nlujlawreview.in/flipping-the-cart-consumer-pr (visited on 5/10/2020 at 9.00 pm)

³ **Arun Prabhu** et.al., 'Consumer Protection E-Commerce Rules: Need for More Clarity', available at corporate.cyrilamarchandblogs.com, (visited on 7/10/2020 at 9.00 pm)

⁴ *Supra* 15

consumers. E-Commerce if properly regulated would increase competitiveness and efficiency in e-tailing and thus act as a major instrument for ensuring sustainable economic growth in future. The E-commerce Rules prove to be effective if sufficient steps are taken to clarify the provisions and lay down guidelines. A pre-defined procedure for resolving disputes would provide more lucidness. Thus if the necessary changes are incorporated, it would lead to a robust and vigorous e-commerce business in India.

ROLE OF THE CENTRAL CONSUMER PROTECTION AUTHORITY IN PROTECTING THE CONSUMER RIGHTS

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INTRODUCTION

The Consumer Protection Act, 1986 was enacted to address the grievances of the consumer and to protect their interests. However, the three-decade-old legislation failed to keep pace with the developments in the market and digital technology in the Country. Further there was no regulatory body to control or keep a check on violation of the rights of consumers. Finally keeping in mind the fast changing new-age economy, e-commerce platforms etc., the 33 years old Consumer Protection Act 1986 has been replaced by Consumer Protection Act, 2019¹. The Act has retained some old provisions but also shows the gleam of some new perceptions. The Ministry of Law and Justice has meticulously framed the Consumer Protection Act, 2019 covering all the possibilities of defaults that may arise in the new epoch.

The Consumer Protection Act, 2019 passed to address e-commerce and online trade challenges, product liability, and safety and dispensing consumer justice in alternative dispute redressal mechanism. The amending law had a seminal bearing on the medical profession and health care system as apparent from the express verbiage exclusion of healthcare from the purview of 'service'. The new Consumer Protection Act, 2019 establishes a Central Consumer Protection Authority² which acts as a regulatory body to "promote, protect, enforce consumer rights as a class." A clear shift from Caveat emptor (let the buyer be aware) to Caveat venditor (let the seller be aware) can be seen in the new provisions as the unfair trade practices and fraud done by the seller will now be penalized. The latest Act also makes provisions for punishment regarding unfair trade practices and misleading advertisements and many more changes which keep the rights of the consumer up to date with the contemporary changes in the market.

CPA 2019 aims to strengthen consumer interests and establish regulatory authority for timely and effective administration and settlement of consumers' disputes. Again, to provide a more robust grievance redressal mechanism for protecting and enforcing consumer rights. This article aims to provide insight into new provisions, analyze the nature, extent, and impact of new provisions and include a comparative overview of some of the main provisions of CPA 2019 vis-à-vis CPA 1986. Further, to discuss the role of Central Consumer Protection Authority to protect and promote the rights of Consumer.

Historical Development of the Act

After independence, several laws were enacted in India to protect innocent consumers from unfair and restrictive trade practices like a false and misleading description about the nature and quality of the goods, exaggerated statements about their power and potency, false weights and measurements and obstruction of capital and resources into the stream of production. The Acts which were enacted in independent India are

- The Drug (Control) Act, 1950
- The Industries (Development and Regulation) Act, 1951
- The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954
- The Prevention of Food Adulteration Act, 1954
- The Essential Commodities Act, 1955
- The Trade and Merchandise Marks Act, 1958
- The Monopolies and Restrictive Trade Practices Act, 1969
- The Cigarettes (Regulation of Production, Distribution, and Supply) Act, 1975
- The Standards of Weights and Measures Act, 1976

¹ Received the assent of the President on 9-8-2019, published in the Gazette of the India Ext, Pt. II, S. 1, Dated 9-8-2019.

² Section 2 (4) "Central Authority" means the Central Consumer Protection Authority established under Section 10;

- The Prevention of Black Marketing and Maintenance of Supplies of Essential
- Commodities Act, 1980
- The Standards of Weights and Measures (Enforcement) Act, 1985
- The Bureau of Indian Standards Act, 1986

But all these Acts were not as successful as they were expected to be and that is why to provide for better protection of the interests of consumers and to save them from the evils of unfair trade practices, Consumer Protection Act, 1986 was enacted by Indian Government¹. The Consumer Protection Act 1986 underwent a series of amendments in 1991, 1993 and 2002. These amendments widened the scope of the authority given to consumer courts. Due to the spurt of digitalization, the 1986 Act possessed certain challenges and needed immediate attention. In this context, the Law Commission of India had recommended that a separate law be enacted and presented a draft Bill in relation to unfair contract terms. In 2018, a Bill to amend the 1986 Act was introduced to enable consumers to file online complaints. However, the Bill lapsed in Rajya Sabha after dissolution of Lok Sabha. The Consumer Protection Bill, 2019 was introduced in Lok Sabha by the Minister of Consumer Affairs, Food and Public Distribution, Mr. Ram Vilas Paswan on July 8, 2019 and it was passed by the Lok Sabha on July 30, 2019 and Rajya Sabha on August 6, 2019. The bill received assent from the President on 9th August, and was notified in the Gazette of India on the same date. The Act came into effect by 20 July 2020, while certain other provisions of the Act came into effect from 24 July 2020.

Changes made by the New Act of 2019

The new consumer protection Act brought significant changes keeping in view the modern e-commerce, unfair trade commerce and misleading advertisements. The Act provides for the establishment of an executive agency to be known as the Central Consumer Protection Authority to protect, promote and enforce the consumer rights. It also envisages provisions for product liability action on account of harm caused to consumers due to defective product². Again, provision of Mediation as an alternative Dispute Resolution Mechanism has also been provided³. Further, the Act provides for several provisions aimed at simplifying the consumer dispute adjudicative process of the Consumer Disputes Redressal Commissions. An attempt is made in this paper to analyses the comparison between the Acts of 1986 and 2019.

Comparison Between Consumer Protection Act, 1986 and Consumer Protection Act, 2019		
Points	1986 Act	2019 Act
Definition of 'Consumer'	Narrow definition of "Consumer" has been given	definition of "Consumer" has been broadened
Unfair Trade Practices	Narrower in scope. Only 6 types of practices were covered	Broader in scope, added three new practices
Product Liability	There was no provision for product liability	Contain provisions for Product liability
Unfair Contracts	There was no provision for Unfair Contracts	Contain provisions for Product liability
E-commerce and direct selling	There was no provision for Ecommerce	Contains specific provisions for Ecommerce and direct selling
Mediation	There was no provision for ADRS mechanism	Contain provisions for Mediation
Pecuniary limits	Lower pecuniary limits of District	Higher pecuniary limits of District

¹ 15th April, 1987, vide notification No. S.O. 390(E), dated 15th April, 1987 in respect of Chapters I, II and IV, see Gazette of India, Extraordinary, Part II, sec. 3(ii).

^{1st} July, 1987, vide notification No. S.O. 568(E), dated 10th June, 1987 in respect of Chapter III, see Gazette of India, Extraordinary, Part II, sec. 3(ii).

² Section 2 (10), "defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods or product and the expression "defective" shall be construed accordingly;

³ Commencing from section 74 to 81 of the Consumer Protection Act, 2019 provides provisions for settlement of Disputes by way of Mediation.

	Forum - up to 20 Lakhs; State Commission - 20 Lakhs to 1 Crore; and National Commission - above 1 Crore	Commission - up to 1 Crore; State Commission - 1 Crore to 10 Crores; and National Commission - above 10 Crores
Consumer Protection Councils	Role of CPCs was to promote and protect the rights of consumers	Role of CPCs is to Act as advisory bodies for the promotion and protection of consumer rights
Selection of members to Consumer Commissions	Different Committees were prescribed for different Commissions	There is no provision for selection Committees. Central Government has the power to appoint the members
Regulator	No regulator was in existence	A regulator by the name of Central Consumer Protection Authority shall be established
Penalties	A person failing to comply with the orders of Commission could face imprisonment between one month and three years or fine between Rs 2,000 to Rs 10,000, or both	A person failing to comply with the orders of Commission can face imprisonment up to three years, or a fine not less than Rs 25,000 extendable to Rs One Lakh, or both
Online Transactions	Online Transactions and Teleshopping were previously not mentioned.	All merchandise and enterprises bought/benefited through all methods of exchanges for which thought was paid are incorporated.
Composition of Commissions	<i>District Commission:</i> Headed by current or former District Judge and two members. <i>State Commission:</i> Headed by a current or former High Court Judge and at least two members. <i>National Commission:</i> Headed by a current or former Supreme Court Judge and at least four members.	<i>District Commission:</i> Headed by a president and at least two members. <i>State Commission:</i> Headed by a president and at least four members. <i>National Commission:</i> Headed by a president and at least four members.
Limitation Period for filing Appeal	The limitation period for filing an Appeal to State Commission is 30 days.	The New Act has increased the limitation period from 30 days to 45 days.

Rights of Consumer under the C.P. Act 2019

Under the 1986 Act, the rights of the consumers were only found as a passing reference under the objects of the Consumer Protection Councils. However, the New Act has defined six specific consumer's rights under Section 2(9). Those rights are as follows

1. **Right to Safety:** Right to be protected against the marketing of goods and services which are hazardous to life and property.
2. **Right to be informed:** Right to be informed of the quality, quantity, potency, purity, standard and price of goods or services.
3. **Right to choose:** Right to access a variety of goods and services at a competitive price.
4. **Right to be heard:** Right to be represented in various forums formed to consider the consumer's welfare.
5. **Right to consumer education:** the right to acquire the knowledge and skill to be an informed consumer throughout life.
6. **Right to grievance redressal:** right to seek redressal against unfair or restrictive trade practices.

Central Consumer Protection Authority

The Act, provides for the establishment of 'Central Consumer Protection Authority' (CCPA) to regulate matters relating to violation of rights of consumers, unfair trade practices and false or misleading advertisements which are prejudicial to the interests of the public and consumers and to promote and enforce the rights of consumers as a class. In exercise of powers conferred by Section 10 of the Act, the Central Government issued notification in the official gazette on 24 July 2020 for the establishment of CCPA as a body corporate having perpetual

succession and a common seal. It has the power, subject to the provisions of the Act and the rules and regulations made there under, to acquire, hold and dispose of property and it shall by the said name enter into contract, sue and be sued. The Central Authority would consist of a Chief Commissioner and such number of other Commissioners as may be prescribed, to be appointed by the Central Government¹. The headquarters of the Central Authority shall be at such place in the National Capital Region of Delhi and it shall have regional and other offices in any other place in India as the Central Government may decide². The Central Government may, by notification, make rules to provide for the qualifications for appointment, method of recruitment, procedure for appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of the service of the Chief Commissioner and Commissioners of the Central Authority³. But, Central Government is yet to notify the rules relating to these factors.

The Central Government shall regulate the procedure for transaction of its business and allocation of its business amongst the Chief Commissioners or Commissioners as may be specified in the regulations. The Chief Commissioner shall have the powers of general superintendence, direction and control in respect of all administrative matters of the Central Authority. The Chief Commissioner may delegate his powers to the Commissioners or other officers in the headquarters or in regional offices. In exercise of the powers conferred by sub-section (1) and clause (b) of subsection (2) of section 104 read with sub-section (1) of Section 14 of the Consumer Protection Act, 2019 the Central Authority with the previous approval of the Central Government notified Central Consumer Protection Authority (Allocation and Transaction of Business) Regulations, 2020⁴.

The Central Authority shall have an investigation wing of its own⁵. It will be headed by the Director General. The Central Government may appoint Director General or such number of Additional Director General, Director, Joint Director, Deputy Director and Assistant Director. The inquiries or investigations made by the investigation wing shall be submitted to the Central Authority within such time and in such manner. Further, The District Collector, on receipt of a complaint or on a reference made to him by the Central Authority, inquire into or investigate complaints regarding violation of rights of consumers within his jurisdiction and to submit a report to the Central Authority⁶.

A complaint relating to violation of consumers rights or unfair trade practices or false or misleading advertisements which are prejudicial to the interests of consumers as a class, may be forwarded either in writing or in electronic mode to any one of the authorities namely District Collector, Commissioner of Central Authority or regional offices of the Central Authority⁷. The Central Authority may, on receipt of any information or complaint or directions from the Central Government or of its own motion, conduct a preliminary enquiry as to whether there exists a prima facie case of violation of consumers' rights or any unfair trade practice or any false misleading advertisement, by any person, which is prejudicial to the interests of public and consumers it shall cause investigation to be made by Director General or District Collector. If such matter is to be dealt with by a Regulator established under any other law for the time being in force, the Central Authority may refer such matters to the concerned Regulator along with its report. For the purposes of investigation, the Central Authority or the Director General or the District Collector may call upon the person against whom the complaint is made and also direct him to produce any document or record in his possession.

For the purpose of investigation the investigating authority is having power to enter at reasonable time into any such premises and search for any document or record or article and seizure such document or record or article. It can make a note or an inventory of such record and if it require it may order any person to produce any

¹ The Consumer Protection Act, 2019, Section 10 (2)

² *Ibid*, Section 10 (3)

³ *Supra* note 6, Section 11

⁴ The Consumer Protection Act, 2019, Section 15.

⁵ F. No. 1-1/2020-CCPA.—In exercise of the powers conferred by sub-section (1) and clause (b) of subsection (2) of section 104 read with sub-section (1) of section 14 of the Consumer Protection Act, 2019 (35 of 2019), the Central Consumer Protection Authority, with the previous approval of the Central Government, makes the The Central Consumer Protection Authority (Allocation and Transaction of Business) Regulations, 2020, on 13th August 2020,

⁶ *Ibid*, Section 16

⁷ *Ibid*, Section 17

record, register or other document or article. If the Central Authority is satisfied that there is sufficient evidence to show violation of consumer rights or unfair trade practice, it may pass an order for

- 1) Recalling of goods or withdrawal of services which are dangerous, hazardous or unsafe;
- 2) Reimbursement of the prices of goods or services so recalled to purchasers of such goods or services; and
- 3) Discontinuation of practices which are unfair and prejudicial to consumers' interest.

But, such order should be made after giving the concerned person a reasonable opportunity of being heard. Further, if the Central Authority is satisfied that any advertisement is false or misleading, it may by order, issue directions to the concerned trade or manufacturer or endorser or advertiser or publisher to discontinue such advertisement or to modify the same in such manner and within such time as may be specified in the order. The Central Authority may impose penalties in respect of such false or misleading advertisements, by a manufacturer or an endorser which may extend to ₹ 10 lakhs. If the contravention is repeated the penalty may be imposed up to ₹ 50 lakhs¹.

The Central Authority may, by order, prohibit the endorser of a false or misleading advertisement from making endorsement of any product or service for a period which may extend to 1 year. For subsequent contravention the prohibition may be extended to 3 years. No endorser shall be liable to penalty if he has exercised due diligence to verify the veracity of the claims made in the advertisement regarding the product or services being endorsed by him. If any person is found to publish, or is a party to the publication of a misleading advertisement, the Central Authority may impose penalty on such person which may extend to ₹ 10 lakhs. No person shall be liable for penalty if he proves that he had published or arranged for the publication of such advertisement in ordinary course of his business. No such defence shall be available if he had previous knowledge of the order passed by the Central Authority for withdrawal or modification of such advertisement. A person aggrieved by any order passed by the Central Authority under sections 20 and 21 may file an appeal to the National Commission within a period of thirty days from the date of receipt of such order.

Functions of Central Authority

As per Section 18, The Central Authority shall:

- (a) protect, promote and enforce the rights of consumers as a class, and prevent violation of consumers rights under the Act;
- (b) prevent unfair trade practices and ensure that no person engages himself in unfair trade practices;
- (c) ensure that no false or misleading advertisement is made of any goods or services which contravenes the provisions of the Act or the rules or regulations made there under;
- (d) Ensure that no person takes part in the publication of any advertisement which is false or misleading.

Powers of Central Consumer Protection Authority

The Central Authority enjoys sweeping and wide-ranging powers under the Act and can discharge functions which are regulatory, investigative or adjudicatory in nature². These include the power to:

- (a) inquire or cause an inquiry or investigation to be made into violations of consumer rights or unfair trade practices, either suo motu or on a complaint received or on the directions from the Central Government;
- (b) file complaints before the District Commission, the State Commission or the National Commission, as the case may be, under the Act;
- (c) intervene in any proceedings before the District Commission or the State Commission or the National Commission, as the case may be, in respect of any allegation of violation of consumer rights or unfair trade practices;
- (d) review the matters relating to, and the factors inhibiting enjoyment of, consumer rights, including safeguards provided for the protection of consumers under any other law for the time being in force and recommend appropriate remedial measures for their effective implementation;

¹ The Consumer Protection Act, 2019, Section 89

² *Ibid*, Section 18(2)

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- (e) recommend adoption of international covenants and best international practices on consumer rights to ensure effective enforcement of consumer rights;
 - (f) undertake and promote research in the field of consumer rights;
 - (g) spread and promote awareness on consumer rights;
 - (h) encourage non-Governmental organisations and other institutions working in the field of consumer rights to co-operate and work with consumer protection agencies;
 - (i) mandate the use of unique and universal goods identifiers in such goods, as may be necessary, to prevent unfair trade practices and to protect consumers' interest;
 - (j) issue safety notices to alert consumers against dangerous or hazardous or unsafe goods or services;
 - (k) advise the Ministries and Departments of the Central and State Governments on consumer welfare measures;
 - (l) issue necessary guidelines to prevent unfair trade practices and protect consumers' interest.

Central Authority has been conferred power under section 35(1)(d) to file a complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a District Commission. The directions of the authority are mandatory if any person fails to comply those directions shall be punished by the competent court with imprisonment for a term which may extend to 6 months or with fine which may extend to 20 lakh rupees or with both. Section 104 empowers the Central Authority to make regulations consistent with this Act, for the purpose of giving effect to the provisions of this Act, with the previous approval of the Central Government.

CONCLUSION

The new phase in Consumer Rights has begun in India with the passing of Consumer Protection Act, 2019 and repealing the Consumer Protection Act, 1986 making the Consumer more powerful than before. As is evident, CPA 2019 has made several changes to the erstwhile CPA 1986. CPA 2019 has widened the reach of consumer protection regime in India. The changes made vide CPA 2019 seem to further empower consumers by leveraging responsibilities not only on their counterparts, i.e., the sellers, manufacturers, service providers, but also the endorsers of such products. The establishment of Central Consumer Protection Authority as a regulatory body to "promote, protect, enforce consumer rights as a class and empowering it to conduct investigations into violations of consumer rights and institute complaints / prosecution, order recall of unsafe goods and services, order discontinuance of unfair trade practices and misleading advertisements, impose penalties on manufacturers/endorsers/publishers of misleading advertisements keeps the rights of the consumer up to date with the contemporary changes in the market.

COVID-19: IMPACT ON HEALTH AND SAFETY OF PEOPLE AND MEDICAL NEGLIGENCE OF HEALTH CARE PROVIDERS

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INTRODUCTION

It is a known truth that the most loved & adored thing in the world by all of us is our life. Every one of us have the desire and ambitious to protect our life and we would have taken various precautionary measures for the same. But when an unpredicted situation like Covid-19 strikes the lives of millions of people around world and takes away lakhs of innocent life from a new born baby to an aged person without any discrimination without even allowing us to realize the situation, Result is life have turned upside down for many.

Health as part of Fundamental Right under Article 21 of the Constitution

Right to basic health is considered as basic fundamental of human beings and recognized by the international community. A duty is imposed on the state to protect, provide and secure the health of its citizens. World Health Organization is working towards the attainment of highest degree health care. It has set standards to attain this object which includes right to access and utilities of services, hospital and bed density, availabilities of essential commodities and medicines.¹

Framers of our Constitution and founding fathers have imposed a duty on state under Part IV of the Constitution as Directive Principles of State Policy to protect and secure the health of the people. Article 38 of the Constitution lays down the responsibility of the state to secure social order for the promotion of the welfare of Public health. Article 39 (e) provides for the protection of health of workers, Article 41 pertains to providing public assistance by the state in special circumstances such as sickness, disability , old age etc. Article 42 provides for protection of health of the infant and the mothers i.e. through maternity benefit. Article 47 imposes a primary duty on the state to make improvement in public health, securing of justice, providing humane conditions of work for the workers, extension of benefits pertaining to sickness, disability, old age and maternity benefits. Article 48-A imposes a duty on the state to provide for a good and healthy pollution free environment. All these provisions are persuasive in nature and it is easy for a state to escapes from its liabilities.

Supreme Court has widened the scope of Article 21 to interpret that right to life is not mere human existence it includes right to life with dignity and decency. In *Paramanda Katra v. Union of India*² it was held that person indulged in the profession of medical care have an obligation to take care of the needy and they are having the custody of public health and if there is any negligence they can be held guilty.

*Bhandua Mukti Morcha v. Union of India*³ Supreme Court widening the provision of Article 21 stated that though Directive Principles of State Policy is persuasive in nature still state is duty bound to take care of the public. Thus right to health was brought under the ambit of Article 21

*Paschim Bangal Khet Mazdoor Samity & Others v. State of West Bengal*⁴ Court held that it was the responsibility of the government to provide adequate medical aid to every person and to work for the welfare of general public. This judgment also clearly shows the intention of Hon'ble Supreme Court is to protect the public health and thus has widened the scope of Article 21.

In this article an attempt is made to critically analyse to what extent the government has taken the responsibility during the outbreak of Covid-19 pandemic in complying the direction of Supreme Court.

Unfair Trade Practices

It was found during the pandemic time starting from February 2020 the health providers are facing shortage in supply of personal protective equipment PPE and it is considered to be unprecedented need. To meet the additional costs they are imposing the additional surcharges of PPE on the patients Bill. Already people are suffering due to loss of job, reduction in the hours of work and reduction in salary, loss of health. Increase in the

¹World Health Organisation, http://www.who.int/gho/indicator_registry/en/

² AIR 1989 SC 2039

³ AIR 1984 SC 812

⁴ (1996) 4 SCC 37

cost of medical services will be devastating. Object should be that even a common man at the bottom level should be in a position to have access to medical assistance.

Shortage of essentials like N-95 mask, sanitizers and Covid related materials at the initial stages of Pandemic which resulted in these essentials materials being sold at skyrocketing prices. When the pharma sector and the manufacturers of hygiene and sanitation product join hands in unfair trade practice in order to make a financial gain out of this pandemic situation it would result in violating the interest of public at large. The situation forced the government to place the masks and sanitizers under the Essential Commodities Act, 1955.¹ The black-marketing, creation of artificial shortage which resulted in overpricing the Remdisiver most potent which was considered as investigational drug against this Covid-19. Directorate General of Health Services (DGHS) gave instructions to all the state to keep a strict vigil against such kind of violators.

Competition Commission of India (CCI) has warned there should be no advantage taken by the businesses indulge in disruptions in supply chain due to the pandemic and creating an artificial shortage of essential commodities especially relating to the health care which includes fair distribution of ventilators vaccines, gloves, face masks, and also services like logistics and testing etc. CCI also directed that the businesses have to provide regularly the stock level details, R&D productions, transport logistics and the information as to distribution network. This would have check on the disruptions that is caused in the supply chain.

Duty of the doctors, nurses and medical staff to treat the patient.

As for as the various kinds of serious infectious diseases, epidemic diseases such as Drug-resistant tuberculosis, Ebola, serious infectious diseases like severe acute respiratory syndrome (SARS) avian flu which can be humanly transmitted has affected the world and the health workers have contributed efficiently to overcome the diseases by rendering their sincere services to the patients but the present situation and the complaints continuously received from the patients and the family members portrays that the medical service or profession is no more remains a noble service. As there are number of instances reported every day where the patients suffering from Covid -19 as well from other serious illness are refused treatment by most of the hospitals. We have also seen and read that many patients died after few hours of reaching the hospital as they were not even provided with basic first aid assistance, in other cases the family members had to rush to more than 9 to 10 hospitals with the patient only to be returned back on the ground that they do not treat a Covid patient, or they have to get the Covid test report or there was no bed facilities available. There were many hospitals who are charging exorbitant rate for covid test, bed charges, and medical treatment than actual rate fixed by the government.

It is true that health care providers are forced to work for longer hours and at the risk of their life and many Physicians, nurse and health workers have become victims of this pandemic. Media sting operation showed how the hospital authorities have taken advantage of this situation to encash by instructing the health workers to get at least 5 patients per day even if the person is tested negative and they will be given Rs.5000/- per patient. In another instances reported in media where a negative report is given if you pay money even though a person is tested positive. There were other reports given by patients who were admitted in the hospital to the media where even though they were tested negative they were forced to stay in the hospital for one month, without any treatment and they were not allowed to contact or meet any of the family members or their friends. The hospital authorities forced the family members to shell down lakhs of rupees in order to get the family member discharged without actually getting any benefit of treatment.

Health care providers have a positive duty to take care or provide with medical assistance to person in need as they take an oath or the code of ethics to which they submit when they enter the profession and at the same time a negative duty not to kill a person or be a cause for a death by not providing emergency assistance. Physicians give express consent at time of accepting their job to treat the patients during emergency situations in the hospital. There is also implied consent given by them as to extend their sincere service even at the risk of their own life. But in reality only few of them strictly abide by it.

Right to medical assistance and Human rights violations

Supreme Court on various landmark decision has widen the scope of Article 21 of the Constitution to consider it is a fundamental right to have access to medical assistance. It is the duty of professional as a doctor, nurse of medical staff by virtue of their position as professionals to render unconditional service to the needy patients irrespective of serious risks involved in this procedure.

¹ <https://pib.gov.in/newsite/PrintRelease.aspx?relid=200239>

A person has right to medical assistance and it is the duty of physician to provide for services when approached but many patients suffering from other ailments who required immediate treatment were denied medical help and the life which could have been saved was lost because of the negligence and reluctant attitude. During this pandemic we have seen patient with heart problem, pregnant women, baby of 3 months old, driver died in pathetic conditions due to negligence on the part of medical service providers who just shifted the responsibilities by directing the patients to be taken to some other hospital. The family members witnessed the loved ones die helplessly.

Right to a decent burial is a right conferred on a dead person. But dead bodies of covid affected persons were just thrown into a pit which can be considered as most inhumane act. As the bodies were not handed over to the family members the task of cremation was done by the hospital authorities. It is true at one point of time death rate was at the peak and it was difficult for the staff members to handle but at least the respect to the dead person and decent burial could have been followed.

It was also reported that some hospitals were involved in organ trafficking, as the dead body of Corona effected patient is not given to the family members as a safety measures, the hospitals taking advantages of this situation had involved in organ trafficking from patients tested negative but died due to various other ailments. a report as to positive was prepared and such bodies also was not handed over to the family members.

Mental health conditions of people

The present scenario is people have taken extra precautions to protect their health and safety. But on other side people who were already suffering from various kinds of health issues are worried about the financial loss if they are tested positive, this has resulted in some of them reducing the intake of dosages, avoiding visit to the doctor, even if they visit they ignore the prescription given by the doctor. All these measures is not going to help them in any way it would have its negative implications in future.

Health insurance

Before the pandemic people had not given much importance to health insurance but after the Covid -19 there is change in the mind set of consumers that health insurance is priority in their life and it has become a necessity today. There is remarkable increase in the health insurance policy taken by the consumers. Consumers have realized that in the present situation they are not only have to fight with the virus but also with the unexpected medical expenses which would completely jeopardize financial position of the family.

Private hospitals overcharging the patients

Controversy relating to PPE kit, it consists of full-body suits, masks, googles, face shields respirators gloves, shoe covers and head covers.

In an instance reported where patient who was a retired driver aged 60 years was provided with 122 pages of medical bill details for 30 days was Rs.16,14,596. For personal protective equipment PPE they charged Rs.10,000 per day which came to Rs.2.9 lakhs which is 18% of their bill.¹ In another case a bill of Rs. 16,44,714 was charged by the Nanavati Hospital in Mumbai for a patient aged 74 years who suffered from pneumonia and died within 13 days.

It is important to note that the Tamil Nadu government had purchased PPE kits, N 95 mask and triple layer-mask for Rs. 362. If we calculate the rate above private hospitals charged for patients is Rs.10,000 per day it would amount to charging for 27 PPE Kits per day. This one instance is sufficient to prove how the private hospitals are sucking the blood of people as the government hospitals are not in a position to provide for the same. The innocent patients have no knowledge about the actual guidelines given by the government as to the price at which PPE has to be sold nor have an idea on what basis the hospital has charged. It is found that the even during the pandemic private hospitals have found a way to make money out of patients.

In spite of sufficient number of PPE kits and N95 masks has been supplied and equal number being manufactures, what was the reason which led to the health workers in private hospital to go on strike for shortage of these medical equipment's.² Supreme Court had to issue order on April 8 to the Union Health Ministry to ensure these equipment's are sufficiently available.³

¹ <https://scroll.in/article/964534/private-hospitals-in-india-are-overcharging-for-safety-gear-in-the-absence-of-government-regulation>

² The Economic Times, April 6, 2020,

³ W.P. 10795/2020

Press release state that the Central Government on May 30 in order to overcome the shortage of PPE kits has supplied 9.6 million PPE units and 11.9 million N95 masks to all states and union territories and also Central government institutes. It also provided the details that more than 300,000 PPE coverall and N95 mask are made every day in our country, there were more than 300 PPE manufacturers and nine labs has been established for this purpose and if anyone wants a specific sample of PPE kits can contact these manufacturers.¹

It was also alleged that in most of the hospitals these PPE kits supplied was of very poor quality and it was not suitable for the purpose.² Who should be blamed for it and where and who are the culprits in making illegal profits out of this pandemic situations.

Medical Negligence during Covid -19 situations

There is lack of basic amenities such as beds, drinking water, toilet etc. in most of the states which is required to be provided to the people in quarantine. this situation has been reported in social media as to the government facilities the pictures was of overflowing toilets, there was no medical personnel to guide patients as to diagnosis and provide treatment. food provided was of very poor quality.³

There are many instances of medical negligence, in one of the instance in Bangalore Hospital a patient was taken with illness and 2 medical staff had given an injection and within few hours he died. The body was moved to morture room and the relatives were informed death was due to corona virus infection. Burial procedure was undertaken by the hospital authorities on May 18th 2020, and when asked for medical report they refused to provide and the family members were not allowed to see body or perform the last rites. On continuous demand the report was provided after the cremation on 19th 2020 with a negative report.⁴ This is a case of serious kind of medical negligence and stringent action to be taken against the medical authorities. This is not the first case there are number of negligent cases that has been reported during this pandemic and the people have become victims in the hands of medical authorities.

This negligence continues to affect other people who are residing within the vicinity of the patient are blocked and sealed with the object of prevention and precaution causing great hardship to people residing there. How this loss caused to the patient and residents of that area can be compensated, who is to be held liable still remains unanswered.

Legal scenario in India

Essential Commodities Act, 1955, Section 3 empowers the Government of India to regulate or prohibit the price, production or distribution of any essential commodities if it finds that in the interest of the public at large as per need of the hour can take control on the production, supply and prices.

Section 2 A provides that any commodity specified in the schedule of the Act can be termed as essential commodity and under Section 2(2) Government of India is empowered to include any other commodity into the list of the schedule to be considered as essential commodity.

Exercising this power, the government of India had declared that hand sanitizers, masks to be brought under essential commodities as there was number of complaints from all parts of the country that hospitals and pharma's were charging exorbitantly for this essential medical equipment's and also to check the black marketing

The Prevention of Black marketing and Maintenance of Supplies of Essential Commodities Act,1980

Section 3 of this Act authorized the Central and State government to prevent any person who is causing any hinderance or acts in deleterious manner which results in regular supply of essential commodities. Any contravention, arrest warrant can be issued against the offender & he can be detained for a maximum period of 6 months according to provisions of Criminal Procedure Code,1973.

The Competition Act,2002

Under Section 3 of Competition Act, 2002, it provides that when the parties have entered into an agreement which would result in adverse effect on the competition then such agreement are declared to be void.

¹ <https://pib.gov.in/PressReleasePage.aspx?PRID=1627908>

² The Wire, June 2,2020

³ <https://economictimes.indiatimes.com/news/politics-and-nation/a-harrowing-experience-quarantine-facilities-in-india-not-up-to-the-mark-in-the-view-of-coronavirus/articleshow/74724924.cms>

⁴ <https://tripakshalitigation.com/medical-negligence-during-covid-19-in-india/>

Competition Commission of India was forced to step in to regulate the manufacture, supply and distribution of essential commodities and also order the traders to provide with details as to stock list, supply, pricing etc. as there was no uniformity in pricing as to the medical equipment's were concerned.

The Consumer Protection Act, 2019

Section 2 of the Act provides that any person aggrieved with the trader or service providers for charging a higher price than fixed under law or displayed in the package of the goods or agreed between the parties can file a complaint under this Act, and get suitable compensation.

Unfortunately, even though we have so many enactments to protect the interest of common man but during the pandemic people were already under financial, emotional distress the situation was exploited by the medical authorities and pharma sectors at large, the consumers were silent spectators as they had no physical or mental strength to fight against these offenders.

Even though the government has stepped in to rectify the lacunae's whenever raised but in reality, the exploitation of Covid 19 victims continuous without any interruption by health care providers. Being a consumer they have right to be treated for the health ailments whenever required and it is the duty of physician, nurses and staff member to provide the same, but the truth is the physician are exercising their discretionary powers as to treatment of patient. This is reason as timely medical assistance is not provided to needy and the death is increasing at alarming rate. If all the family members who have lost their near & dear ones to Covid 19 due to negligence of the doctors would have decided to file complaint in Consumer Court, the court would have been by flooded with thousands of grievance complaint.

Role of judiciary in protection of health of people

Supreme Court had taken *Suo motu* cognizance on 11th June 2020 based news report as to the deplorable health conditions prevailing in hospitals in India and especially Delhi Government had failed miserably in providing health care to the residents of Delhi and also the news reported depicted how constantly the right to health of COVID-19 patients admitted in Government hospital were constantly violated. Supreme Court ordered that there should be increase in the testing center, installation of CCTV cameras in the government hospitals and a committee was constituted to constantly keep a surveillance as to functioning of the hospitals in Delhi.

Supreme Court on 19th June 2020, directed Ministry of Health and Family to constitute a committee with a duty to inspect all the hospitals and report to Supreme Court.

SUGGESTION

1. Ensure the patients are provided with the care they need according to consumer protection law.
2. Health care providers to be provided proper training to attend to such kind of medical emergency situations
3. Hospitals involving unfair trade practices licenses to be immediately terminated.
4. Doctors found charging exorbitant fees and involved in exploitation of the patient's situations, or in organ trafficking his licence to be permanently terminated and serious action to be taken.
5. Arrangement to be made in all hospitals for establishment of covid test center and report to be provided at the earliest in order to prevent the patient being moved in case of emergency from one hospital to another for non-production Covid test report.
6. Impose price caps on essential medical equipment's like hand sanitizers, masks etc.
7. Impose heavy penalties on person hoarding the essential products, giving misleading advertisement, selling at excessive price.
8. Consumers should be warned against such kind of misleading advertisements and provide them with guidelines the procedure of filing complaint against the violators.
9. Establish long term disaster management centres with sufficient number of beds, physicians, medical equipment's, medicines and intensive training to health care workers to cope up with future disaster of similar situations

CONCLUSION

Covid-19 pandemic has changed the life of the consumers upside down and they have started realizing the importance of health care. Many of them have serious emotional issues, anxiety, financial and economic crisis which has to be taken care of by providing timely counselling to overcome it.

The object should be at no point of time the government should compromise with the health of the public. This is possible only when the government keeps a constant vigil on the supply of essentials relating to health to public is not hampered. Doctors should not avoid treating a patient as it is a serious and global pandemic. There should be stringent action and severe punishment imposed on the violators of right to access to health.

INFLUENCE AND INVOLVEMENT OF PARTICIPATIVE MECHANISM IN THE RESOLUTION OF CONSUMER DISPUTES

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“An ounce of mediation is worth a pound of arbitration and a ton of litigation!”

-Joseph Grynbaum

ABSTRACT

The Consumer Protection Act, 1986 gives compelling, economic, straightforward, and rapid redressal of customers' grievances which the common courts are not ready to give. The Arbitration and Conciliation Act of 1996 was subsequently authorized by the Parliament getting generous changes in Mediation, with respect to the local and global question.

Keeping e-commerce in mind, and to address the new set of challenges faced by consumers in the digital age, the Indian Parliament on 6th August 2019, passed the landmark Consumer Protection Bill, 2019, which aims to provide the timely and effective administration and settlement of consumer disputes. This new Act provides for mediation as an ADR mechanism making the process of dispute resolution quicker and simpler. This will help with a speedier resolution of disputes and reduce pressure on consumer courts, which already have numerous cases pending before them.

A substantial revival of Section 89 of the Civil Procedure Code, 1908, was carried out by the Law Commission and had proposed to amend this section as 'Settlement of Disputes outside the court'. Out of the methods of ADRs, mediation is the most suited system for India, on the grounds that all-round individuals in India at any rate in the provincial ranges might want to settle their question agreeable. This paper will focus primarily on how the ADR mechanism facilitates the resolution of consumer disputes and also tries to ponder into some of the criticisms as well. The paper will bring out some suitable suggestions to the concerned stakeholders.

Keywords: Redressal, e-commerce, Mediation, Consumer Disputes, Resolution

INTRODUCTION

In the present world with the emergence of new technologies, increasing usage of E-commerce, smartphones, the internet, and the global supply chain has provided better access to products and services but also has increased vulnerabilities through data leak, defective goods, counterfeit goods, misleading advertisements, and unfair and unethical trade practices. Since the three-decades-old Act wouldn't be able to sort today's demand, the Consumer Protection Act, 2019 was adopted with various issues been addressed but the primary query being if the Act has something for the overburdened traditional court system. The Act has introduced Mediation as an ADR to tackle the issue. Mediation has been used in different countries and cultures and has been known by different names. The entire process is more flexible and involves the active participation of the parties in resolving their dispute. The mediation is deep-rooted in our community as well. It was there in the form of Panchayati Raj decisions. Presently the number of judges and population ratio is the lowest in our country. At the Current rate, it will take decades together for the disposal of all pending cases. The conventional old fashion approach of going to court to get justice is old and obsolete.

The Objective of the study is to examine the ADR mechanism facilitates the resolution of consumer disputes and also tries to ponder into some of the criticisms as well; to provide suitable suggestions to the concerned stakeholders.

ADR: EXTRINSIC PATCH FOR LITIGATION

The litigation in Civil Courts has become augment and stagnant due to a variety of reasons that have made it unviable to dispose of cases within a reasonable time. The large and almost unmanageable amount of litigation before Courts is not able to meet heavy demands due to the disposal rate which is quite high. There can be 'n' for pendency and delay, one of the reasons believed to be the lack of clarity in the procedural laws but The Law Commission of India has maintained that the judicial delay is not due to a lack of clear procedural laws, but rather the imperfect execution, or even utter non-observance, thereof.¹ This situation demands an alternative,

¹ Law Commission of India, *Delay and Arrears in Trial Courts*, Report No. 77 (1978).

that's where Alternative Dispute Resolution (ADR) mechanisms come in handy to offload some cases from Court's dockets. ADR is a mechanism of resolution of disputes of conflicting parties without resorting to the adjudicatory process. It can preserve and enhance personal and business relationships that might otherwise be damaged by the adversarial process. It also occurs outside of, but closely linked to, the court process, and take place within its shadow.

Access to justice has played an increasingly central role in India and has been enshrined in the preamble of the Constitution of India, which enjoins the state: "to secure to all the citizens of India, justice-social, economic and political-liberty, equality and fraternity". Further, It is our Constitutional obligation to ensure that the backlog of cases is declared and efforts are made to increase the disposal of cases.¹ The right to access justice and to a fair trial is guaranteed under Article 39A² of the Constitution of India enjoins that the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes, to ensure that opportunities for securing justice are not denied to any citizen because of economic or other disabilities.

The term "Alternative Disputes Resolution" contains various modes of settlement including, Lok Adalats, arbitration, conciliation, and Mediation. This technique of Alternative Disputes Resolution has been used by many countries for effective dispute resolution. In the USA, ADR has been practiced for about 35 years and 90% of cases settled through ADR. Various other countries like the UK and Australia have also had a great success rate.³ The most common type of Alternative Disputes Resolution is Mediation. In, fact mediation had been described by some as the most Appropriate Dispute Resolution method. Mediation as a tool for dispute resolution is not a new concept. To put it in simple terms, mediation is an amicable settlement of disputes with the involvement of a neutral third party who acts as a facilitator and is called a 'Mediator'.⁴

In India, ADR has been in vogue for a long has an age-old practice of settlement of disputes through mediation and conciliation. Panchayats are a traditional form of ADR which continues to be a form of settlement of disputes in rural India. Presently, ADR is governed by Section 89 of the Code of Civil Procedure, 1908.

It is worthwhile to refer to Section 89 of the Civil Procedure Code, which runs as follows:

"89. Settlement of disputes outside the Court - (1)Where it appears to the court that there exist elements of a settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the court may reformulate the terms of a possible settlement and refer the same for –

- a) arbitration;
- b) conciliation;
- c) judicial settlement including settlement through Lok Adalat; or
- d) mediation

(2) Where a dispute has been referred-

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

(b) to Lok Adalat, the court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authorities Act, 1987 and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c) for judicial settlement, the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authorities Act, 1987 shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

¹ Brij Mohan Lal vs. Union of India & Ors. (2002) 5 SCC 1.

² The article was inserted by the Constitution (42nd Amend.) Act, 1976.

³ PANCHU SRIRAM, MEDIATION PRACTICE AND LAW: THE PATH TO SUCESSFUL DISPUTE RESOLUTION (LexisNexis 2015).

⁴ Gaurang Ashutosh, *Role Of Mediation As An Effective Tool Of Dispensation Of Justice*, SHOUDHGANGA (Nov. 9, 2020, 10:30 PM), <https://shodhganga.inflibnet.ac.in/handle/10603/44117>

(d) for mediation, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.”

The object behind Section 89 is laudable and sound but the language adopted has created difficulty in giving effect to the provision. The Supreme Court in the case of *Afcons Infrastructure Ltd. vs. Cherian Varkey Construction Co. (P) Ltd.*, concluded that proper interpretation of section 89 of the Code requires two changes from a plain and literal reading of the section. Firstly, it is not necessary for the court, before referring the parties to an ADR process to formulate or reformulate the terms of a possible settlement. It is sufficient if the court merely describes the nature of the dispute (in a sentence or two) and makes the reference. Secondly, the definitions of 'judicial settlement' and 'mediation' in clauses (c) and (d) of section 89 (2) shall have to be interchanged to correct the draftsman's error.¹ Soon after the decision, The Law Commission of India in 2011 proposed its recommendations to amend Section 89 of the Code of Civil Procedure and Allied Provisions which is yet to be adopted.

In India, the arbitration framework is governed by the Arbitration and Conciliation Act, 1996 (amended in 2019) which was enacted based on UNCITRAL Model Law.² Under the present framework, arbitration can either be institutional, i.e. conducted by an arbitration institution under its self-governing rules, or it can be ad-hoc with the parties themselves deciding the contours of the proceedings.³ The advantages of Arbitration are it is often faster than Court, cheaper and more flexible for businesses, arbitral awards are generally non-public, and can be made confidential, limited avenues for appeal of an arbitral award, and expertise can be appointed in highly technical disputes. However, there are some disadvantages of the Arbitration which are Arbitrator may be influenced by powerful parties, the parties waive their rights to access the Courts, Parties will incur additional cost for arbitrators, limited appeal means that an erroneous decision cannot be easily overturned, and Arbitration awards are not directly enforceable which would mean parties will have to resort to judicial remedies.

Conciliation is a voluntary process whereby the conciliator, a trained and qualified neutral, facilitates negotiations between disputing parties and assists them in understanding their conflicts at issue and their interests to arrive at a mutually acceptable agreement. The conciliator does not decide for the parties but strives to support them in generating options to find a solution that is compatible with both parties. The process is risk-free and not binding on the parties till they arrive at and sign the agreement. Once a solution is reached between the disputing parties before a conciliator, the agreement had the effect of an arbitration award and is legally tenable in any court in the country.⁴

Mediation is a voluntary process where parties arrive at a mutually agreeable settlement for their dispute in the presence of a neutral third party. The process is confidential, non-binding, and does not involve a strict formal procedure or delve into questions of law or, right or wrong. As opposed to arbitration, mediation is preferred for disputes which do not involve complex questions of law or evidence and hold potential for amicable resolution outside the formal and rigid procedures.⁵ In the Indian context, the words 'mediation' and 'conciliation' hold different meanings. A conciliator plays a more pro-active role in the settlement proceedings in comparison to a mediator.⁶

Lok Adalats or people's courts as established by the government to settle disputes through conciliation and compromise. It is a judicial institution and a dispute settlement agency developed by the people themselves for social justice based on settlement or compromise reached through systematic negotiations. Lok Adalats accept

¹ *Afcons Infrastructure Ltd. and Ors. vs. Cherian Varkey Construction Co. (P) Ltd. and Ors.* (2010) 8 SCC 24.

² Model Law on International Commercial Arbitration 1985 (United Nations Commission on International Trade Law [UNCITRAL]) UN Doc A/40/17, Annex I.

³ Bibek Debroy and Suparna Jain, *Strengthening Arbitration and its Enforcement in India – Resolve in India* (NITI Aayog 2016).

⁴ S.C. TRIPATHI, *THE ARBITRATION AND CONCILIATION ACT, 1996* (Central Law Publications 2012).

⁵ Vidhi & Jaldi, *The Future of Dispute Resolution in India*, VIDHI LEGAL POLICY, (Nov. 9, 2020, 10:32 PM), https://vidhilegalpolicy.in/wp-content/uploads/2020/07/200727_ODR-The-future-of-dispute-resolution-in-India.pdf

⁶ Justice M. Jagannadha Rao, *Concept of Conciliation and Mediation and their Differences*, (Nov. 9, 2020, 10:33 PM), http://lawcommissionofindia.nic.in/adr_conf/concepts%20med%20rao%201.pdf

even cases pending in the regular courts within their jurisdiction. It is governed by the Legal Services Authorities Act, 1987. The Lok Adalat is presided over by a sitting or retired judicial officer as the chairman, with two other members, usually a lawyer and a social worker. There is no court fee, thus making it available to those who are the financially vulnerable section of society. The parties to a dispute can interact directly with the presiding officer, which is not possible in the case of normal court proceedings.¹

CONSUMER PROTECTION: UPGRADED FOR NEW ERA

The Consumer Protection Act, 1986 was enacted with a view of consumer's interest in their mind and for the quick and simple settlement of customers' questions. The Act gives engaging, economical, straightforward, and rapid redressal of customers' grievances, which the common courts would not be able to deliver. The Act accommodates three-level fora, that is, District Forum, State Commission, and the National Commission for redressal of grievances of consumers. The Fora also encourages social activity cases for the benefit of consumers by Consumer Activists, Voluntary Consumer Organizations, and other Social Activist Groups.

While Consumer Fora were setup for effective redressal and to reduce the backlog of cases, the poor administration has made the consumers wait for years together to get the relief. The poor administration was highlighted by the committee constituted by the Supreme Court to examine the functioning of the Consumer Protection Courts and suggest remedial measures². The Committee's finding³ showcased the underwhelming aspects of consumer fora. In its report, the committee stated that the government's initiative of consumer awareness campaign Jago Grahak Jago had a very limited impact, consumer courts hardly work for two-three hours in a day, files were getting damaged by termites as most of the time they are lying unattended, grossly inadequate infrastructure and corruption in the system which led to inefficiency in timely disposal of cases. The committee also highlighted and alleged that the bureaucrats and politicians could be accommodating and undue favoring candidates for appointments to vacant positions at the consumer court level on the post of a non-judicial member which prevented the appointment of qualified or eligible candidates in fora. Thus, a tool that was meant to empower the consumers against any exploitation was dented and soon a pitfall was being created. Even though the Percentage of disposal of cases seems to be great at 90.92% as per NCDRC Statistics referred to in Table 1, the real need for ADR arises from recent trends, and increased consumer awareness will even collapse the system if effective and suited measures are not adopted.

Sl. No.	Name of Agency	Cases filed since inception	Cases disposed of since inception	Cases Pending	% of total Disposal
1	National Commission	132596	111597	20999	84.16%
2	State Commissions	943620	818719	124901	86.76%
3	District Forums	4301258	3959149	342109	92.05%
	TOTAL	5377474	4889465	488009	90.92%

Table 1: Total number of Consumer Complaints filed/disposed of since inception under Consumer Protection Law⁴

India's E-Commerce is on overdrive, with a total number of internet subscribers of 743.19 million⁵ which also increases the expected online consumers from 60 million in 2016 to 475 million by 2026⁶; this, in turn, increases a serious cause for concern as far as dispute resolution is concerned. Considering the above-mentioned reports, it seriously calls for Alternative Dispute Resolution.

¹ *Supra note 5.*

² A three member Committee presided by Justice Arijit Pasayat, dated Jan. 14, 2016.

³ *State of U.P. v. All U.P. Consumer Protection Bar Association* (2017) 1 SCC 444.

⁴ Statistical data on pending cases, NCDRC, (Nov. 9, 2020, 10:34 PM), <http://ncdrc.nic.in/stats.html>.

⁵ TRAI's Performance Indicator Report: Jan. 2020 – Mar. 2020, (Nov. 9, 2020, 10:35 PM), https://www.trai.gov.in/sites/default/files/PIR_17092020_0.pdf

⁶ Sushma U. N., *Morgan Stanley Explains Why India's E-Commerce Market Is A Hot Investment Opportunity*, QUARTZ INDIA (Nov. 9, 2020, 10:36 PM), <https://qz.com/1089559/morgan-stanley-explains-why-indias-e-commerce-market-is-a-hot-investment-opportunity/>.

The Supreme Court of India has, in many cases¹, encouraged the settlement of disputes through an institutionalized ADR mechanism. However, it was in *M/s Afcons Infra Ltd. v. M/s Cherian Varkey Construction Company Ltd. and Other*², while enumerating matters that are suitable for Alternate Dispute Resolution (ADR), held that all consumer disputes including disputes where a trader/supplier/manufacturer/service provider is keen to maintain his business/professional reputation and credibility or product popularity can be referred to ADR.

An Integrated Grievance Redress Mechanism (INGRAM) was set up for the consumer to keep track of existing grievances. Furthermore, the Ministry of Consumer Affairs, Government of India has established the 'Online Consumer Mediation Centre' (OCMC) at the National Law School of India University in 2016 to cater to the E-Consumers and E-Commerce companies but as it is toothless, it hasn't been effective at executing the order.

In *A. Ayyasamy v. A. Paramasivam*³, the Court relied on the *National Seeds Corporation* case⁴ which encouraged arbitration in consumer's interest and it was expected the Court would avenue for the consumer to opt for arbitration if they wished to. Instead, the Court arrived at a completely contrasting observation. It was of the opinion that since the jurisdiction of the ordinary civil court is excluded by the conferment of exclusive jurisdiction on a consumer court, matters pertaining to consumer disputes become Inarbitrable as a matter of public policy as well. The Court noted that parties are prohibited from contracting out of the legislative mandate when it is a matter governed by welfare legislation. Thus, the decision in the *A. Ayyasamy* case put the final nail in the coffin and made the consumer dispute completely Inarbitrable. This meant mediation was a suitable option for consumer disputes.

Considering Arbitration was not suitable for consumer disputes in India, the Report of the Working Group on Consumer Protection⁵ provides insight on ADR in Consumer Disputes. Out of the methods of ADR, Mediation is the most suited system for a nation such as India, because all-around individuals in India at any rate in the provincial ranges might want to settle their question agreeably. The degree of Judicial Interference under the Arbitration and Conciliation Act, 1996 crushed the reason for fast equity, although it was a move in the right course. Arbitration had a few shortcomings like procedures are postponed as both sides take a lot of time introducing their entries and submissions; the expense of arbitration is a great deal more than the common ADR process, consequently, it doesn't draw in the poor disputants; participatory part of the parties are disregarded as the entries and submissions are made by the lawyers. Mediation to succeed making of mindfulness and advancing this technique is to be made

As stated above, the need for mediation in the consumer context in India was recognized under the Consumer Protection Bill, 2015, and the Consumer Protection Bill, 2019. Recently, the 2019 Bill was passed and repealed the 1986 Act. The Consumer Protection Act, 2019 introduced Mediation in Chapter V of the Act.

A. Mediation: An Instrumental Tool

Sections 74 – 81 of Chapter V deals with Mediation under the Act, It provides a legislative basis to the resolution of consumer disputes through Mediation thus, making the process less complex, simple, and swift. Mediation centers would work under the auspices of the Consumer Commissions, State Government and Central Government would be empowered to decide the Composition of the Mediation Cell. Further, the Government has notified the Consumer Protection (Mediation) Rules, 2020 which provides a list of matters which shall be excluded from Mediation like cases involving death due to medical negligence, Criminal Prosecution, or Non-Compoundable Offences and public interest at large, etc.

Section 74 mentions that the State Government shall establish a mediation cell and it shall be attached to its regional benches of consumer court and the cell shall submit a quarterly report to District Commission. Section 75 is provided for Empanelment of mediators. Section 77 provides that it shall be the duty of the mediators to

¹ *Salem Advocate Bar Assn. (II) v. Union of India* (2005) 6 SCC 344; *K. Srivivas Rao v. D.A* (2013) 5 SCC 226.

² *Supra note 6*.

³ *A. Ayyasamy v. A. Paramasivam* (2016) 10 SCC 386.

⁴ *National Seeds Corporation Ltd. v. M. Madhusudhan Reddy* (2012) 2 SCC 506.

⁵ Report of the Working Group on Consumer Protection, (Vol. II, Subgroup, Planning Commission, Government of India, 2012-17).

disclose certain facts related to a financial interest in the outcome of the dispute which may likely give rise to justifiable doubt as to his independence. Section 78 for Replacement of mediator on the information furnished by the mediator. Section 79 to 81 deals with the procedure, settlement, and passing of order for the mediation.

B. Alternative Dispute Resolution for Consumers in the European Union

Contrary to the Indian position, European law has witnessed an expansion of private dispute resolution mechanisms across different legal fields, including consumer disputes. In an enlarged European market, consumers move increasingly across the European Union and engage in online transactions. This has led to a higher number of cross-border purchases and complaints, requiring new means of dispute resolution. Alternative Dispute Resolution (hereafter ADR) is regarded as an important element in the attempt to provide simple and efficient redress at the EU level.¹

Further, the UK Government has a specific regulation to deal with ADR for consumer disputes, the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities) Regulations 2015 (SI 2015/542) which has been introduced to improve the availability and quality of ADR services in consumer disputes. Its main objectives are: Designating competent authorities who will vet and monitor approved ADR entities offering ADR services in certain consumer sectors (an example being the Financial Conduct Authority which is the relevant competent authority for the Financial Services Ombudsman which provides ADR services in the consumer financial sector) and by the intended creation of a 'residual ADR scheme' to be available to businesses that are not obliged or committed to using another ADR scheme; Requiring traders to provide certain information as regards the availability of ADR services for resolving disputes brought by their consumers.²

FINDINGS AND THE WAY FORWARD

1. The Traditional Methodology of Consumer Fora has procedures almost similar to those in civil courts; most of the consumers have low financial stakes due to which they do not approach consumer fora at all; procedures are lengthy and time-consuming.
2. Section 89 has drafting issues that could be corrected if the Law Commission recommendations are adopted. Further, Section 89 is limited to matters of civil nature.
3. Necessary setups should be taken to set up a Special body consisting of experts from Administration, Judiciary, etc. to devise, implement and monitor a mechanism to take care of small consumers (like LokAdalat without elaborated procedures to deal with small consumer issues).
4. Consumers with low financial stakes (below ₹1000) shall not be subjected to conventional court procedures.
5. A strong cooperation/collaboration is much needed between the executive and the judiciary as we found out from Justice Arijit Pasayat Committee Report that certain bureaucrats were involved in red tapeism.
6. The introduction of mediation in the Consumer Protection Act, 2019 is a great move and much appreciated but the scope of private ADR is limited.
7. UK's Regulation on ADR for Consumer Disputes could be scrutinized and similar legislation can be drafted to suit the Indian scenario.
8. Awareness will be the key! More consumers must be made aware of such alternatives to resolve disputes for better access to justice.
9. Online Consumer Dispute Resolution (OCDR) is a great initiative but the only concern is the execution of the order by providing more power.

Thus, the emphasis should be to provide relief to the consumer rather than indulging in technicalities alone. A flexible, rational, and pragmatic approach must be adopted for Consumer Disputes Resolution. Special emphasis on small consumers is necessary to provide relief to the population at large.

¹ OECD, Recommendation on Consumer Dispute Resolution and Redress (Paris, OECD, 2007)

² Ruth Pratt, *4 Things You Need To Know About The Consumer Disputes Regulations If You Act For An ADR Service Provider*, (Nov. 9, 2020, 10:40 PM) <<https://www.lexisnexis.co.uk/blog/dispute-resolution/4-things-you-need-to-know-about-the-consumer-disputes-regulations-if-you-act-for-an-adr-service-provider>> .

CONCLUSION

With the growing backlog and delayed resolution of consumer disputes, consumers' trust in the legal system is declining and ADR has the name suggests could provide an alternative to the traditional courts. ADR has presently gained importance in the present era especially where the failure of the courts is blatantly seen. It has, of late, become a fact that ADR is more effective indefinite terms of time, cost, and satisfaction. Mediation that has been introduced through the Consumer Protection Act, 2019 can play a vital role in consumer dispute resolution especially for cases that are long pending and this should take off some burden from the Consumer Fora in a quick, fair and inexpensive manner.

Consumers involving in electronic commerce should be provided an Online Consumer Dispute Resolution (OCDR) as an option for redressal of their grievances. Consumer education and awareness should be enhanced through wide media publications. Further, a study on various other alternatives should be conducted to sort a solution for consumer disputes which we believe are necessary for Consumer activism.

IMPACT OF PANDEMIC ON SUPPLY OF ESSENTIAL COMMODITIES

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ABSTRACT

The object of this paper is to study what happened during the time of COVID-19 and how the population of the country struggled for all its basic needs and also for essential commodities. The challenges faced by the migrant workers and daily wage labourers are also looked by this paper. This paper also shows that how each sector faced crisis starting from losses it suffered and also the supply shocks it faced. This paper also focuses on how our defence sector suffered because of the pandemic. The policies made by the government which acted as the cushion for surviving of many sectors. The major challenge was faced by the health sector because in spite of so many deaths of the health care workers it still worked to serve the people of the nation.

Keywords: essential commodities, people, sectors, COVID- 19, government.

On January 17, 2020, the Ministry of Health and Family Welfare acknowledged the emergence of a new corona virus (COVID-19) that was spreading across China.¹ On March 11, 2020, the World Health Organisation declared the COVID-19 disease to be a global pandemic. As of November 12, 2020, there are 8,683,916 confirmed cases of COVID-19 in India.² Of these, 128,121 patients have died.

The pandemic have affected the entire food system. Border closures, trade restrictions and confinement measures have prevented farmers from accessing markets, including for buying inputs and selling their produce, and agricultural workers from harvesting crops, thus disrupting domestic and international food supply chains and reducing access to healthy, safe and diverse diets. As breadwinners lose jobs, fall ill and die, the food security and nutrition of millions of women and men are under threat, with those in low-income countries, particularly the most marginalized populations, which include small-scale farmers and indigenous peoples, being hardest hit.

Millions of agricultural workers – waged and self-employed – while feeding the world faced high levels of working poverty, malnutrition and poor health, and suffer from a lack of safety and labour protection as well as other types of abuse. Migrant agricultural workers are particularly vulnerable, because they face risks in their transport, working and living conditions and struggle to access support measures put in place by governments. In the COVID-19 food security, public health, and employment and labour issues, in particular workers' health and safety is major challenge.

INSIGHT ON ESSENTIAL COMMODITIES ACT OF 1955

Essential commodities are those commodities which centre notifies as essential commodities for the purpose of Essential commodities Act of 1955. This act is applicable to whole of India including Jammu and Kashmir³ as it comes under the basic amenity which every individual must be entitled to. The Act empowers the central government to control the production, supply, distribution, trade, and commerce in certain commodities. The Act empowers the central government to designate certain commodities such as food items, fertilizers, and petroleum products as essential commodities. The central government may regulate or prohibit the production, supply, distribution, trade, and commerce of such essential commodities. This pandemic which moved the whole world also forced our country to bring in certain changes in this Act so that it can beat the heat of the pandemic and that is the reason why there was an ordinance promulgated on June 5, 2020. The Ordinance provides that the central government may regulate the supply of certain food items including cereals, pulses, potato, onions, edible oilseeds, and oils, only under extraordinary circumstances. These include: (i) war, (ii) famine, (iii) extraordinary price rise and (iv) natural calamity of grave nature. So this is one of the big impact of the pandemic on the Essential commodities. This ordinance also led to a stop on hoarding which was creating an

¹ Novel coronavirus outbreak in China, Ministry of Health and Family Welfare, January 17, 2020, <https://www.mohfw.gov.in/pdf/TraveladvisorytotravelersvisitingChina17012020.pdf>.

² Ministry of Health and Family Welfare website <https://www.mohfw.gov.in/index.html>.

³ Extended to Goa, Daman and Diu and kashmir with modification by Regulation 12 of 1962, section 3 and Schedule, to Dadra and Nagar Haveli by Regulation 6 of 1963, section 3 and Schedule I and to Lakshadweep and Amindivi Islands by Regulation 8 of 1965, section 3 and Schedule, to the State of Sikkim vide S.O. 28(E), dated 7th January, 1976 (w.e.f. 7-1-1976)

artificial hoarding. The provisions of the Ordinance regarding the regulation of food items and the imposition of stock limits will not apply to any government order relating to the Public Distribution System or the Targeted Public Distribution System. Under these systems, food grains are distributed by the government to the eligible persons at subsidised prices. The Ordinance provides that any stock limit will not apply to a processor or value chain participant of agricultural produce if stock held by such person is less than the: (i) overall ceiling of installed capacity of processing, or (ii) demand for export in case of an exporter. A value chain participant means a person engaged in production, or in value addition at any stage of processing, packaging, storage, transport, and distribution of agricultural produce. So we can see that there were lot of changes which were brought to this Act in order to meet the supply chain deficit.

THE IMPACT OF SUPPLY ON DIFFERENT SECTORS OF ECONOMY

The shortage of food supply have hit every individual in all the sectors starting from the small vendors till big businessman. This pandemic affected workers of **unorganised sector** mostly who are daily wager or those working in Micro, Small and Medium Enterprises (MSMEs) and left them jobless, and rapidly increased the unemployment rate, left no alternate income source.¹ **Agriculture** is considered the backbone of the Indian economy. As Inter-state transportation services have shut down, farmers are unable to sell their crops in the market. They are incurring huge losses and forced to throw out their crops. They don't have any other source of income. The **poultry sector** which is the fastest-growing subsector of the Indian economy has also incurred huge losses due to social media where misinformation has been spread by correlating the infection of COVID-19 with the consumption of meat and poultry products. The nationwide lockdown will tremendously affect the operations of the **E-commerce industry**² especially at a time when there is a huge demand for home delivery of goods. This pandemic forced the Government to boost edtech sector. COVID-19 has changed the way of learning in the long term. **Higher education** has also got affected as universities and colleges are shut down, most higher education institutions are not equipped with digital technology. There will be a delay in the admission process, as most of the entrance exams are scheduled around April and May. Despite online education, platforms helped students in learning but if this could continue then there can be seen drastic unemployment in the education sector. The revenue of the **tourism sector**³ got down due to a strict ban on both domestic and international flights. Even many tourists got themselves cancelled. Meetings, conferences and major international events got cancelled like mobile world congress, Olympic, Wimbledon, Cannes international film festival and Face book F8 which lead to huge losses. The **labour sector** under the **MGNREGA**, 2005 are worst impacted as they are not provided jobs due to lockdown, most of the labour sectors are associated with the construction companies and daily wage earners. Travel restrictions and quarantines affecting hundreds of millions of people have left Indian factories short of labour and parts, just-in-time supply chains and triggering sales warnings across technology, automotive, consumer goods, pharmaceutical and other industries. Lack of medical investment and healthcare infrastructure are the biggest challenge for an effective response in India in a battle against the novel pandemic. Amid the rising cases lack of **healthcare** facilities like shortage of beds, lack of protection equipment. According to a survey conducted by Local Circles, which included responses from over 17,000 individuals located in over 211 districts of the country, only 4 percent patients who needed an ICU bed were able to find one by going through the routine process while 78 percent are forced to use connections, clout to secure an ICU bed.

IMPACT OF COVID- 19 ON SUPPLY OF ESSENTIAL DEFENCE ITEMS

The COVID-19 impacted the supply chains and production/manufacturing facilities of defence companies. As they have to depend on different components on different sources located in affected countries. This led to a decrease in demand for defence equipment. The current scenario is not even good for business development as we know that many high-value procurement programmes were finalised during defence shows which are now cancelled. Military exercises, which expose foreign equipment and their capabilities to the prospective buyer also affected business development as many countries like the USA, UK have cancelled travel plans, deployments and exercise for troops. Even the assembled equipment which are ready for dispatch are also held up due to the lockdown of airspace. Due to non-dispatchment on time their sales value will substantially reduce

¹<https://www.statista.com/statistics/574151/global-automotive-industry-revenue/>
<https://www.makeinindia.com/sector/automobiles>

² Department for Promotion of Industry and Internal Trade, Ministry of Commerce & Industry, GoI, Fact Sheet on FDI

³ Source: <https://economictimes.indiatimes.com/news/economy/indicators/indias-tourism-sector-may-lose-rs-5-lakh-cr-4-5-cr-jobs-could-be-cut-due-to-covid-19/articleshow/74968781.cms?from=mdr>

which in turn will affect the balance sheet of the manufacturing companies. COVID-19 has taught a lesson to defence industry that they need to explore the different aspects of risk planning. They need to shift themselves toward technological platforms or start using an unmanned system

IMPACT OF COVID-19 ON THE INDIAN ECONOMY

India is a developing economy, it is stated as an economy is passing through demand depression and high unemployment and it has also slowed down the supply-side, accelerating the slowdown further and jeopardising the economic wellbeing of millions.

The quarterly GDP growth has consistently fallen since Q4 of FY18. There is a deviation in Q4 of FY19 because the National Statistical Office (NSO) revised its data on February 28, 2020, drastically cutting down growth rates in the first three-quarters of FY19 (from 8% to 7.1% for Quarter 1; from 7% to 6.2% in Quarter 2 and 6.6% to 5.6% in Quarter 3. Orders on Swiggy and Zomato have dropped 60 per cent amid the pandemic. Maharashtra, Uttar Pradesh, Bihar, Tamil Nadu, and Madhya Pradesh have the highest number of registered MSMEs, a study by the AIMO estimated that about a quarter of over 75 million is facing closure if the closure goes beyond four weeks and if the lockdown still extends the situation would worsen affecting the employment of 114 million people affecting the GDP. Consumer goods, garments, logistics are facing a sharp drop in the business and the MSMEs engaged in the service sector are still operating, however, is likely to isolate due to plunging liquidity constrains and purchasing capacity. **GDP Contracted** in the first quarter of the fiscal year 2021 India's Gross Domestic Product collapsed by 23.9 percent amid the corona virus lockdown. The pandemic has led to an unprecedented shutdown of business, industries and services. From manufacturing to real estate, hospitality to mining, has been impacted as the economy records its sharpest drop in 41 years. The pandemic has wreaked havoc on the **job landscape** in India. According to the Centre for Monitoring Indian Economy (CMIE) about 21 million salaries employees lost their jobs during April-August. There were 86 million salaried jobs in India during 2019-20. In August 2020, the count was down to 65 million after 3.3 million jobs were gone in the particular month, mostly among the industrial workers and white collar workers, as per the CMIE. According to an analysis by Scroll, during the first two months of the lockdown, India's **vulnerable section** lost incomes amounting to as much as Rs 4 lakh crores or nearly 2 percent of the country's annual GDP. Indian travel and tourism industry is one of the worst-impacted sectors by the corona virus pandemic. According to the Confederation of Indian Industry (CII) and hospitality consulting firm Hotelivate. Tour operators, including both online and offline as well as inbound and outbound lost \$4.77 billion. The entire value chain linked to **Travel & Tourism**¹ is likely to lose around 5 lakh crores or US \$65.57 billion, with the organized sector alone likely to lose US \$25 billion. Currently hotels are seeing an 80 percent- 85 percent erosion in revenue streams. The hospitality industry, including branded and unbranded hotels, will incur a revenue loss of \$19.31 billion, as per the CII-Hotelivate research. The **metro** incurred huge revenue loss. On September 17, Union Housing and Urban Affairs Minister Hardeep Singh Puri told Lok Sabha that the Delhi, Bangalore, Lucknow, Chennai and Kochi Metro Rail Corporation reported a combined loss of almost Rs 2,000 crores while the services were suspended during the lockdown. Amid the corona virus crisis **Railways** had suspended all passenger services from March till May 3. During a web conference on July 28, Railway Board chairman VK Yadav said that the Indian Railways expects to incur revenue loss of up to Rs 35,000 from passenger train segment during the FY21 due to a fallout of train travel following the restriction to prevent the spread of COVID-19. Livelihoods of street vendors which depend on being in public places have been hit hard by the unprecedented lockdown. With the absence of people during the lockdown, the city's **vendors** lost their source of income. Many were unable to feed their families, which led to starvation and deprivation. Even after the lockdown restrictions were lifted, many street vendors reported a drastic decrease in income as compared to the times before the pandemic outbreak.

MEASURES TAKEN BY INDIAN GOVERNMENT TO EASE THE SITUATION.

Movement restrictions

21-day lockdown in the country

The Ministry of Home Affairs announced a 21-day lockdown to contain the spread of COVID-19 from March 25, 2020 to April 14, 2020.² During the lockdown, all establishments, other than those providing essential goods and services, and those involved in agricultural operations, have been closed. Essential goods include

¹ <https://www.businesstoday.in/current/economy-politics/modi-govt-5-trillion-gdp-target-by-2025-simply-out-of-questionsays-former-rbi-governor-c-rangarajan/story/390818.html>

² <https://mha.gov.in/sites/default/files/ndma%20order%20copy.pdf>.

items such as food, medicine, and electricity. Essential services include banking services, telecommunications, and pharmaceuticals. Transportation of all goods (essential or non-essential) will remain functional.^{1 2 3}

All state/UT governments have been directed to: (i) arrange for shelter and food for the needy, including migrant workers, (ii) quarantine migrant workers for at least 14 days, (iii) direct employers to pay wages during the lockdown, and (iv) ensure landlords do not demand rent from workers and students for one month.⁴

Financial aid

Pradhan Mantri Garib Kalyan Yojana to provide relief against COVID-19

On March 26, the Finance Minister announced a relief package of 1.7 lakh crore rupees under the Pradhan Mantri Garib Kalyan Yojana for the poor.⁵ Key features of the package are:^{10,6}

- Insurance cover of Rs 50 lakh will be provided to health workers (such as doctors, nurses, paramedics and ASHA workers) who are treating patients of COVID-19.[12]
- Five kilograms of wheat or rice and one kilogram of preferred pulses will be provided for free every month to poor families for the next three months.
- Women account holders under the Pradhan Mantri Jan Dhan Yojana will get Rs 500 per month between April and June, and poor families will be given three free gas cylinders over the next three months.

Extension and relaxation in payment of taxes

The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 was promulgated on March 31, 2020.¹⁰ The Ordinance provides certain relaxations, such as extension of time limits and waivers of penalties, in relation to specified laws. These include the Income Tax Act, 1961 (IT Act), some Finance Acts, and the Prohibition of Benami Property Transactions Act, 1988. Key provisions under the Ordinance include:

- **Extension of time limits:** The Ordinance extends the time limits (for the period between March 20, 2020 to June 29, 2020) for compliance of certain actions such as: (i) issuing notifications, completing proceedings, and passing orders by authorities and tribunals, (ii) filing of appeals, replies, and applications, and furnishing documents, and (iii) making any investment or payment for claiming deductions or allowances under the IT Act.
- **Interest and penalty:** Payment of any tax, made before June 30, 2020 (or any further date specified by the government), will not be liable for prosecution or penalty. Also, the rate of interest payable for the delay in payment will not exceed 0.75% per month.
- **Donations to PM CARES Fund:** Donations made by a person to the PM CARES Fund will be eligible for 100% tax deduction.
- **GST compliances:** The central government may notify extension to time limits for various compliances under the Central Goods and Services Tax Act, 2017.

Measures by RBI to address the financial stress caused by COVID-19

The Reserve Bank of India (RBI) also announced several measures to address the stress in the economy caused by COVID-19.⁷ Key measures are detailed below:

¹<https://mha.gov.in/sites/default/files/MHAorder%20copy.pdf>

² <https://mha.gov.in/sites/default/files/Guidelines.pdf>

³ https://mha.gov.in/sites/default/files/PR_ConsolidatedGuidelinesofMHA_28032020.pdf.

⁴<https://mha.gov.in/sites/default/files/MHA%20Order%20restricting%20movement%20of%20migrants%20and%20strict%20enforcement%20of%20lockdown%20measures%20-%2029.03.2020.pdf>.

⁵ “Finance Minister announces Rs 1.70 Lakh Crore relief package under Pradhan Mantri Garib Kalyan Yojana for the poor to help them fight the battle against Corona Virus”, Press Information Bureau, Ministry of Finance, March 26, 2020.

⁶ <https://dea.gov.in/sites/default/files/India%20economic%20policy%20response%20on%20%20COVID%2019%20Fiscal%20and%20Monetary%20as%20on%2027032020.pdf>

⁷<https://rbidocs.rbi.org.in/rdocs/PressRelease/PDFs/PR2129F5E23A447E0F4A00955429716C53F5A2.PDF>.

https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=49582.

- **Cutting Policy Rates:** The repo rate (the rate at which RBI lends money to banks) was reduced from 5.15% to 4.4%. The reverse repo rate (the rate at which RBI borrows money from banks) was reduced from 4.9% to 4.0%.
- **Liquidity management:** Measures are being taken to expand liquidity in the market to ensure that financial markets and institutions can function normally. These measures include the reduction of the Cash Reserve Ratio (CRR) for all banks from 4% to 3% till March 26, 2021. CRR is the amount of liquid cash that banks have to maintain with the RBI, as a percentage of their total deposits. These steps are expected to inject total liquidity of Rs 3.74 lakh crore.
- **Relief to borrowers in repayment of loans:** All banks and financial institutions (including NBFCs) are permitted to grant a moratorium of three months on payment of all term loan instalments (including agricultural, retail and crop loans) and interest on working capital loans (such as overdraft facilities), which are due between March 1, 2020 and May 31, 2020.

Short term credit to states

The Reserve Bank of India (RBI) has constituted an Advisory Committee to review the Ways and Means Advances (WMA) limits for states and UTs. WMA limits refer to temporary loans given by the RBI to state governments. Until the Committee submits its final recommendations, the WMA limit has been increased by 30% from the existing limit, for all states and UTs. The revised limits will be in force between April 1 and September 30, 2020.¹

PM CARES Fund

The central government has set up a national fund to deal with emergencies like the COVID-19 pandemic. The public charitable trust known as the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) will provide relief to those affected by COVID-19. The trust is chaired by the Prime Minister and includes members such as the Defence Minister, Home Minister, and Finance Minister.²

Donations made by a person to the PM CARES Fund are 100% tax deductible.³ Non-residents can also contribute to the Fund through foreign inward remittances.⁴

Health measures

COVID-19 testing

Currently, government facilities are offering free of cost diagnosis to all individuals with COVID-19 symptoms.⁵ Further, the government has approved certain private laboratories to test individuals for COVID-19. The cost of screening in private labs may not exceed Rs 4,500.[21] As of April 7, there are 136 government testing centres for analysing samples of COVID-19 and 3 additional collection centres.⁶ Further, there were 59 private labs offering testing in 12 states. These states are Delhi, Maharashtra, Kerala, West Bengal, Uttar Pradesh, Telangana, Tamil Nadu, Odisha, Karnataka, Haryana, Uttarakhand and Gujarat.⁷

The Ministry of Health and Family Welfare has also laid down guidelines for those who may be tested at these laboratories. These include: (i) symptomatic contacts of those who have tested positive for COVID-19, and (ii) symptomatic persons with a travel history to COVID-19 affected countries, (iii) symptomatic healthcare workers, and (iv) persons with severe respiratory diseases.²¹

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11835>.

¹ <https://rbidocs.rbi.org.in/rdocs/PressRelease/PDFs/PR2167BA409AC37FA8460497BA0C9B283E5DD9.PDF>.

² <https://pib.gov.in/PressReleaseDetailm.aspx?PRID=1608851>.

³ <http://www.egazette.nic.in/WriteReadData/2020/218979.pdf>.

⁴ <https://rbidocs.rbi.org.in/rdocs/Notification/PDFs/NOT2087A69F5158C174585A46C69B78BD96DBD.PDF>.

⁵ <https://www.mohfw.gov.in/pdf/LabTestingAdvisory.pdf>.

<https://www.mohfw.gov.in/pdf/NotificationofICMguidelinesforCOVID19testinginprivatelaboratoriesIndia.pdf>

⁶ https://icmr.nic.in/sites/default/files/upload_documents/Govt_Labs_functional_for_COVID19_testing_05042020.pdf.

⁷ https://icmr.nic.in/sites/default/files/upload_documents/Private_Labs_06042020.pdf.

Containment plan for large outbreaks

The Ministry of Health and Family Welfare has created a plan to contain the spread of the COVID-19 disease. Some of the measures suggested in the plan include:¹

- **Geographic quarantine:** This strategy requires the restriction of movement of people to and from a defined geographic area where there is a large outbreak.
- **Cluster Containment:** This strategy will contain the disease within a defined geographic area by early detection of cases. Cluster containment will include geographic quarantine, social distancing, testing all suspected cases, and awareness amongst the public.

Restrictions on export of medicines and medical equipment

The central government placed restrictions on the export of certain medical equipment and medication so as to ensure its availability in India. For example, the export of ventilators, surgical masks, diagnostic kits, and medications such as paracetamol and hydroxychloroquine is restricted.²

Travel restrictions**Domestic and international travel banned; issue of visas suspended**

Civil Aviation: All passenger domestic air travel within the country is banned from March 24 till April 14, 2020.³ All international commercial passenger travel has been banned till April 14, 2020 (cargo and certain other flights are exempted).⁴ All existing visas issued to nationals of any country except those issued to diplomats, officials, UN/international organisations, employment and project visas are suspended from March 13 till April 15, 2020.⁵

Railways: Indian Railways suspended all passenger trains till April 14, 2020.⁶ Transportation of essential commodities will continue.⁷ Railways has also made parcel vans available for quick transportation for e-commerce companies and other customers including state governments to transport certain goods. These include medical supplies, medical equipment, food, etc. in small parcel sizes.⁸

¹ <https://www.mohfw.gov.in/pdf/3ContainmentPlanforLargeOutbreaksofCOVID19Final.pdf>.

² <http://egazette.nic.in/WriteReadData/2020/218857.pdf>.

<http://egazette.nic.in/WriteReadData/2020/216551.pdf>.

https://prsindia.org/files/covid19/notifications/1492.IND_Export_Restriction_Hydroxychloroquine_Apr_4.pdf.

https://prsindia.org/files/covid19/notifications/1491.IND_Export_Restriction_Diagnostic_Kits_Apr_4.pdf.

³ <https://www.civilaviation.gov.in/sites/default/files/Revised-%20COVID-19%20-%20Order%20under%20Section%208B.pdf>.

<https://dgca.gov.in/digigov-portal/Upload?flag=iframeAttachView&attachId=130618666>.

⁴ <https://dgca.gov.in/digigov-portal/Upload?flag=iframeAttachView&attachId=130618625>.

⁵ <https://dgca.gov.in/digigov-portal/Upload?flag=iframeAttachView&attachId=130617742>.

⁶ “Ministry of Railways extends Cancellation of Passenger Train Services till 2400 hrs of 14th April, 2020”, Press Information Bureau, Ministry of Railways, March 25, 2020.

⁷ “Transportation of essential commodities to various parts of the country by Indian Railways continues at full speed”, Press Information Bureau, Ministry of Railways, March 30, 2020.

⁸ “Indian Railways to run Special Parcel Trains for carriage of essential items in small parcel sizes during the complete lockdown in fight against COVID-19”, Press Information Bureau, Ministry of Railways, March 29, 2020.

CONSUMER PROTECTION AND E-COMMERCE

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ABSTRACT

E –Commerce concept been revolutionized the Indian Market. It refers to the practice of buying and selling of products through online or through internet connection. Now in modern world the concept purchasing parity been changed all the activity happens on finger smart phones or computers. That is the magic of E-Commerce. This transactions will help consumers like save the time and effort. This plat form process easy along with the bonus of exceptionally affordable prices and delivery to our very doorstep.

The challenges are there are no specific laws for the protection of rights of consumers. Because there is no specific laws for the protection of customers who conduct transactions online. The new cosumer protection Act 2015, will provide new laws related to e-commerce and also it will great assistance to consumers.

“The rights of the consumer flow from the rights enshrined in Articles 14 and 19 and 21 of the Constitution of India. Equality before the law under Article 14 is not only a constitutional right but it is an essential ingredient for making a state into just and effective welfare state. In India the right to know and the right to receive and impart information have been recognized as a part of the right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Indian Constitution”¹.

Keywords: Consumer protection law, Indian Constitution, E-Commerce.

INTRODUCTION

Today the Internet has given consumers with a strong and powerful tool for searching for buying goods and services. Benefits have included increased competition and lower prices, there would be availability of more choice in product and services, and the conveyance of shopping for goods and services from vendors located around the world, due to the Digital world the industrial economy has developed rapidly.

The development of information and communication Technology has busted new paradigm of e-commerce. Today it became the integral part of everyday life. In urban and rural area it is necessity for people. E-commerce platform is available almost every aspect of our lives, starting from purchasing of everyday household items to online brokerage. Mail order or catalogue shopping has been in existence in the India. Thus several changes in business regulations become necessary for the smooth conduct of business and offer consumer protection.

E-Commerce: through the telecommunication the consumers transaction goods and services without physical location. Online shopping poses a wide range of challenges from the consumers protection perspective, ranging from invasion of privacy to insecure payments, and jurisdiction issues.

Need of protection of E-commerce: the online shopping activities have several related to e-commerce business and protection of e-consumers.

Jurisdictional concern: according to the traditional rules of jurisdictions in determination, the courts in a country have jurisdiction over individual who are within the country and or to the transactions and events that occur within the natural borders of the nation. E-commerce transactions, if a business derives customs from a particular country as a result of their website, it may be required to defend any litigation that may result in the country.

E –commerce companies will soon be liable to acknowledge the receipt of consumer complaints within 48 hours and display the name and details of the importer in case of cross border commerce, according to the consumer protection Act 2019. The act which replaces the central government to make rules to prevent unfair trade practices and secure the rights and interests of the consumers. The part of the act which takes into the account direct selling and ecommerce activities is likely to be notified soon.

¹ ‘Consumer Protection Jurisprudence A Constitutional perspective’ Rostrums Law Review, Volume I Issue III, May 2014.

A part of the act that deals with ecommerce entities specify that in case of imported goods and services, the online platform will have to mention the name and details of the importer or relevant seller on the platform¹.

Challenges posed by the electronic contracts

Privacy and data protection: the internet collects huge amount of datas relating to consumers many business are collect variety of information on a regular basis about their own customer. Now the companies track the customers interests and collecting the personal information which invading identity theft. Further usage of credit cards, debit card, and smart cards can lead to recording, tracking and selling consumers shopping and banking practices. Thus, increase in the way of collecting and using data has lead to raising public awareness and consumer cautions about internet privacy.

IT Act 2000: sec 1(2) and Sec 75 provides that, the Act shall apply to any offence or contravention committed outside India by any person if the act or conduct constituting the offence or contravention involves a computer, computer system or computer located in India²

IPC,1869: sec 3 of the IPC provides that any person who liable by any Indian law, to be tried for an offence committed beyond India shall be dealt with according to the provision of the IPC for any act committed beyond India in the same manner as if such act had been committed within India.

Privacy: for an e-commerce platform it is almost difficult to complete any online transaction without collecting some form of personal information of the users such as details about their identity and financial information. Two primary concerns that user or e commerce platform would have are

1. Unauthorized access to personal information
2. Misuse of such personal information

Historically, the concept of Privacy and data protection were not addressed in any Indian Legislation. In the absence of a specific legislation, the Supreme Court of India in the cases of Kharak Singh v State of UP and People Union of Civil Liberties v. UOI, recognized the right to privacy as subset of the larger right to life and personal liberty under Article 21 of the Constitution of India. However a right under the constitution can only be exercised under the State action. Non state initiated violations of privacy may be dealt with under the principles of torts.

Authentication and identification: Electronic signature may be considered as one of the methods used to determine the authority and legitimacy of the person to authenticate an electronic record. The IT Act gives legal recognition to the authentication of any information by affixing an electronic signature as long as it is in compliance with manner as prescribed under IT Act.

- i. The signature creation data, at the time of affixing the signature, was under the exclusive control of the signatory and no other party and
- ii. The signature creation data was stored and affixed in such exclusive manner as may be prescribed³
 1. Product returns: when customer orders the products and gets in hands is totally different that the customers might not be satisfied with the product. It may be possible that the consumer finds it eye catching when he looks it on the screen but when he observes it in his hands, the appearance of the product may not be as attractive as it seemed on the screen. In ecommerce the consumer will not be able to inspect the goods. There is not option to consumer that he has to accept it or reject it no other options. It must be further observed that once the goods are cancelled, the refund by the trader to the consumer may broaden out of an unreasonable stretch of time which may be injustice to the consumer.⁴
 2. Delivery of faulty goods and services: this electronic contract deals with faulty goods for totally wrong goods, to curb these kind of undesirable practices it is pertinent to enact a legislation which provides for

¹ <https://www.techcircle.in/2020/07/20/new-consumer-protection-act-brings-ecommerce-entities-under-its-ambit> site visited on 18/11/2020.

² Hina Kausar "E-Commerce and the Rights of E-Consumers" Published in Articles section of www.manupatra.com site visited on 18/11/2020.

³ Supra note 3

⁴ Parul Sinha "Electronic contracts and Consumer Protection" Bharati Law Review-june 2017.

adequate amount of compensation to the suffered consumers as well as have a deterrent effect on the online trader so as to prevent from engaging in these practices.

3. **Liability fixation:** it is very difficult to owe the liability in case of some dispute arises in the manner as for delivery of faulty good, therefore the provision defining their liability has to be incorporated in the separate law in such a way that the consumer must have an option to sue the online portal, the manufacturer or both of them. By this the consumer will be saved from findings the appropriate to sue and can get compensation from the both of them.

In United Kingdom, the Electronic Commerce Regulation 2002 deal with this complex problem and it covers all the websites selling goods and services online as services providers in case they do any act which goes against the interest of consumers and violates their consumer rights

Statutory provisions

Information Technology act 2000. The Information Technology Act 2000 is based on the Model Law on E-Commerce adopted by the United Nations Commission on International Trade Law (UNCITRAL).¹⁵ The Act aims to provide legal recognition for the transactions carried out by the means of electronic data interchange and other means of communications, commonly referred to as “Electronic Commerce”, which involve the use of alternatives to paper based methods of the communication and storage of information, to facilitate electronic filing of document with the government agencies. The Act comprises of the three significant aspect of e-commerce: Legal recognition of electronic records and communications contractual framework, evidentiary aspects, digital signatures as the method of authentication, rules for determining time and place of dispatch and receipt of electronic records. Cyber contraventions- civil and criminal violations, penalties, establishment of the Adjudicating Authority and the Cyber Regulatory Appellate Tribunals.

the IT Act 2000, provides for investigation, trial and punishment for certain offences like source code attacks (section 65), hacking (section 66), obscenity (section 67), failure to comply with the controller’s directions (section 68), subscriber’s failure to Controller’s requirement for decryption (section 69), accessing designated protected systems (section 70), misrepresentation to CCA (section 71), breach of privacy/confidentiality (section 72), publishing false digital signature certificate (section 73), making available digital signature for the fraudulent purpose (section 74) and section 75 of the IT Act deals with the offences or contravention committed outside India.

International perspective: E-Commerce is a global and transborder matter. Its successful development and acceptance will largely depend on international and transborder solutions. Those solutions have to be found in harmonized regulation and legislation based on policy coordination between the countries. It is not surprising that international organizations are interested in contributing to regulate e-commerce. Therefore international organizations have released proposals for regulations in the area of electronic transactions and e-commerce

UNCITRAL Model Law mainly deals with the legal recognition of data messages in general and electronic contracting. It is applicable to “any kind of information in the form of a data message used in the context of commercial activities”. The purpose of the Model Law is twofold: 1. To offer national legislators a set of international rules for creating a more secure legal environment for e-commerce in order to facilitate its use; and 2. To provide equal treatment “to users of paper-based documentation and to users of computer-based information”, known as the functional-equivalent approach.¹

CONCLUSION

Consumer Protection in relation to the e-commerce has been one of the global problem. The existing laws are not competent enough to protect the rights of the consumers and thus the need for introduction of a new law is felt in order to secure the rights of affected parties. Further, it is also to be put forth that the consumers in the present economic environment are not aware of their rights and thus the path to exploitation is smooth.

¹ Supra note 3 PP.27.

**CONSUMER PROTECTION AND ECOMMERCE CHALLENGES DURING THE COVID 19 WITH
REFERENCE TO VERIFYING THE AUTHENTICITY OF CUSTOMER**

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ABSTRACT

The covid 19 pandemic brought in health and economic crisis impacting the world and pushing digital transformation more than ever before. The eCommerce apps became the safe resort to purchase of goods and services avoiding going out physically to shop in brick and mortar shops avoiding risk of covid virus contact. The eCommerce business swelled in India during pandemic due to first time eCommerce site users coming online and illiterate populations embracing the digital economy without having any alternative option and the demand and supply equation titling due to lockdowns and inferences of production of goods . Thanks to micro transactions Apps from Paytm, Google Pay, Phone pay etc. In this situation there had been reporting of exponential rise in cyber-attacks on eCommerce digital infrastructure than before and consumer trust on eCommerce got widely endangered. It is worth to note by doing proper authenticity verification of customers lots of cyber-crimes will be prevented. The verification with cognitive ability can identify any fraudulent actions done through stolen digital identities and trigger customer protection measures.

The Customer protection regulations instead of stating security measures to be implemented to protect the eCommerce customers should make relevant rules to adopt customer verification mandatorily. This would benefit the consumer largely and the burden of proving the transaction fraud will be moved on to the Business rather than on to the consumer.

In this context, literature research is carried to re-examine the Consumer Protection Act and other cyber laws in Indian Jurisdiction. So will give appreciable insights into the Identity and fraud legal framework in context of eCommerce business and its dynamics during covid. It suggested that Customer Identity verification and risk assessment policies move to cover more technologically advanced solutions in its ambit and address any breaches in identity quickly and provide a timely remedy to customers. National eCommerce Strategic Roadmap have scope for the same.

Keywords: E-Commerce, Consumer Protection, Identity Verification, Cyber Law, Covid

INTRODUCTION

The paper is centered around the concept of verifying the authenticity of the customer by eCommerce entities. This concept addresses the highly damaging identity theft issue, the customers face, and dispute eCommerce entities for the reason of remote acts of the third party. There is need of having synergy between the technological innovation and the legal framework to enhance protection to the interest of eCommerce entity and its customer, such that no third party plays a fraudulent role with mis-presentation of customers personal identity, they steal.

There is pressing need during Covid 19, where more first-time entrants on eCommerce platforms are registering providing their personal information in India. Now the consumer identification verification should seamlessly be happening by all eCommerce service providers rigorously to prevent the frauds that would impact the customers - affect not only customers financial security, but it also takes a toll on their social, emotional, and physical well-being.. The technological adoption driven by the legal regulations to be compliant with the customer verification standards should come a long way in India whereas in developed nations they have moved quite ahead. Most of the businesses known customers were called on to get registered on new e-commerce sites. For the businesses in India, the decision of just being a partner on the eCommerce marketplace like Amazon or flip cart or start with own eCommerce website where they served their local customer base was hard to decide. Most brands have dedicated eCommerce sites, as well participation in marketplace eCommerce sites. The paper is based on the challenges that were envisioned by the technical & legal consultants of these eCommerce sites and explain the landscape to traversed for the solution.

DEFINITIONS & MEANINGS

Ecommerce means using the Internet and the web for business transactions and/or commercial transactions, which typically involve the exchange of value across organizational or individual boundaries in return for products and services.¹

A simpler definition of eCommerce that has been preferred is ‘the buying and selling of products, services, and information via computer networks including the internet’²

The FDI policy further defines Ecommerce entity as a “ company incorporated under Companies Act 1956/2013 or foreign company covered under sec. 2(42) of Companies Act 2013 or an office, branch or agency provided in sec 2 (v) (iii) of FEMA 1999, owned and controlled by a person resident outside India and conducting the eCommerce business”.

Authenticity means with reference to Authenticity of customer, like - Truthfulness of customers origins, attributions, commitments, sincerity, and intentions. Customers have footprints in the online and offline worlds and seamless transition across different channels and devices – presenting a distinctive challenge, it is difficult to truly understand who they are. But the ability to analyse these unrelated components of information holistically means marketers can make better decisions and have more meaningful interactions with their customers. And for customers, this means an experience with personalized content more likely to be relevant with them.³

Authenticity in this paper will discuss to de-track fraudulent customers and raise proper alerts to the concerned. Then Authenticity score showing low can blacklist the customer and trigger the legal investigation process.

E-Commerce Consumer Safety and Protection During Covid-19

Pandemic derailed the economy and E-Commerce. It disturbed supply chain and distribution logistics, triggered unreasonable price hikes, consumer verification difficulties. Consumer and Employee safety become very important and difficult to manage. Different kinds of fraudulent behaviors surfaced in online eCommerce. The lockdown measures moved consumers online and attacks to exploit customer's vulnerability raised. Many businesses have recognized the importance of strengthening trust. In March, survey of consumers, it is found that 52% of adults prefer buying from companies that are proactively protecting customers and employees against COVID-19 risks. Many eCommerce businesses have reframed their consumer policies in response to COVID-19 (e.g. offering free shipping, giving more time-periods for change-of-mind, returns or waiving cancellation fees) and are highlighting features, to be of no-contact delivery or pick-up services⁴

The covid 19 increased the demand for soaps and sanitizers which were not in demand early and the manufactures had shut down operations. Spurious products with high cost and quality were sold by many fake eCommerce sites. Some got involved in identity theft of the consumers misleading them by false advertisements and offers. Then mis-used identity to victimize consumers by economical and other attacks. The legal framework to protect consumers pertinent to this victimization is not strong to give much need relief.

Identity Theft Attacks and Its Impact

Identity theft attacks everything, one has built over years. It means someone else is unauthorizedly using customers information to make purchases, open new accounts, withdrawal from existing customer accounts, get facilities at customer expense, commit crimes in the customer name, and more. It is a criminal offence it the biggest threat to business and individuals at large.

Protection of Consumer Rights During Covid 19

With the customers shifting towards online services, there is a greater necessity to authenticate the identity of users during transactions and banking activities, to:

1 Ruhaniika S, E-Commerce,Economic Discussion, <https://www.economicsdiscussion.net/business/e-commerce/31868>,.(last visited Oct. 29,2020)

2 Dennis Shiao, Brian Holak and Ben Cole, e-commerce (electronic commerce), (Jul 11, 2011, 11.00 AM), <http://www.whatis.com/ecommerce>,

3 Daniel Portoff, Product Manager, Customer Identity: What Is It, And Why Should I Care? Experian, (Oct 30,2020), <https://www.experian.com/blogs/marketing-forward/2018/05/02/customer-identity-care/>.

⁴ Protecting online consumers during the COVID-19 crisis, <https://www.oecd.org/coronavirus/policy-responses/protecting-online-consumers-during-the-covid-19-crisis-2ce7353c/>, (last visited Nov.5,2020)

- Enhance the security services to prevent identity theft attacks in eCommerce
- The global standards of operations need to be followed and enforced by law
- The remedial support measures for the eConsumers need to be simplified
- Increase cardholder confidence in using online services
- Better collaboration with sector and industry security consultants to address issue.

This paper makes efforts to address the following questions:

In this section, researcher questions whether adequate Customer Identity measures are taken by the eCommerce entities operating in India? Elaborate Customer protection laws in this regard, find the lacunae with respect to our adoption and records findings/suggestions for betterment.

LITERATURE REVIEW

In this section, the researcher presents some of the previous literature of research throwing light on the topic that have dealt with the impact of Customer Identity issues in eCommerce business with relevance to corona pandemic on eCommerce is also kept in background.

(Pandey and Parmar,2019) aimed to investigate the factors affecting consumer's online shopping behavior. The study results suggest that consumers 'online shopping behavior is being affected by several factors like demographic factors, social factors, consumer online shopping experience, knowledge of using internet and computer, website design, social media, situational factors, facilitating conditions, product characteristics, sales promotional scheme, payment option, delivery of goods and after sales services plays an important role in online shopping.¹

(Gunjan, Vinit & Kumar, Amit & Avdhanam, Sharda. (2013) The report titled "Global Risks for 2012", predicts cyber-attacks as one of the top five risks in the World for Government and business sector. Cybercrime is a crime which is harder to detect and hardest to stop once occurred causing a long-term negative impact on victims. With the increasing popularity of online banking, online shopping which requires sensitive personal and financial data, it is a term that we hear in the news with some frequency. Now, in order to protect ourselves from this crime we need to know what it is and how it does works against us²

(OECD Guidelines) on the Protection of Privacy and Transborder Flows of Personal Data states Security Safeguards Principle: Personal data should be protected by reasonable security safeguards against such risks as loss or unauthorized access, destruction, use, modification or disclosure of data.³

(Vinit Kumar Gunjan ,2019) In India, as per the law there are two laws under which the offenders can be booked namely Information Technology Act, 2000 and the Indian Penal Code (IPC). IPC deals with traditional crimes such as mischief, defamation, theft, fraud, forgery etc. and IT Act 2000 deals with electronic documents hacking, unauthorized access, plagiarism etc.⁴

(Atefeh Tajpour,2013) A survey conducted by the Identity Theft Resource Center, ITRC reported that victims may spend an average of 330 hours repairing the damage occurring from identity theft. The process of fixing is time-consuming, will also be very frustrating because victims must deal with an array of different agencies and

¹ Mansour Abdelrhim & Abdullah Elsayed, The Effect of COVID-19 Spread on the e-commerce market: The case of the 5 largest e-commerce companies in the world, p3, :<https://www.researchgate.net/publication/343123992>, (last visited Nov.2,2020)

² Gunjan, Vinit & Kumar, Amit & Avdhanam, Sharda. (2013). A Survey of Cyber Crime in India. 2013 15th International Conference on Advanced Computing Technologies, ICACT 2013. 10.1109/ICACT.2013.6710503.

³ Tunde Ibidapo-Obe, Online Consumer Protection in E-Commerce Transactions in Nigeria: An Analysis, Research Gate, p6, https://www.researchgate.net/publication/320646191_E-Commerce_Security_and_Identity_Integrity_The_Future_of_Virtual_Shopping/link/5afe4cdd0f7e9b98e0198260/download, (last visited Nov.3,2020)

⁴ Vinit Kumar Gunjan, A Survey of Cyber Crime in India, Research (sept,25,2019), <https://www.researchgate.net/publication/259761802>. (last visited Nov.5,2020)

institutions. Contact with these agencies generally needs to be made during business hours and creates havoc for a victim who works and does not have the flexibility to make consuming personal calls.¹

Analysing the literature, it is important to pinpoint that:

This is the first study considering the pain of the customer whose identity theft happen while registering or purchasing or transacting in any ecommerce website and the legislative protections. under following headers: -

1. **Customer Authenticity Verification** – the discussion on its relevance to eCommerce and its deep implications over customers life when identity theft occurs. The prevention measures that the eCommerce entities should be taking.
2. **E-Commerce Legal Framework Around Customer Identity Verification in India** – The set of all legal provisions available are examined to determine its effect Customer Identity verification in eCommerce.
3. **E-Commerce Legal Framework Around Customer Identity Verification in EU and US** – The international progress on eCommerce legislations with respect to Identity verification and personal data protection is briefed.
4. **Discussion & Suggestions** -The discussion on the progress of India with rest of the world is highlighted, followed by what could be expected to change in Indian consumer protection legal framework that will impact positive change in customer identity verification.

OBJECTIVE

The main objective of the paper is to study and understand the legal provision presently available under Consumer Protection and Ecommerce legal framework and to make suggestions to address the protection of customers by mandating the process of ‘verifying the authenticity of customer’ to avoid identity theft and its implications.

RESEARCH METHODOLOGY

The method of study adopted in this paper follows to achieve the stated objectives, the information obtained from secondary sources is used for examining the subject and to identify research gaps in study. Following qualitative analysis the guidelines, laws and orders issued by authorities during the course of time with emphasis on Covid is used in study, the available in articles and papers published in different websites, business journals, newspaper, periodicals were studied in relation to eCommerce , Consumer Protection and causes available at both national and international level emphasizing Consumer Identity Verification in eCommerce and its impacts. Citation Style followed is Bluebook Method.

Statistics of Data Leaks and Breaches in India

Increase in data theft in India since 2016 is 786, Number of Indian websites hacked in 2017 is 22000. Fraud has always been a risk in eCommerce, but the trend is seen growing quick since the beginning of the covid pandemic. The online security reports that average 20% increase in fraud in the first quarter of 2020 happened, compared to the last quarter of 2019. Part of the reason behind the increase is due to the shift, that more consumers are going for online shopping. Fraud can take many forms, including friendly fraud involving chargebacks (when a cardholder receives goods, but denies making a purchase, or a family member makes a purchase without cardholder approval) to hackers using credit cards or credentials that are stolen to make purchases. During covid -seen highest attack rate ever, as consumer behavior is in confusion state and digital transactions are on the rise.² Identity theft accounts for three-quarters of all attacks and rely upon credit card details, Email and user accounts, names, addresses and other identifying information. It is used by attackers trying to look like real consumers.³ Analysts are also anticipating an upward rise in attacks as fraudsters are driven by economic uncertainty and more individuals will be pushed into cybercrime due to high unemployment.

¹Atefeh Tajpour. E-Commerce and Identity Theft Issues, ABU Technical Review, P9, (Oct,25, 2013), <https://www.researchgate.net/publication/320006684>.

²Filip Truta, Digital Behavior Shifts Amid COVID-19 Pandemic, Security Boulevard, (Apr 29, 2020), <https://securityboulevard.com/2020/04/new-research-shows-20-spike-in-fraud-as-digital-behavior-shifts-amid-covid-19-pandemic/>

³ Jon moore & Icons8 Team, Identity Theft in eCommerce: How DTC Brands Can protect Themselves, (Oct 31,2020), <https://www.scalefast.com/blog/ecommerce-identity-theft>.

In India we have thousands of eCommerce sites few of them which are popular eCommerce Sites are -

- B2C: Amazon, Flipkart, Snapdeal, eBay, Jabong, Myntra, PayTM, Shopclues, Pepperfry, Zomato, BigBasket, Alibaba
- B2B: Tolexo, Industrybuying, moglix, msupply, amazonbusiness

It is important to have customer Monitor, Alert, Control and Recover technical measures as per best practices to uphold consumer protection.

Customer Authenticity Verification

1. It is a prevention measure which should be adopted by the eCommerce entities to ensure, the Customer whenever interact with credentials the solution tool implements a decisioning model to selectively apply friction for higher risk customers, and to provide traceability and visibility for lower risk customers approved through an auto-decisioning model. The solution tool give view into the risk score from many systems, enabling clients to configure their program according to their internal risk profile, and focus on the risk that matters. These addresses the security and data privacy requirements as per the compliance requirements. The verification will depend on the personal and behavioral biometrics, geolocation, public records, device intelligence, document scanning/authentication to enhance the reliability of risk scores. Based on risk score the authentication will be successful or failed or the customer is put under red flag for fraudulent behavior investigations.
2. There are multiple approved service providers who offer multi-factor authentication and verification services for the ecommerce entities. Whose services should be must and should, be utilized by them with the intervention of regulating bodies to protect the consumers. This would enhance the customer trust in platform.
3. Consumer dispute trigger when customer experiences deficiency in product or service or when his identity is misused fraudulently. For deficiency alone consumer court will intervene, the problem with identity theft must look for remedy elsewhere and is costly.
4. E-Commerce entities and intermediaries who administer shopping websites must take measures, that their sites are protected from frauds through identity verification process. The provision to give supporting records to consumers be made easy by sites.
5. The customers shop where exchange, return and refund policies are adequately placed. Trust those websites for shopping which are easily accessible through customer care numbers, so that in case any problem they immediately contact them. Now the Artificial intelligence is evolving, the possibilities need to be explored.

E-Commerce Legal Framework Around Customer Identity Verification in India

When Customer identity is not verified with due diligence in ecommerce platform it increases the customer identity theft, which is a crime and a menace. Any individual who uses internet for eCommerce will be highly susceptible for Identity theft. In India therefore- Identity theft is not treated as a standalone crime, so there is no one singular statute which deals with it in detail. It has been dealt with the Indian Penal Code and the Information Technology (Amendment) Act, 2008

The Information Technology (IT) Act, 2008 - covers online market places under the purview of intermediary and they are exempted from liability and envisages that they are not responsible for 3rd party data there role is only of infrastructure providers. They have to observe due diligence and inform users not to host, display, upload any information that infringes any patent, trademark, copyrights and proprietary rights. The consumer identity is protected by Sections 46(b), 66 & 72(a) in a way of data protection.

The Indian Penal Code (IPC) – is recommended to have provision under sec. 419A (punishment for cheating by impersonating using a network or computer resource to attract punishment of imprisonment for 5yrs and fine.

Department of Industrial Policy and Promotion (DIPP) - Ecommerce is still in nascent stage in India with its contours veining examined judiciously. Streamlining of rules and regulations pertaining to ecommerce and rendering clarifications about contributory negligence or infringement in such cases would help in avoiding this online marketplace attenuating laws obscurity in this sector.

Consumer Protection (E-Commerce) Rules, 2020 – It is latest addition to consumer laws in India. The department of consumer affairs after the inputs from DIPP issued these rules in exercise of its power under

Consumer Protection Act 2019 sec 101 (1) (zg), inter alia it protects the rights and interest of consumers in eCommerce. The rules also fall under the National E-Commerce Policy of the Government initiated in the year 2019 as well. Newly the Central Consumer Protection Authority (CCPA), will act as the nodal agency for intra-government coordination, and provide a platform for e-commerce operators **regarding complaints of fraudulent activities**.

Payment and Settlement Systems Act, 2007 – deals with regulatory aspect of all payment systems in India including eCommerce. The Act empower Reserve Bank of India to authorize the intermediaries to conduct transaction on behalf of the consumers. RBI guidelines pertaining to Know your customer and Anti money Laundering will be time to time issued to eCommerce entities. Act covers risk management stating the board of directors of the bank should ensure proper KYC programs, ensure effective implementation, and properly cover oversights and controls. Customer acceptance criteria need to be set, customer identification procedures (CIP) should be set to identify the customer during different relationships and when bank has a doubt on veracity/authenticity of customer identification data. Monitor transaction which are out of pattern and cross the thresholds set for certain account types.

PSD2 Guidelines -A Payment authentication service should have adopted Active Access is an EMVCo compliant Access Control Server, which offers a multi-factor authentication service in internet banking, mobile banking and eCommerce transaction, irrespective of card schemes directory servers. This provides banks with a flexible & secure solution for their eBanking customers.¹ Applicable if eCommerce operates in process transaction in European Economic Area (EEA), if local to India not required but authenticity of Identity is required.

The parliament instituted 'Expert Committee' had recommended certain amendments to the IT Act, 2000 and the IPC. It recommended that there should be a section called Section 417-A which punishes any individual who has created a person using data and personal information of other person. Further any form of cheating through a computer network is punishable with imprisonment up to five years.²

Apart from the above legislative laws consumer protection in India revolve round other Acts such as Sale of Goods Act 1930, Agriculture Produce (Grading & Marketing) Act, 1952. Food Safety and Standards Act, 2006, Essential Commodities Act, 1955.

The ecommerce organizations and consumers are interested in the prevention measures with new techno services and strict enforcement of present cyber laws. With the projection of 51% growth rate of Indian eCommerce in the world building up customer safety in eCommerce by preventing cybercrime like identity theft though proper verification of authenticity is need of the hour.

E-Commerce Legal Framework Around Customer Identity Verification in EU and US

The ecommerce rules are covered under European Unions (EU) E-Commerce rules where the member countries can ban the eCommerce web site in case of involvement of fraud or scam. The EU commission deliberate on 'digital contractual rights' to protect customers identity(personal) information in all means, consumer should be provided information and rights to control the usage of his personal information collected by the eCommerce Entity, in case of any breach remedy is provided. The General Data Protection Regulation (GDPR) apply to eCommerce entity now and they are obligated to keep customer informed about personal data storage and processing and protection policies.

In United States (US), the state legislations provide flexibility for consumer to choose what personal information they want to provide and what can be sold. The eCommerce entity is obligated to the protect the Consumer information-California Consumer Privacy Act 2020 and they will be fined heavily for any data breach. The Federal Trade Commission (FTC) is regulating online profiling and collection of consumer data by eCommerce sites

¹ Strong Customer Authentication under PSD2 Guidelines, PSD2 SCA Action Plan for Business Owners, <https://www.cardinalcommerce.com/content-hub/mandates/psd2-sca/psd2-online-merchan..>, (last visited Nov.2,2020)

² Shikhar Shrivastava, Identity theft: Is it a modern crime? ITJ, <http://lawtimesjournal.in/identity-theft-is-it-a-modern-crime>, (last visited Nov.3,2020)

DISCUSSION & SUGGESTIONS

The provisions of EU and US has set the compliance and consumer protection with respect to Consumer verification of authenticity of identity information to new heights, so it is followed by other players also in global eCommerce. In US Fair Credit Reporting Act (FCRA) Section 609(e) speaks of “Business records turnover provision”, according to which business should provide free of cost all the necessary records and information to victim and investigators in support of victim coming out of problems and clear his good name. By helping the eCommerce business is complying with the law. In case of Kohl’s Department Stores, Inc. US agreed to pay a civil penalty of \$220,000 to settle Federal Trade Commission allegations that the retailer violated the Fair Credit Reporting Act by refusing to provide complete records of transactions to consumers whose personal information was used by identity thieves.¹

In our study we find that Consumer Protection(E-Commerce) Rules, is not touching upon personal information and its usage in India, no provisions for Identity verification to protect identity theft and its implications is evident. However, the aspect of data protection is said to be the part of National E-Commerce policy set to be tabled by DPIIT. Due to Covid 19 around the policy is delayed being put for public review. The policy is said to empower the government to take cognizance of all eCommerce activities that will be treat to consumer and national security.

1. The payer must be always be aware of both the transaction amount and the payee, authentication tokens must be specific to the amount of the transaction and to the payee.
2. The Customer verification process should be active in ecommerce activities such that any authentication is also connecting to customer verification to identity content provided.
3. System should not store personal data and address, use an instantaneous verifying system provided by the third parties, with different parameters based on the risk factor of the transactions when needed to check fraud.
4. Adhere to new technological best practices in eCommerce industry with respect to customer verification and to safeguard the end to end integrity of the system.
5. The government should consider the effects of lacunae in customer verification and make laws to sufficiently adopt robust identity theft protecting measures.

CONCLUSION

In eCommerce, cyber threats of identity theft are increasing and endangering customer safety. It is concluded that personal identifiable information (PII) must be secured, without being compromised otherwise e-Commerce will face adverse security challenges. On the other hand, the individual customers will face deep financial disaster when identity theft happens. The cost of filing any or both, a civil and criminal case, simultaneously with injunction remedies will be burden.

In legislative approach several legislations are enacted worldwide to deal specifically with Customer Identity Verification and India is catching up. The continuous innovation of Customer Verification, with cognitive sense or awareness about all aspects of customer behavior shared across by different entities is making fraud detection at first place more effective. It is important that the eCommerce platform entities embrace and pursue on these technologies continuously under the newfound regulations that keep in pace with the new technologies & international standards. Take preventive, protective and supporting measures under regulatory framework in India. Central Consumer Protection Authority (CCPA) address eCommerce frauds.

¹ FTC MATTER/FILE NUMBER:182 3200, CASE SUMMARY, [ftc.gov/enforcement/cases-proceedings/182-3200/kohls-department-stores-inc](https://www.ftc.gov/enforcement/cases-proceedings/182-3200/kohls-department-stores-inc)

CONSUMER PROTECTION (E-COMMERCE) RULES, 2020: AN OVERVIEW

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INTRODUCTION

There has been a shift in the marketplace in recent times, as consumers tend to prefer to buy products and services on the e-commerce platforms, as against the traditional physical marketplace. The Competition Commission of India has also highlighted the revenue growth of the E-Commerce sector in India in one of its market study,¹ thereby reemphasising on the need to regulate the interests of the consumers in the ever growing e-commerce market space. The Consumer Protection Act, 2019 came into force in July 2020. Under this Act, the Consumer Protection (E-Commerce) Rules, 2020 ("Rules") were also passed, to achieve the same by setting up a compliance framework, wherein all the transactions taking place on E-commerce platforms are transparent, and different entities can be held accountable in case of any grievances from the consumers.

The Rules apply to every commercial transaction taking place on the digital or electronic network including digital products, which result in the consumer being able to procure goods or avail services in India. Hence, any foreign entity which is providing goods or services to consumers in India is also accountable under the Rules. However, the Rules make a clear exclusion of non-commercial activities carried out by a natural person. The key stake-holders under the Rules are:

Inventory e-commerce entities: the entities that sell their own goods on the e-commerce platforms;

Marketplace e-commerce entities: the entities that act as mere intermediaries and only own the e-commerce platform on which the goods or services are offered for sale, and

The Product Sellers and Service Providers: which provide their goods or services for sale on third party e-commerce platforms.

Information to be displayed online: There are various duties and obligations laid down under the Rules for each entity. An e-commerce entity has to display in a clear and accessible manner:

- 1) Its legal name;
- 2) Addresses of its office(s);
- 3) Details of the website; and
- 4) Contact details of customer care and grievance officer. In case of imported goods, the e-commerce entity has to display the name and details of the importer or the seller.

The sellers have to display the details about the goods and services offered for sale including total price (along with breakup price), expiry date, country of origin, details of grievance officer, details of importer and guarantees relating to the authenticity of the imported products, warranty/guarantee, terms of exchange, returns and refund and details of delivery and shipment. Sellers are also required to:

1. Enter into a written contract with the respective e-commerce entity for undertaking sale or offer;
2. Appoint a grievance officer and ensure time-bound redressal of complaints;
3. Ensure that advertisements are consistent with actual features of the goods or services; and
4. Provide all the relevant information (such as legal name, office address, email address, customer care contact number etc.) to the E-Commerce entity.

GRIEVANCE REDRESSAL MECHANISM:

Further, in order to be easily accessible by consumers in case of any grievances, an E-Commerce entity has to appoint a nodal person of contact or a senior designated functionary who is resident in India, for ensuring compliance with the Consumer Protection Act, 2019 and the Rules, and also establish an adequate grievance redressal mechanism and appoint a grievance officer whose name, contact details and designation are to be displayed on the platform. Under the new Rules, it is mandatory to acknowledge the receipt of any consumer

¹ Competition Commission of India, Market Study on E-Commerce in India (08 January, 2020), https://www.cci.gov.in/sites/default/files/whats_newdocument/Market-study-on-e-Commerce-in-India.pdf.

complaint within 48 hours and provide redressal of the same within 1 (one) month from the date of receipt of the complaint. Further, the E-Commerce entities:

- (a) Cannot impose cancellation charges on consumers unless similar charge is required to be borne by it;
- (b) Must obtain explicit and affirmative consent from consumers for executing the purchase but not through automatic means such as pre-ticked checkboxes;
- (c) Effect refund within a reasonable period of time as per guidelines of the Reserve Bank of India. The marketplace e-commerce entity has to further display, in a clear and accessible manner:
 - i. Details of the sellers,
 - ii. Complaint ticket number for tracking status of such complaints;
 - iii. Information relating to return, refund, exchange, warranty and guarantee, delivery and shipment, modes of payment, and grievance redressal mechanism;
 - iv. Payment method;
 - v. All information provided by the seller, and
 - vi. Parameters on which products are ranked.

Accuracy of information displayed:

A marketplace e-commerce entity has to obtain an undertaking from each seller confirming that the information furnished by them with respect to the goods and services being offered on its platform is accurate and corresponds directly with the appearance, nature, quality, purpose and other general features of such goods or services.

Regulation of product listings: Under the new Rules, they are also expected to maintain a record identifying sellers who repeatedly have offered goods or services that have been removed or access to which has been disabled under Copyright Act, 1957, Trade Marks Act, 1999 or the Information Technology Act, 2000. The entities are required to disclose any differentiated treatment which it may extend to goods, services or sellers of the same category and publish the same on their platform clearly.

CONCLUSION:

Under the Rules, sellers are prohibited from posting reviews posing as a customer on the offered goods or services. They are obligated to take back goods or withdraw services and refund consideration if such goods and services are defective, deficient, not delivered on time (unless due to force majeure), different from the features advertised or spurious, and the like. The inventory e-commerce entity's obligations are the same as that of the Marketplace e-commerce entity and those of the sellers, as they sell their own goods and services on their respective platforms. These obligations that the Rules impose upon the E-Commerce entities and the Sellers are to safeguard the rights and interests of the consumers on the digital platforms.

WHAT THE FUTURE HOLDS FOR THE INDIAN CONSUMERS POST THE CORONAPOCALYPSE?

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When we welcomed the New Year 2020, full of things that had never been and be hopeful for what the future holds, little did we know that we would all have to blend into a new way of life under quarantine. The outbreak of the Novel Coronavirus muddled people's life like never before and brought it to a grinding halt. The new normal being, schools and colleges shut, employees working remotely, people staying indoors masked, businesses padlocked, transport sector combating challenges daily, restricted mobilization and over 25 million jobs at risk, especially those in the informal sectors, has impelled the people to unforeseen financial crunch. The International Labor Organization (ILO) describes it as "the worst global crisis since World War II". All this while countries continue to grapple with the pandemic and contain its spread.

In the wake of safeguarding public health, various businesses including food industry, hospitality, retail industry, banks, transport, recreation and entertainment have been disrupted, leaving both businesses and consumers in a state of uncertainty. This had a grave impact on the availability of essential commodities. The survey conducted by Deccan herald in association with the Department of Consumer affairs, Government of India to check the availability/non-availability of essential goods showed about 35% consumers were unable to find essentials via local retailers and the percentage increased to 50% in case of 'e-commerce' apps¹. Varying lockdown extensions by different States in the country added to the misery of shortage of essential commodities. This article would mainly assess the impact of COVID-19 outbreak on supply of essential commodities, consumer behavior in times of the virus outbreak that affected their purchasing power and the entry of e-commerce with digital economy while centralizing consumer safety and protection.

The falling incomes due to layoffs, closures and furloughs coupled with low optimism of the economy have persuaded the Indian consumers and consumers around the world to spend more on essential commodities like groceries, sanitizers and household supplies rather than on ego goods. The first lockdown in India wrapped anxiety and fear among people, leading to herding and hoarding of groceries, staples and hygiene products. The pandemic triggered some unusual change in the purchasing behavior. Consumer frenzy broke out leaving empty shelves at supermarkets in an attempt to stockpile indispensable goods which deprived the others of the same. The panic shopping videos that went viral also exposed the callous attitude of various people. However, Consumers have made lasting changes to what they eat, how they live, work and shop. About 85 % of the Indians have shifted to a healthy diet, purchasing personal hygiene products and are focusing on limiting food waste². People having to work from home with no domestic help and most restaurants either shut or with no food delivery, the lockdown had turned many into masterchefs in quarantine. Brands have become incompetent in retaining the trust of consumers as they have become more conscious in terms of cost, quality and safety. Companies would now have to tailor and refresh their brand promises. On the other hand, Small retailers or kiranas and local sources have seen a sharp increase in sales as more and more consumers are buying from them.

India is regarded as the world's largest food basket. Ironically, India ranks 102 among 117 countries in the Global Hunger Index as a large chunk of its population is food-deprived, hungry, and malnourished³. The course of the COVID-19 has disrupted both global and local food system. The hasty nationwide lockdown further shook the fragile and fragmented food system and supply chain leading to severe labor shortage, lack of cooling and storage facility, stalling of import and export of food, increase in food prices, closure of roads, air cargo and port operations hampering the movement of food across the country and facilitating food insecurity that amplified the vulnerabilities of the farmers and consumers, especially India's poor and hungry.

¹ Athrady Ajith, 'Coronavirus lockdown: Consumers still facing essential commodities shortage', DHNS, Apr 12, 2020.

² PTI, 'Covid-19 likely to alter consumer behaviour permanently: Survey', ET, Aug. 11, 2020.

³ Tortajada Andrea and Tortajada Cecilia, 'How COVID-19 worsens hunger in India, the world's largest food basket', The Conversation (Nov. 13, 2020, 9:41 AM), <https://theconversation.com/how-covid-19-worsens-hunger-in-india-the-worlds-largest-food-basket-142300>.

The pandemic has also thrown light on the brutal reality of income inequality in the nation that directly affects the purchasing power. While half of the population was hoarding essential commodities, the other half, mostly in informal sectors that account to 90% of labor force was hoarded by poverty and hunger and was hit by another layer of precarity without the prospect of a steady income, let alone save for unforeseen contingencies. Access to food, shelter, water, healthcare, sanitization, transportation was entirely compromised during the lockdown that increased the plight of the tired, weary migrant workers walking back to their native homes with their children and family. Some walked on the streets, some on highways and the others on railway tracks that resulted in a train running over 16 workers in Maharashtra, while the Government watched. Well, they say, while there is life, there is hope. The apocalypse also saw civil society mobilization of various individuals, organizations and relief camps that came out to alleviate the situation by providing basic meals and necessities to thousands. “Atmanirbhar Bharat” may have become the mantra for everyone today but how will a country be self-reliant or self-sufficient unless these structural problems are not addressed?

Another primary victim of the virus has been the transportation sector. From airlines to rickshaw pullers, all have been economically affected. The demand for passenger transport has fallen sharply. Apart from dear once being stranded in far of places, the movement of people and goods also benefit consumers, governments and industries. Indian Railways is one of the highest contributors to the GDP as well as employment in India. Airports and railways are imperative for economic development of a country. In the initial days of lockdown, consumers had trouble getting refunds for the tickets booked. But recently, the apex court approved the recommendation of the Director-General of Civil Aviation regarding full refund of passenger flight tickets that were cancelled due to the lockdown¹. Similarly, refund rules have been relaxed by Indian Railways. Furthermore, public transports like buses, autos, metros and other private transport businesses have been deeply hit since mass mobilization had come to a halt. Oil exporting countries experienced a double blow as the global oil prices dropped. On the bright side, it may have created opportunity for transition towards a low-carbon, more resilient and diversified economic future that would also positively impact the consumers. Surprisingly, oil prices in India have skyrocketed due to the excise duty as the tax revenues took a beating. Basically, the Government captured the oil price drop without passing the benefits to its consumers. Anywho, with the lockdown being lifted, movement of passengers has resumed and there is a need for proper ramping up of the transport system. Airports, railways, metros and other transport sectors have been taking the necessary precautions to safeguard the health of their passengers.

Nevertheless, Banks that come under essential services remained open, albeit with some restrictions to ensure safety. In an attempt to tackle the COVID induced distress, Banks tried to reach out to their customers to know if they want to opt for EMI moratorium announced by the Reserve Bank of India. It should not be assumed as a waiver of loan, but as a grace period that gave only a momentary relief to consumers. Momentary because, the interest for the unpaid amount for two installments will be added to the outstanding loan increasing the EMI and extending the loan tenure and non-payment of credit loans will bloat up once credit card bill. It was advisable for consumers to go for this deferment plan only in case of a dire need. Banks also carried out only essential services like withdrawals, cash deposits, cheque clearances etc. Consumers were largely encouraged to use electronic or digital banking system like UPI, NEFT, IMPS from home and avoid bank visits². Only selective branches were open, bank timings were revised, staff was cut down and along with limited number of customers, masks and sanitizers were made mandatory.

The standardized lockdown rules across the nation, social distancing, growing hesitation of the consumers to go out to shop and accelerated digital payments over traditional cash have tilted the country towards e-commerce. Consumers had to chop and change from supermarkets, shops and malls to online portals to purchase products, ranging from branded goods to basic commodities. Food, pharma products, electronic appliances and groceries have seen a meteoric rise online. It is hard to fathom, how much change the virus has ignited. Hitherto, millennials and Gen Z have led the digital revolution but COVID-19 has contrived FTUs (First time users) as well as old shoppers to embrace e-commerce and digital economy at a much faster rate and would persist to do so even after the pandemic. This has put the retailers at a pivotal crossroad and can severely limit their customer pool if they fail to offer a variety of digital payment methods and incorporate a more sophisticated technology. People being stuck in their homes could lead to “revenge buying” and will cause people to throng shops post the pandemic.

¹ Prakash Satya, ‘SC accepts DGCA scheme for refund for air tickets booked during lockdown’, TNS, Oct. 01, 2020.

² Deth Amol, ‘How are your Banks working during the Coronavirus outbreak?’, ETBFSI, Mar. 23, 2020.

E-commerce has been dominated by top 5 cities in India, with Karnataka, Maharashtra and Delhi making up to 65% of the consumer demands. According to Unicommerce report, India has seen massive online sales events since June - from Flipkart's Independence Day sale to Myntra's End of Seasons sale and Amazon Great Indian Festival sale, that has helped boost online orders. Flipkart alone reported 45% growth in monthly active customers and has ostensibly surpassed 1.5 billion visits per month¹. However, E-commerce marketplaces have faced a few challenges like catering to the demand with less workforce, ensuring fast and safe delivery, shipment to fulfillment centers and controlling product returns. The digital transformation of kiranas and retailers selling essential goods online and the inflow of online shopping that delivers everything to the doorstep, consumers would opt for e-commerce as the time saving power is here to stay.

Plato's Republic states, "Necessity is the mother of all invention". In today's world, that is infected with the virus, it is the insecurity of others that steers invention. Digital revolution requires advertisements in such emergencies to be cautious and responsible while promoting a product as they are crucial in creating awareness about the preventive measures in relation to public health. Advertisers today have tried to blatantly wring their products through misleading and false claims relating to Covid-19. Recently, clothing companies like Zodiac and Van Heusen have concocted claims that their clothing is Covid-19 resistant and Anti-bacterial, along with various other homoeopathic and Ayurvedic drug makers like Patanjali marketing its unapproved drug – Coronil through misleading advertisements. In these challenging times, when the world is waiting for a cure, the governments must be vigilant in scouting and calling out such deceptive advertisements.

In India, the exploitation of manufacturers is a common phenomenon as a large part of the population is still poor, illiterate and ignorant. Ergo, protection of the Consumers became the need of the hour that resulted in the enactment of the Consumer Protection Act, 1986 that provided redress to a consumer in case of deficiency in service or defect in the product purchased and provider to compensate the aggrieved consumers in case of their negligence. On 20th July, 2020, the Indian Ministry of Consumer Affairs, Food and Public Administration enacted the new Consumer Protection Act, 2019 that buttressed the statement "Consumer is the real king of the market". The new Act replaced the erstwhile Consumer Protection Act, 1986 in entirety. Both these Acts are juxtaposed in terms of Product Liability. Product liability can be traced back to the common law concept of 'caveat venditor', which simply means "let the seller beware" and "caveat emptor", which means "let the buyer be aware"². The CPA 2019 is imperative to promote, protect and enforce the consumer rights especially in the post-covid era.

To capitalize from the "Plandemic", plaintiffs' attorneys are filing product liability lawsuits against manufacturers, suppliers, distributors and sellers for product claims related to:

- Products that falsely claim to protect against COVID-19
- Food supplements that allegedly treat, boost immunity or cure Covid-19 and its symptoms
- Hand sanitizers, protective gears or mask that misrepresent protection against the virus
- Testing kits that detect the virus inaccurately
- Delivery of Packages or devices that are contaminated
- Failing to warn the exposure to COVID-19 in a manufacturing or distribution unit
- Drugs and vaccines related to the virus that are perfidious

Former USA President Donald Trump on March 27, 2020 signed the Coronavirus Aid, Relief and Economic Security (CARES) Act that extended the protection provided in the Public Readiness and Emergency Preparedness (PREP) Act to individuals and consumers by granting additional liability protection to businesses

¹ Dash Sanchita, 'India's e-commerce is now even bigger than pre-COVID', BUSINESS INSIDER (Nov. 13, 2020, 6:24 PM), <https://www.businessinsider.in/business/ecommerce/news/indias-e-commerce-is-now-even-better-than-before-smaller-cities-add-to-the-bounty-while-metros-continue-to-lead/articleshow/77655199.cms>.

² Ghosh Anindya and Chandra Nabarun, 'India: Product Liability Law in India: An Evolution', MONDAQ (Nov. 14, 2020, 9:10 PM), <https://www.mondaq.com/india/dodd-frank-consumer-protection-act/974270/product-liability-law-in-india-an-evolution>.

that produce and distribute critically required respiratory protective equipments¹. Product liability provision provided by The CPA 2019, paves way for the consumers, healthcare workers and governmental entities to begin an onslaught of mass tort lawsuits and class action against companies.

CPA 2019 provides six rights to the consumers - to be protected from unfair trade practices, to have goods at competitive prices, to be protected from hazardous goods, to be informed about the quality, quantity, price, potency and standard of the goods and services etc. The new Act also establishes the Central Consumer Protection Authority (CCPA) that regulates cases related to violation of consumer rights, unfair trading practices and can also issue safety notices and reimburse purchase price. The CPA 1986 had no provisions for establishing a CCPA or regulating e-Commerce platforms. Under CPA 2019, every e-commerce entity is required to provide necessary information regarding the delivery, shipment, return, refund, warranty, exchange, mode of payment, security of payment, country of origin etc for all its products that will enable the consumers to make an informed decision. The e-commerce companies have to acknowledge the consumer complaints within 48 hours and redress the complaint within one month². But to make the rules of prevention of unfair trade practices by e-commerce companies more sufficient and effective, we need the consumers to be responsive, moral, action oriented and transparent while claiming their rights.

The Advertising Standards Council of India (ASCI) is a self-regulatory and non-government organization that ensures all advertisements adhere to just and legal practices. ASCI recommended and stated that the advertisers have to be mindful while creating advertisements pertaining to their claims of curing the virus and substantiate their claims by clinical or technical support approved by health authorities like WHO, AYUSH, DCGI, ICMR, MoHFW etc³. Currently, ASCI can only make recommendations and cannot compel the advertisers to remove advertisement or grant compensation or interim relief. However, The Central Consumer Protection Authority has been empowered to impose penalties on the endorsers for misleading advertisements up to two years imprisonment and repeated offenders may attract up to five years imprisonment and a fine of Rs 50 lakh. The government of India via AYUSH ministry has reprimanded Patanjali for advertising an unapproved drug, yet no legal action has been taken against the firm. To curb the exploitation of the anxiety of the consumers living in the pandemic, the Parliament has taken cognizance of similar misleading advertisements. The consumers can lodge complaints with the Ministry of Consumer Affairs against endorsers that cajole them into buying products and create a scare amongst general public that could potentially trigger health risks.

To protect the interest of the framers and investors and also ensure the availability of essential commodities to consumers, the Parliament passed the controversial Essential Commodities (Amendment) Bill on 15th September 2020 to replace ordinances promulgated on 5th June 2020⁴. The Modi government claimed to liberalize agricultural trade, provide better price realization to farmers and usher farm reforms by curbing inflation and has tried to justify the Bill by stating that the main objective is to help the poor people to afford essentials and prevent black marketing of essential commodities. The Act also seeks to control the supply, production and distribution of certain commodities through government intervention. It also aims to remove the fear of private investors of excessive regulatory interference, that distorts entry of private players into agricultural markets. While it may help pull in investments, the market and price would also be dominated by big corporate and capitalists, that would eventually weaken the negotiating power of the farmers and consumers. Aside above, the control orders and prevention of hoarding has been found to be ineffective in controlling prices of essential commodities. Many things are left vague, like the stock limit, price triggers etc. The Act declared the inclusion of masks, hand sanitizers as essential commodities while removing primary food items such as, pulses, oilseeds, cereals, onions, potatoes etc from the list of essential commodities and such foods can be

¹ Price Joseph, 'What Product Liability claims can we expect to see as a Result of Covid-19?', FAEGRE DRINKER (Nov. 15, 2020, 6:30 PM), <https://www.faegredrinker.com/en/insights/publications/2020/6/what-product-liability-claims-can-we-expect-to-see-as-a-result-of-covid19>.

² Professor Dr. M.M. Goel, 'Relevance of Consumer Protection Act, 2019 in Post covid Era', SAMAJ WEEKLY (Nov. 16, 2020, 11:20 AM), <https://www.samajweekly.com/relevance-of-consumer-protection-act-2019-in-post-covid-era/>.

³ Brand Wagon, 'ASCI announces Covid-19 advertising advisory', FINANCIAL EXPRESS (Nov. 16, 2020, 01:20 PM), <https://www.financialexpress.com/brandwagon/asci-announces-covid-19-advertising-advisory/2110091/>.

⁴ Sharma Harikishan, 'Redefining essential items: Why it was needed, and who it will impact', THE INDIAN EXPRESS, Sep. 26, 2020.

regulated in 'extraordinary circumstances' like war, famine, natural calamity and 'extraordinary price' rise that are all subjective and may result in interpretational disputes.

Around 18th century and during the Industrial Revolution, commercial and economic activities were governed by the principle-Laissez Faire, which meant the minimal interference of the State. This doctrine was based on Individualistic theory of absolute economic freedom to individuals and the assumption that a consumer possessed capacity and skill while making purchases or commercial transactions. The economic account of the nineteenth century divulges that there was a conflict between the consumers and sellers. With the view to make profit, producers, manufacturers and sellers monopolized the goods produced, dictated the terms and exploited the buyers in the era of individualism leading to the rise of capitalism. Consequently, this led to the concentration of wealth in the hands of the few, who dominated the economic market and cost the consumers their freedom to choose and capacity to bargain.

Nonetheless, in the latter half of the 19th century, with societies advancing, there was a boost in industrial development and production. Various legal, social and political philosophers like Sir John Stuart Mills, Jeremy Bentham etc. campaigned for the protection of the consumers against the unscrupulous manufacturers and traders and emphasized on regulative measures by the State¹. Bentham's Utilitarianism and other Social, economic and political philosophies like Marxism and Communism was a blow to capitalism. The doctrine of laissez faire withered away gradually and paved way to a socialistic society which aimed at the welfare of the people and protection of Consumer Rights came to be recognized as the socio-legal responsibility of the State.

However, there has been an unprecedented growth in capitalism and consumerism due to the rise in market activities, ameliorating living standards of human life and craze for luxuries and comfort. Accordingly, consumer disputes have risen and the State needs to be more observant and take necessary measures to protect its consumers, especially in the wake of the pandemic that has left them more vulnerable than ever. In the 14th century, the peasants revolt after the plague saw off feudalism, will capitalism meet the same fate after the pandemic or will we be forced to espouse a new model of capitalism and consumerism? Well, we have to wait and see.

¹ Dr. N.V. Paranjape, '*Law of Torts: Consumer Protection Law and Compensation under other Statutory Laws*', 458-459 (4TH ed. 2019).

PATIENTS' RIGHTS DURING THE PANDEMIC: A CRITICAL ANALYSIS

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ABSTRACT

Consumer Rights, Consumerism and related jurisprudence is presently in boom. When all the deficiencies in goods and services are viewed from the perspective of Consumer Rights, it is important to know about the Patients' Rights in case of medical negligence vis-à-vis the need for the medical professionals to work freely and fairly and also the issues regarding the same under the Indian Legal system.

Keywords: Consumer Rights, Patients' Rights, Medical Negligence, Consumer Protection Act.

1. INTRODUCTION

The growing awareness regarding patients' rights in Indian society has created a spurt in increased litigations relating to medical profession, proving the liability of doctors and the Redressal claimed for the suffering caused due to medical negligence. The Pandemic which has taken the physical and mental health of the world by a toll has had its impact on the Consumer Jurisprudence as well. Lack of laws on Pandemic/Epidemic, or the existing laws being outdated has added to the chaotic situation.

This paper throws light on the issues faced by Patients owing to the Pandemic and the contradiction between the rights of the patients with the need for the Doctors to work freely and fairly. The paper is divided into five units. While the first unit gives a brief introduction of the topic, the second unit deals with the definition of consumer and the rights associated with him, the third unit looks into the concept of medical negligence, the notion of reasonable care being associated with the medical profession, the lack of knowledge pertaining to the cure of Covid-19, the trial and error method incorporated by Researchers and Practitioners, the forth unit deals with issues being faced by doctors and other healthcare workers, and the fifth unit comes with the conclusion and suggestions with respect to the same.

1.1. The Pandemic

A Global Health crisis and the greatest challenge the World has faced since World War two. Spanning several countries and affecting the population in large numbers, a Pandemic can be called as a disease outbreak. The situation would worsen especially if such a disease is contagious. The Pandemic is however much more than a mere health crisis; it is an unprecedented socio-economic crisis. It has the potential to create devastating social, economic and political effects that will leave deep and longstanding scars.

This has made people fearful, anxious and sometimes they have found it difficult to access emergency treatment. India has a combination of government and private healthcare facilities. This has led to restlessness, irritation and sometimes despair when trying to find medical help. As a consequence of this, people have shown their frustration by verbally abusing and threatening to physically assault doctors and other healthcare workers.

2. Consumer

Under the Consumer Protection Act, 2019 'consumer' is defined as a person who buys any goods and hires or avails of any service for consideration but does not include a person who obtains goods for resale or goods or service for any commercial purpose.¹ Off late there is massive private investment in the sphere of health care system and patients who avail health services for consideration are very much bought under the purview of the Act.² Medical Negligence happens to be the cause for which the rights of the patients' are claimed to be enforced.

Under the very Legislation along with a generalized context of Patients' rights there come a bunch of relative rights such as right to safety, right to information, right to choice, right to be heard or right to representation, right to seek Redressal and right to consumer education.³

¹ Section 2(7) of The Consumer Protection Act, 2019. (Act 35 of 2019)

² *Indian Medical Association v. V. P. Shantha (IMA Case)*, 1996 AIR 550

³ Section 2(8) of The Consumer Protection Act, 2019. (Act 35 of 2019)

2.1. Right to Health

Apart from being a mere statutory right, right to health is a recognised right under the most fruitful provision of the Constitution of India¹ which also gives it an additional boost by making it one of the most important rights under the Indian Legal system.²

3. Medical negligence

Having conferred recognition to the above rights, most of the legal systems have had a spike in cases relating to medical negligence. The term negligence is defined as the absence or lack of care that a reasonable person should have taken in the circumstances of the case. It is now settled that a medical practitioner will bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care.³

Lack of knowledge pertaining to the novel SARS COV-19 coronavirus and its treatment, Medical practitioners and pharmaceutical researchers used the trial and error phenomenon against the deadly disease. The drugs prescribed to subside Malaria, Ebola and the Auto Immune Deficiency Syndrome (AIDS) were used to treat the novel virus, but the efforts were in vain, not much could be done about the same.⁴ While the above mentioned drugs could merely subside the symptoms, they failed in bringing the outbreak of the disease to a permanent halt. Research to come up with a vaccine is ongoing. The easy accessibility of information to laymen through the Internet as well as the other forms of media worsened the situation, mere rumours and stipulations galore across the Globe. While the patients and their families tried to enforce their right to health seeking medical help and at times even failing to avail the same, this medical emergency led to many other issues among which people attacking the medical professionals and related social workers for ineffective treatment or unavailability of adequate infrastructure.

4. Medical practitioners – the target

Doctors and healthcare workers who are responding to a global health crisis, trying to protect individuals, families and communities in adverse situations with stretched resources, shortage of personal protective equipment (PPE) and other equipments have found themselves as unexpected targets in the fight against the Covid-19. There have been several reported incidences of such violence against them during this time in India. Although the exact number of such cases cannot be determined, there are various glaring examples. The violence against the doctors and other medical personnel is an attribute of ignorance and fear, which is amplified by the pandemic. The type of attacks has ranged from verbal abuse, verbal threats or aggressive gestures in majority of cases.⁵ There have also been serious reports of manhandling.⁶

5. Conclusion & Suggestions

The jurisprudence of 'right' has its strings attached to the Natural Law School. The concept of 'right' has evolved and developed over a period of time. From mere recognition of the same to the enforcement; right has received utmost priority. It has emerged towards bringing all positives to the people in need including the patients but the same should never prove to be mighty towards a section of society which works for the safety and health of people. There is a need to strike a delicate balance between the rights of the patients vis-à-vis the need for the Doctors to dispense their duties freely and fairly. The following suggestions may be incorporated to achieve the same.

5.1. Better communication

A better and timely communication with the aggrieved patients and their family members is the key to avoid violence and untoward incidences. Due to shortage of time and to maintain social distancing norms, often the verbal and direct communication between doctors and patients is lacking during this pandemic. It leaves the patient and the family unsatisfied. The hospitals should take up the responsibility of designating counsellors or social workers to coordinate with them on a regular basis to allay any fears

¹ Article 21, The Constitution of India; Article 47, The Constitution of India

² *Vincent v. Union of India*, 1983 4 SCC 598

³ *Bolam's Test*

⁴ Hydroxychloroquine, Ivermectin, Favipiravir

⁵ Violence mars COVID-19 doctor-victim's burial, editorial, Times of India, 20 Mar 2020

⁶ Kapoor M C. Violence against the medical profession; *Anaesthesiol Clin Pharmacol* 2017; 33:145-147

5.2. Role of media

The print, the digital as well as the social media has a significant role in the spread of information in India and are known to sensationalise stories about medical negligence and malpractice. While the media platforms can play a positive role in the current pandemic situation collaborating with Government agencies to provide an effective information campaign to educate the public about the diagnosis, spread, containment and prevention strategies against the novel Coronavirus.

5.3. Government Strategy

The rising violence against doctors and healthcare workers has been a matter of concern for the Government of India and thus it has issued an Ordinance that makes violence against healthcare workers a non-bailable offence, punishable by up to 7 years' imprisonment. The Ordinance – an amendment to the Epidemics Diseases Act, 1897; seeks to protect doctors, nurses and paramedic and community health workers from harassment or physical injury, has been introduced following an upsurge of violence against healthcare workers since the pandemic. It has been welcomed by all quarters to rein in violence and punish the wrongdoers. It is acting as a deterring source. However, currently it is an amendment of the epidemic statute and it is unclear how the regulation will be applied once the pandemic has resolved.¹

5.4. Role of education and better primary healthcare

Education of the masses and better access to primary healthcare services is vital to reduce violence against doctors and healthcare workers. Time has to identify effective ways and means to improve and strengthen public health education and practice. This is necessary not only to educate the population but also to support the Medical practitioners in carrying out their fight against this global health crisis. For a sustainable protection of the healthcare workers, the current Ordinance needs to be further extended and incorporated into existing laws in the form of a strict, permanent legislation that is strictly enforced. It would improve the safety of the very individuals who carry out their duties fearlessly for the benefit of sick patients, either during a health crisis such as the current pandemic or during traditional times.²

¹ Hegde A. Violence in hospitals three steps towards mending doctor-patient relationships. <https://scroll.in/pulse/837572/violence-in-hospitals-three-steps-towards-mending-doctor-patient-relationship>, Accessed 02 Nov, 2020)

² Kartikeyan P Iyengar, Vijay Kumar Jain; 'Current situation with doctors and healthcare workers during COVID-19 pandemic in India', Poast Graduate Medical Journal (Statistics from Almetrics)

MISLEADING ADVERTISEMENT

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ABSTRACT

False and deceptive information is more on rise in today's competitive market, even the performance of our economy depends on the performance of market and if market function imperfectly through imperfect information and deceptive information, manipulation or through misrepresentation, consumer are forced to purchase products which are not satisfactory at all. every human doing business want to attract customer's on their side not realizing the fact that it might harm their business and may lose their customer base. Marketing field demands an accurate disclosure of information to live up to the customer expectation. Studies shows that the recent trend of the companies is to rack up profit as much as they can and they want to remain as interstellar which make them advertise half information or misleading information which is ultimately linked with negative purchasing intention of the customer hence this kind of business is not helpful as it deprive customer getting accurate information which help them in making good decision. Hence this research aims to focus on the importance of buyer being aware about a product or services through appropriate decision.

1. INTRODUCTION

Advertisement is one of the important parts of strategic Business in any competitive market as it helps in giving strength in functioning business smoothly. Business run across the world uses the method of advertisement Irrespective of their area and field. With the development of technology new playing role has been set for advertisement were advertiser has to be up to date with new media platform such as advertisement through mobile phone and website. Because of its role in the business, businessmen across the world spend trillion's of money to sell their product using different platform. It is true to say that without advertisement economy would have different prospect and impact on the production and distribution and also on the standard of living as well. No doubt that increase of advertisement at the same time does also create an imperfect market when used false and misleading information. Since it is most widely used to remain in the competitive world advertiser sometime conceal information and advertises in the manner which is customer friendly and helps them in building customer base. They tend to forget Business ethics which ultimately leads to misleading information with respect to products. The buyer must not only be informed with respect to the qualities of goods and services being offered, but he must be further persuaded to make his choice coincide with what a particular seller has to offer. Society also plays role equally in curbing the problem of misleading advertisement. Now a day's businessman have been using this as a tools which can become an uncontrollable demon threatening him and his business with losing confidence of buyer's in product and advertisement. As a result of misleading advertisement customer are forced to buy a product at higher cost. Misleading advertisement also involve several component in it. These are fraudulent advertisement, misrepresentation, unfair trade practice however we have different law to stop these practices and penalized if required. All kind of fraudulent advertisement is prohibited in law. As the Law clearly states that no enterprise shall make use of false or misleading advertisement as to price, quality, quantity, content, manufacturing date, method of use, place of origin etc in any other way to be known to public.

2. ISSUES RELATING TO MISLEADING**Advertisement**

✓ Misleading advertisement in today's time is in various forms. For instance, Milk Product, number of milk companies claims that there product helps in kids proper development also some companies claim that such as complan, horlicks claims that these product can help kids in increasing their height. Also some companies use celebrities for their brand endorsement and by this they claim that using their product customers can live up to their expectation.

✓ **Deceiving Public through**

Misrepresentation. There are some enterprise who in the business of real estate taking name of renound builders represent their project as one of the sister concerned and sell their project part through advertising the same and public believing the advertisement purchase their flats. Hence they create discrepancy in the fact This does not only happens in Real estate Business but also happens in Retail sector.

✓ Fraud: Fraud through their advertisement tries to deceive customer as much as they can. They tend to use different slogan to attract customer in their favor for example we sell the finest product, Bango cement sasta

nahi sabse achcha these are known as puffing advertisement by which mean public falsely believing they go buy their products.

3. My approach to misleading advertisement:

Misleading advertisement involves several things and using this mean they tend to create false information in customer mind. These are:

- Fake licenses
- False warranties
- Use of well known Actress to create faith in customers mind
- Discount and gifts
- Fraud

There is the several other ways through which companies tend to attract customer's upon which the law has also eye on. The best example is the case of:

3.1 Colgate Palmolive Pvt Ltd Vs Anchor health and beauty care ltd

tooth powder. Interim order granted in favor • Food Safety and Standards Act, of the plaintiff and the appeal against the 2006 (Department of Health and same is pending. Family Welfare).

1.2 A very recent case of Patanjali Pvt Ltd • The Cigarettes and other Tobacco which happened during This Pandemic with Products (Prohibition of one of the product name as Coronil. This Advertisement and Regulation of guaranteed to treat Corona in cheaper rate as Trade and Commerce, Production, no corona vaccine is invented till now. Mr. Supply and Distribution) Act, 2003 Ram Dev who happens to be the founder of (Department of Health and Family Patanjali and is trying to pick customer base Welfare).

Had launched Coronil using Media platform • Cable Television Network informing Public that it prevents corona and (Regulation) Acts 1995.

Can treat Corona as well. Several Leader • The misleading Advertisements in opposed against this product claiming that print media, which are vocative of Mr. Ram Dev is using this critical time in 'Norms of Journalistic Conducts' favor of him to make profit and as a result of are being adjudicated by the Press. this his product were band in many state but • Drug and Cosmetic Acts 1940 after the intervention of supreme court his • Press council Act 1978.

product was able to be launched. We have • The Food Safety and Standards also witnessed the seller in order to sell their Authority also provides for penal products they tend to lure customers through action against misleading various kinds of discount and gifts advertisement pertaining to food proposals. Hence false and misleading products.

advertisement is prohibited under law. In

- Under Indian Penal Code Of 1860

Here in this case the applicant has prayed for granting permanent injunction against the respondent for giving false and misleading advertisement which made a loss to Colgate Company and had asked for damage of around Rs 10, 1,000/- This case relates to the color combination in the container of the India, we have different legislations to look in to such acts:

- Trade mark act 1994
- The Drugs and Magic Remedies

(Objectionable Advertisements) Act, 1955 provide penal provisions for Fraudulent act under section 415

- Section 420 of IPC is attracted in case of cheating.

Hence through this legislation Law keep all companies to work under the authority of law. And to keep an eye on the enterprise there are different regulatory institution established in India.

CONCLUSION:

In spite of various legislation and having various Regulatory authorities in India we all have failed to control such enterprise playing with Public mind. In fact this has been increased more. The question of simply having

legislation has been raised by many social worker's but all gone in vein though we have also have certain decided cases which sets as an example for other who tries to deceive public but in numbers. Due to the competitive market advertiser has now sought different way to be in the competitive market. Hence the government has to come forward and see that the legislation is fully applied when required and the regulatory agencies works effectively

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CONSUMER PROTECTION IN THE AGE OF E-COMMERCE

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ABSTRACT

Time has changed. People don't need to go out to get the stuff they need. It's all available at the convenience of their smartphones or personal computers/laptops, that's the magic of e-commerce. E-commerce refers to the process of purchasing or selling goods and services, exchanging money, etc. electronically, i.e. over internet access. The e-commercial activities have become the most important and happening activities which are taking place in cyberspace. The Indian economy has been fully revolutionized. With the rapid growth and broad application of the e-commerce industry, the protection of the privacy of consumer e-commerce networks has become an important market environment for the smooth development of e-business. Consumer's comfort has been given the utmost priority. It saves time and effort efficiently. But there are secret cons in this pink image, which only seems to have pros. A growing number of e-commerce activities are raising the alarm about the safety of online consumers and their interests. Sometimes, without having remedies for consumers, the legislation becomes rigid. The main objective of the paper is to explain the development of Internet shopping and its Impact on Consumer behavior. Nothing comes without any risk, only a vigilant public will itself put a check on these malpractices of online merchants. We need to update ourselves with upcoming technology if we want to have our existence in this modern competitive world of change and e-commerce is the demand of time.

Keywords: Consumer's, Cyberspace, E-commerce, Consumer Protection.

INTRODUCTION

One of the main components of the market environment is the consumer. Consumers are individuals who use the products and services provided by business players. The preservation of consumer rights is also essential for the improvement of the business world. With the introduction of the Internet and the World Wide Web, traditional business practices have been applied to the electronic network. People are getting more and more attracted to online shopping. The e-commerce activity has been the most critical and most active activity taking place in cyberspace. Many e-commerce operations are taking place in cyberspace. The e-commerce platform has allowed Indian customers to cross national borders and experience the goods of their choosing. The growing number of events in e-commerce worries about the protection and interests of online consumers.

THE OBJECTIVE OF THE STUDY

The main purpose of the said study is:-

- To strengthen the rights of the Consumer, making the e-merchants more accountable and providing transparent redressal mechanisms that in turn will aid the consumers in making an informed decision in buying products and availing services.
- Convenient grievance redressals encourage more consumers to do transactions online and help enhance the faith in e-merchants which will eventually lead to the growth of the sector and enhanced profits.

Methodology

The Present research work is mainly based upon Doctrinal Research work.

- Secondary tools are used to collect information.
- Use of BOOKS, JOURNALS, NEWSPAPERS, INTERNET is being done to collect the relevant information.

Meaning: Concept of e-commerce

Electronic Commerce or E-commerce denotes the commercial transactions of different products and services by using a computer network such as the internet. So it deals essentially with business transactions that take place through the electronic medium. The e-commerce portal helps the customer to trade goods or services without any time and distance barriers. Not only in India worldwide, but there is also a huge development in the e-

commerce industry. Every day, the number of e-consumers is growing and individuals find it an easy way to get interested in shopping.¹

ADVANTAGES

For those who lack time to visit some tangible store, it plays an important role in the life of the customer to make shopping easy. It has multiple benefits which are as follows:-

- E-Commerce can be done 24 hours a day, 7 days a week.
- Consumers should not have to wait in long queues to buy anything.
- It is easy for consumers to compare prices as there are many shopping search engines through which they can compare prices on shopping websites.
- E-Commerce makes a variety of options for consumers.

International guidelines

International Organizations like the Economic Cooperation and Development (OECD)² have laid out international guidelines to be followed regarding e-commerce.

Some of the important guidelines are as follows³:-

- Consumers participating with e-commerce should be provided with clear and reliable customer protection that is not inferior to the level of protection provided in other modes of commerce.
- E-commerce companies should give due attention to customer desires and behave in compliance with fair business, advertisement, and marketing policies.
- Businesses should not try to limit the right of a customer to make unfavorable feedback, dispute charges, or communicate with government agencies and other complaint bodies or file complaints.
- Businesses should not reflect, or omit, or participate in any activity that is likely to be misleading, dishonest, fraudulent, or unjust. Businesses should not misinterpret or hide terms and conditions which are likely to influence the decision of a consumer about a transaction.
- Online disclosures should be transparent, precise, easily accessible, and conspicuous for customers to provide adequate knowledge to make an informed transaction decision.
- Businesses engaged in e-commerce with consumers should make readily available information about themselves that is sufficient to allow, at a minimum.
- Companies engaging in e-commerce with customers should have adequate detail describing the products or services provided to encourage consumers to make informed decisions about a transaction.
- Businesses engaging in e-commerce should have sufficient information on the terms, conditions, and costs associated with a purchase to enable customers to make an informed transaction choice. At every point of the transaction, customers should be able to quickly access this information.
- Companies should provide easy-to-use payment methods for customers and enforce security measures that are proportionate to payment-related threats, including those arising from improper access to or use of personal data, fraud, and identity theft.

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¹SaimunurRahman, *Introduction to E-commerce Technology in Business*, (Oct. 28, 2020, 10:04 AM), <https://www.grin.com/document/280494>.

² The OECD's Committee on Consumer Policy represents the main forum regulations of e-commerce at global level. It should be noted that e-commerce is a central element in the OECD's vision of the potential that our network world holds for sustainable economic growth.

³*OECD Guidelines for Consumer Protection in the Context of Electronic Commerce*, (Oct. 28, 2020, 08:44 PM), <https://www.oecd.org/sti/consumer/oecdguidelinesforconsumerprotectioninthecontextofelectroniccommerce1999.htm>.

- Consumers should be granted meaningful access to fair, easy-to-use, consistent and efficient mechanisms for settling domestic and cross-border e-commerce conflicts promptly and seeking remedy without incurring undue costs or burdens, as appropriate.
- Businesses should protect consumer privacy by ensuring that their practices relating to the collection and use of consumer data are lawful, transparent, and fair, enable consumer participation and choice, and provide reasonable security safeguards.

These universally accepted guidelines provide a legal framework to go by in the absence of particular laws regarding e-commerce consumer protection.

INDIAN LAWS

In India, the interests of the consumers and their rights are protected by the Consumer Protection Act, 2019. The basic aim of the Act is to save the rights of the consumers by establishing authorities for timely and effective administration and settlement of consumer disputes.

“*Consumer*” is any person who buys or hires any goods or services for a price.¹

“*Complainant*” means-

- (i) a consumer; or
- (ii) any voluntary consumer association registered under any law for the time being in force; or
- (iii) the Central Government or any State Government; or
- (iv) the Central Authority; or
- (v) one or more consumers, where numerous consumers are having the same interest; or
- (vi) in case of death of a consumer, his legal heir or legal representative; or
- (vii) in case of a consumer being a minor, his parent, or legal guardian.²

“*Complaint*” means any allegation in writing, made by a complainant for obtaining any relief provided by or under this Act, that-

- (i) an unfair contract or unfair trade practice or restrictive trade practices been adopted by any trader or service provider;
- (ii) the goods bought by him or agreed to be bought by him suffer from one or more defects;
- (iii) the services hired or availed of or agreed to be hired or availed of by him suffer from any deficiency;
- (iv) a trader or a service provider, as the case may be, has charged for the goods or the services mentioned in the complaint, a price over the price-
 - (a) fixed by or under any law for the time being in force; or
 - (b) displayed on the goods or any package containing such goods; or
 - (c) displayed on the price list exhibited by him by or under any law for the time being in force; or
 - (d) agreed between the parties;
 - (v) the goods, which are hazardous to life and safety when used, are being offered for sale to the public-
 - (a) in contravention of standards relating to the safety of such goods as required to be complied with, by or under any law for the time being in force;
 - (b) where the trader knows that the goods so offered are unsafe to the public;
 - (vi) the services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by a person who provides any service and who knows it to be injurious to life and safety;
 - (vii) a claim for product liability action lies against the product manufacturer, product seller, or product service provider, as the case may be;¹

¹Section 2(7) of the Consumer Protection Act, 2019.

²Section 2(5) of the Consumer Protection Act, 2019.

Information Technology Act, 2000

Providing legal recognition for e-governance and e-commerce was the key purpose of the Information Technology Act 2000. The transaction taking place through the various electronic medium was commonly called electronic commerce and legal recognition was ensured by the IT Act 2000². This Act has given legal recognition to electronic records which are considered as one of the significant characteristics of this Act³. This legal recognition is the foundation of all e-commerce undertaken by customers.

The validity of electronic contracts is specified in Section 10A of the Information Technology Act, 2000⁴. In India, e-contracts are regulated by the fundamental contract rules as laid out in the Indian Contract Act, 1872. This legal recognition guaranteed under information technology thus forms the backbone of all e-commerce operations and protections and enforces customer rights⁵. Although no clause in the IT Act protects the e-commerce industry for consumer protection.

Basically, in a broader environment, the IT Act allows for economic practices taking place in business to government and government to business. A common man in his everyday life never enters into such a large transaction through the electronic medium. For online trading, online shopping, and other minor transactions, one effectively ventures into e-commerce⁶.

While the IT Act serves as a forum that offers legal recognition for different e-commerce operations, there is no clear provision for protecting the interest of small consumers in the e-commerce industry. With the wide scope of the e-commerce sector, the number of individuals who use e-commerce platforms is growing in their everyday lives. It is high time for the legislature not to be a business client, but to recognize the majority of individuals participating in the e-commerce industry as household consumers. For the progressive growth of the e-commerce sector, the protection of the rights of these customers is also crucial.

RULES ON E-COMMERCE AND UNFAIR TRADE PRACTICES⁷:

The Consumer Protection (E-commerce) Rules, 2020 under the Act whose broad provisions are given below:-

- E-commerce entities are required to provide customers with details on return, refund, exchange, warranty and guarantee, shipment and delivery, payment methods, grievance redress mechanism, payment methods, payment security methods, charge-back policies, and country of origin. All are necessary to allow the customer to make an informed pre-purchase decision.
- These platforms would have to accept the receipt of every complaint from customers within 48 hours and correct the complaint within one month of the date of receipt. They will also have to appoint a grievance officer for consumer grievance redressal.
- The Consumer Protection (E-commerce) Rules, 2020 are mandatory and are not advisories.

¹Section 2(6) of the Consumer Protection Act, 2019.

²DR. FAROOK AHMAD, CYBER LAW IN INDIA 28 (4th ed., New Era Publications).

³Section 3 of Information Technology Act, 2000.

⁴Section 10A OF Information Technology Act, 2000 : Validity of contracts formed through electronic means. Where in a contract formation, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptances, as the case may be, are expressed in electronic form or by means of an electronic record, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose.

⁵Kanika Satyan, *E-commerce and Consumer Rights: Applicability of Consumer Protection Laws in Online Transactions in India*, (Oct. 29, 2020, 11:55 AM), http://papers.ssrn.com/sol3/Papers.cfm?abstract_id=2626027.

⁶Ravi Sharma, *Man orders iPhones, Snapdeal delivers pieces of wood*, Times of India, (Oct. 29, 01:05 PM) <http://timesofindia.indiatimes.com/tech/tech-news/Man-orders-iPhones-Snapdeal-delivers-pieces-of-wood/articleshow/45492851.cms>.

⁷Ministry of Consumer Affairs, Food & Public Distribution, (Oct. 29, 03:45 PM) <https://pib.gov.in/PressReleasePage.aspx?PRID=1639925#:~:text=The%20Consumer%20Protection%20Act%20C2019,i.e.%2020th%20July%202020.&text=The%20gazette%20notification%20for%20establishment,e%20commerce%20are%20under%20publication>.

- Sellers can not refuse to take back goods or withhold services or refuse refunds if they are faulty, deficient, shipped late, or if they do not comply with the description on the platform.
- The rules also prohibit the e-commerce companies from manipulating the price of the goods or services to gain unreasonable profit through unjustified prices.

PRODUCT LIABILITY

A manufacturer or product service provider or product seller will be held responsible to compensate for injury or damage caused by defective product or deficiency in services

The Basis for product liability actions are as follows:-

- Manufacturing defect.
- Design defect.
- Deviation from manufacturing specifications.
- Not conforming to express warranty.
- Failing to contain adequate instructions for correct use.
- Service provided-faulty, imperfect, or deficient.

PUNISHMENT FOR MANUFACTURE OR SALE OF ADULTERATED/SPURIOUS GOODS

In case of the first conviction, a competent court may suspend any license issued to the person for a period of up to two years and in case of second or subsequent conviction, may cancel the license permanently.

ALTERNATE DISPUTE RESOLUTION MECHANISM OF MEDIATION

- A case will be forwarded for mediation by the Consumer Commission if there is space for early arbitration and the parties consent to it.
- The mediation will take place in Mediation Cells, which will be set up under the aegis of the Consumer Commissions.
- No appeal against arbitration by mediation will be brought.
- Simplification of the Consumer Dispute Adjudication Process.
- Empowering the Commissions of the State and District to review their orders.
- Enabling a consumer to file complaints electronically and in consumer commissions that have jurisdiction over the place of his residence.
- Video conferencing for the hearing and assessment of the admissibility of complaints, until the matter of admissibility, is decided within a specified 21-day span.

OTHER RULES AND REGULATIONS

- There will be no charge for filing cases of up to Rs. 5 lakh, as per the Consumer Disputes Redressal Commission Regulations.
- The credit will go to the Consumer Welfare Fund (CWF) for the money owed to unidentifiable customers.
- Quarterly, the State Commissions will provide reports to the Central Government on vacancies, disposal, pending cases, and other matters.
- In addition to these general laws, the Central Consumer Protection Council Rules are set down in the Constitution of the Central Consumer Protection Council (CCPC).
- It will be an advisory body on consumer issues, headed by the Union Minister of Consumer Affairs, Food and Public Distribution with the Minister of State as Vice Chairperson and 34 other members from different fields.
- It will have a three-year tenure and will have a Minister-in-charge of consumer affairs from two States from each region- North, South, East, West, and North-East Region.

PRECAUTIONS TO BE TAKEN BY CONSUMERS

In addition to the laws protecting consumers, consumers themselves should be vigilant and take some precautionary steps when making deposits and orders online.

A few examples are as follows:-

- Be well informed about the dealer before making an online purchase;
- Read up on the privacy policy of the online portal or the dealer;
- Never make purchases from unknown online retailers;
- Read reviews making a purchase;
- Monitor your bank account from where you make the online transactions regularly. Prefer using credit cards for online purchases instead of debit cards.

COVID-19 AND E-COMMERCE

As the news of COVID-19 circulated and as the World Health Organization formally announced a pandemic, people reacted by stocking up. Health supplies such as hand sanitizers and masks and household products such as toilet paper and essential commodities were purchased online.

COVID-19 was uniquely different from what we had ever seen. It is fair to say that e-commerce was the saving grace when the country was plunged into complete shutdown, letting millions of people sit home and procure at their doorstep what they needed.

Soon, it was impossible to keep up with the demand for both brick-and-mortar and online stores, and price gouging for products became rampant.

ISSUES

Despite the advantages, like every technology, e-commerce is also not without negative aspects. At its core, it embodies a concept for doing business online. It has various negative impacts on the consumer which are as follow:-

- Defective or wrong product delivery;
- Refusal to replace wrong product delivered;
- Refusal or delay in refunding of money transferred for online purchase;
- Unreasonable delay in delivery of products purchased online;
- Issues regarding guarantee and warranty of products purchased online;
- Risky exposure of sensitive personal information shared for online transactions;

CASES

In the case of *LIC of India v. Consumer Education & Research Centre*,¹ the court has noted that there would be no occasion for a weaker party to bargain as to assume to have equal bargaining power. He has either to accept or leave the service or goods in terms of the dotted line contract. His choice will be either to accept the unreasonable or unfair conditions or to indefinitely forgo the service. Therefore, it must be remembered that if the products are terminated, the reimbursement to the customer by the trader may continue to an unreasonable period that may be unfair to the consumer since his money is blocked for a certain period of time. Also, refund period must then be specified.

Another problem of e-commerce is that it is very ambiguous to know who would owe the responsibility in the manner of supply of damaged goods, late delivery, etc. in the event of a conflict. If the goods services are bought from websites such as Flipkart, Snapdeal, etc. and then a conflict occurs, any lawsuit can be raised against them as they concern the ownership and management of a web portal that allows certain vendors who stock storage devices to sell items for a commission through their web portal and does not participate in the buying or selling of goods and service.²

Another point posed when Flipkart called it the Big Billion Sale on 6 October 2014 indicated that it sold Rs 600 crore (\$100 million). While the frenzied transaction indicates a coming of age for India's Big Billion Day e-commerce, the problems of e-commerce in India that were highlighted on social media platforms were also

¹LIC of India v. Consumer Education & Research Centre, AIR 1995 SC 1811.

²AshishAhuja v. Snapdeal, Case No. 17 Of 2014, (Competition Commission of India, May 19,2014).

unveiled. User complaints varied from technical concerns such as out of stock goods to those who alleged that before discounting them, Flipkart marked prices higher.¹

The other issue in e-commerce is related to the consumer when he receives faulty goods for totally wrong goods. Wwww.Shopclues.com was served a legal notice for selling fake JBLspeakers Premium audio devices manufactured by Harman International (India) Pvt.²

A few years back, there has been a case where a person who allegedly ordered a laptop received a brick instead.³

SUGGESTION

- Customers should shop only with known e-merchants, as anyone can set up a web site offering something for sale. By buying from bogus companies, a lot of customers waste a lot of money. If the e-merchant is not identified, ask for a paper catalog or brochure to get a better understanding of the kind of goods sold by the firm.
- Know what one is buying. Product and service information should be transparent and readily accessible on the website. If you have any questions about the products, ask them before making your order.
- One also needs to understand the terms, conditions, and costs related to e-transaction. Before one completes the transaction get an itemized list of all the costs involved in the sale and understand the terms of delivery of the goods or services that one is purchasing.
- If one needs to have a password to make his e-transaction, choose a password that has no logical connection to him. Also, keep a record of it for later use, so that one doesn't forget it.
- Use your credit card for e-transactions rather than your debit card.
- To detect billing irregularities, or improper transactions or deductions, check your monthly bank and credit card statement promptly and thoroughly.

CONCLUSION

E-commerce has revolutionized the Indian industry in the modern age of digitalization. It is a fantastic opportunity for both sellers and buyers, but only if the sales are managed and recorded to ensure that the market is not plagued with unethical activities that may prove to be harmful. It is of paramount importance to safeguard consumer rights as they are the foundation of every economy and everyone is a consumer in one way or another. The regulations ought to be up-to-date with technological advancements and innovations to ensure the smooth running of industry and a healthy economy.

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¹ KartikHosanagar, *Flipkart's Big Billion sale fiasco hands edge to competitors like Amazon, Snapdeal*, The Economic Times, (October 29, 05:05 PM),<http://economictimes.indiatimes.com/small-biz/startups/ecommerce-sales-what-does-flipkart-amazon-snapdeal-have-on-offer-today/articleshow/54640255.cms>.

² Harman send legal notice to Shopclues.com for selling fake JBL speakers, THE INDIAN EXPRESS (October 29, 05:55 PM), <http://indianexpress.com/article/technology/technology-others/harman-sends-legal-notice-to-shopclues-com-for-selling-fake-jbl-speakers/>.

³Bosco Dominique, *Teen orders on laptop for Rs 14000 online, get brick*, The Times Of India (October 30, 06:25 PM), <https://timesofindia.indiatimes.com/city/delhi/Laptops-worth-over-1cr-stolen/articleshow/53481380.cms>.

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CONSUMER PROTECTION AND E-COMMERCE: PROTECTION OF THE CONSUMER IN DIGITAL SPACE

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ABSTRACT

Information and Communication Technology (ICT) and Internet of Things (IoT) has brought paradigm shift in consumer behaviour and revolutionized the manner in which goods and services are offered to the consumers using the digital space. Electronic Commerce (E- Commerce) is one the most viable and lucrative business opportunity to reach out to the consumers through innovative marketing over Internet and creating a virtual marketplace where people can buy goods and services without physically visiting a market or a shop. While the Corona Virus Pandemic has left most of the traditional businesses struggling to meet their ends and looking for governmental support for survival, it has come as a blessing in disguise for e-commerce businesses who are selling their products through the digital space ensuring that the needs of the customers are satisfied maintaining social distancing and bare minimum physical contacts. Though e-commerce has created a win-win situation both for the consumer as well as the seller, certain aspects relating to misleading advertisement, problems relating to payments made online, privacy and secrecy of the personal data shared by the consumers, complexity of the applicable laws, jurisdictional issues of disputes, grievance redressal resolution methods and requirement of a robust regulatory mechanism to monitor and regulate transactions in the digital space, just to name a few, must be critically assessed to ensure that rights of consumers are protected. The Information Technology Act, 2000, the Contract Act, 1872 as well the Consumer Protection Act, 2019 and the Consumer Protection (E-commerce) Rules, 2020 are few laws governing the sphere of e-commerce. This paper attempts to critically analyze the issues concerning consumer rights in the virtual world and effectiveness of the existing laws in regulating e-commerce and stopping online fraud and unfair trade practices.

Keywords: e-commerce, digital space, consumer protection, consumer behavior, dispute resolution

1. INTRODUCTION

Use of internet is no more considered a privilege but it has become a necessity. Almost

4.66 billion people around the world now use the internet – that's close to 60 percent of the world's total population². Out of this, India has a total of 696.77 million internet and broadband subscribers.³ The increasing trend in the use of Information and Communication Technology (ICT) has brought a radical transformation in the manner in which business is carried out throughout the world. Various platforms offering internet-enabled businesses eradicates the existence of the long chain of wholesalers, retailers, middlemen and establishes direct interaction between the sellers and buyers for developing, marketing, selling, delivering, serving and paying for products and services. As a result of emergence of network-based technologies business enterprises have moved from a traditional business models to fully electronic environment both in terms of change in the mode of their operation and extension of their businesses beyond the geographical boundaries resulting in a paradigm shift from paper-based transactions to Electronic Data Interchange (EDI) wherein all data processing activities happens electronically and in the digital space in the globalized world. While internet-based marketplaces offers a friendly and attractive environment for the customers, a major part of such activities has been either unregulated or application of laws to such business activities has till now remained ambiguous to the common man which poses a number of legal and regulatory challenges pertaining to consumer protection rights.

2. RESEARCH METHODOLOGY

Research Methodology used in preparation of this paper is the systematic and theoretical analysis of secondary data. The collection of data from secondary sources include information from relevant laws, statutes, books, journal, reports, conference resolutions, internet, etc.

3. E-COMMERCE: MEANING, CONCEPT AND CONTEXT**4.1 Meaning and Definition**

² Global digital population as of July 2020, STATISTICA, (Nov. 16, 2020, 9:40 AM), <https://www.statista.com/statistics/617136/digital-population-worldwide/>.

³ Number of internet users in India from 2015 to 2020 with a forecast until 2025, STATISTICA, (Nov. 16, 2020, 9:42 AM), <https://www.statista.com/statistics/255146/number-of-internet-users-in-india>.

The General Assembly, in its resolution 70/186 of 22 December 2015, considered that e-commerce⁴ “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 computers, mobile phones and connected devices that promote consumer welfare”.⁵ An e-commerce transaction thus can be defined as “the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders”.⁶

4.2 Concept and Context

Electronic commerce or e-commerce, as it is popularly known in the today's world, is used to define any business, or commercial transaction virtually over the internet which may include consumer based retail sites, auction or music sites, over the top (OTT) movie platforms providing direct to home film distribution, on demand services and many more. Since, e-commerce allows consumers to electronically exchange goods and services with no barriers of time or distance, it is largely seen as the future of retail business. This term doesn't only cover just the act of purchasing goods and / or availing services through an online platform but also all other activities which are associated with any transaction such as Delivery, Payment facilitation and supply chain and service management.⁷

There is a misconception among people about applicability of e-commerce only in terms of making purchases over the internet. However, e-commerce has greater involvement in our daily lives than we realize. E-commerce, therefore, may be categorized into three broad segments. These are:

- 1) B2B (business to business) - Business-to business (B2B) e-commerce involves transactions directly between two business organizations.
- 2) B2C (business to consumer) - Business-to-consumer (B2C) model helps the businesses to reach out to the customers directly avoiding any middleman.
- 4 TD/B/C.I/CPLP/7, United Nations Conference on Trade and Development, Consumer protection in electronic commerce, UNITED NATIONS, (Nov. 16, 11:31 AM) https://unctad.org/system/files/official-document/cicplpd7_en.pdf
- 5 A/RES/70/186, Resolution adopted by the General Assembly on 22 December 2015, UNITED NATIONS, (Nov. 16, 11:39 AM) https://unctad.org/system/files/official-document/ares70d186_en.pdf.
- 6 <https://stats.oecd.org/glossary/detail.asp?ID=4721>
- 7 E-Commerce in India, Legal, Tax and Regulatory Analysis, NISHITH DESAI ASSOCIATES, (Nov. 16, 2020, 2:07PM), https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/E-Commerce_in_India.pdf.
- 3) C2C (consumer to consumer) – Under consumer-to-consumer (C2C) model, a consumer reaches out to another consumer directly over an online medium. Few examples include, selling used goods to another customer or posting reviews about a product to help another customer to evaluate the utility of the product.

4. THE CONSUMER IN THE DIGITAL SPACE: ISSUES RELATING TO CONSUMER AWARENESS, PROTECTION AND WELFARE IN INDIA

Consumer is considered as the king and is at the heart of all business activities. Businesses thrive on the wants and necessities of the end consumers and consumer behavior and spending pattern of the people. Digital technology has transformed modern businesses through better communication, access to information, wider choice and convenience. Consumers today spend an extraordinary amount of time with their smart phones and digital gadgets to engage with various brands which provide them with the products they need. Thanks to websites, blogs, reviews, testimonials, and other forms of online content, consumers now have the power to research everything they want to know about a product, service, or brand before making a purchasing decision.⁸ Today's consumers expect brands to have a digital presence, and nearly 30% prefer to communicate with brands via digital channels.⁹

Though consumers are benefitted from the tireless efforts made by the businesses to make products and services available through the virtual marketplace, certain valid questions about the quality of products and services, trustworthiness of the provider, security and confidentiality of data they share online including their financial data and most importantly the grievance redressal model for dispute resolution relating consumer rights protection needs to be addressed. There is an increasing need for the government to step in as a regulator of the internet-based trades and frame and execute laws which will not only educate and protect the consumer but also

provide adequate guidance to the businesses, using Internet of Things (IoT), artificial intelligence (AI) and peer platform markets (PPMs), to create a balance between consumer trust and ease of doing business. Below some basic problems related to consumer protection in the world of internet based businesses has been discussed.

8Brand Awareness: Why A Digital First Approach Is Essential, DMI BLOG, (Nov. 16, 2020, 10:04 AM), <https://digitalmarketinginstitute.com/blog/brand-awareness-why-a-digital-first-approach-is-essential>.

9supra note 4.

- Authentication and Identification
- Every valid transaction must be authenticated and recorded. Similarly, transactions over the internet between competent parties without any pre-existing relationship requires validation of identity and authenticity with respect to the party's capacity, authority and legitimacy to enter the contract. Since, such transaction happens largely between complete strangers without any pre-existing relationship, risks related to fraud and misrepresentation cannot be ruled out.
- Transparency and Disclosure
- Transparency and adequate disclosures build trust and confidence among the customers. A lack of transparency and overly complex, legalistic, or otherwise inadequate disclosures about how consumer data is collected, used and shared, appears to be a common issue involving e-commerce transactions.¹⁰
- Discrimination and ChoiceThe huge volume of consumer data collected, stored and processed by e-commerce enterprises helps in consumer profiling. While businesses can use these profiles to personalise offers in ways that benefit consumers, they could equally use them to discriminate against consumers in terms of pricing, the offers presented, or the way that information is presented. While personalisation may be economically efficient, and may benefit few consumers, leading to an unfair commercial practice. ¹¹
- RefundsFor every failed transaction where consumer account has been still been debited, the refund process is long and, in some cases, require the consumer to make repeated follow ups to get the money back.
- Manufacturing and Expiry DatesWhile buying offline a customer can always check the best before or the expiry date of the product, but in case of online purchase, the consumer does not know such details.
- Delay/Fraud in Delivery of the GoodsThe goods, purchased online, are sometimes not delivered within the timeframe given to the customer. Additionally, either many a times consumers are delivered¹⁰ Challenges to Consumer Policy in the Digital Age, Background Report, G20 International Conference on Consumer Policy, Tokushima, Japan, Sep. 5 to 6, 2019, (Nov. 17, 7:38 AM), <https://www.oecd.org/sti/consumer/challenges-to-consumer-policy-in-the-digital-age.pdf>¹¹ supra note 13the wrong product the or the delivered product varies in quality, size or weight in comparison to the description of the product on the shopping portal.
- Origin of GoodsSometimes consumers have to compromise with quality of the product, as the information regarding place of origin of the goods is not displayed at e-shopping platforms.Privacy and securityE-commerce portals collect large volumes of consumer data including personal data as well as sensitive personal data. This poses a potential privacy and security risks if businesses do not implement adequate security measures to protect customer data.
- Product safetyGoods and services provided online may pose IoT devices could also present a number of safety risks resulting from the failure to control such devices remotely. Connected products that were otherwise safe when placed on the market may become unsafe following, for example, a software patch or bug, or data breach.¹²
- AccountabilityConsumers may not be acquainted with the new technologies which may involve integration of different parties like the manufacturer, the seller and the intermediary, banks, payment gateways and delivery partners. Such a network may leave the consumer confused about the accountability and liability of the entities involved in a transaction if something goes wrong in a consumer transaction.
- InteroperabilityInteroperability is key to ensuring that different systems and devices can work together. While some restrictions on interoperability may spur innovation and could safeguard privacy and security, some level of interoperability is necessary in order to avoid "lock-in" and support consumer choice and

competition. Alongside hardware and software interoperability, consumer data interoperability is likely to be important in facilitating consumer choice and competition.¹³

- **Changes to Traditional Ideas of Ownership**¹²Challenges to Consumer Policy in the Digital Age, Background Report, G20 International Conference on Consumer Policy, Tokushima, Japan, Sep. 5 to 6, 2019, (Nov. 17, 7:38 AM), <https://www.oecd.org/sti/consumer/challenges-to-consumer-policy-in-the-digital-age.pdf>¹³supra note 15, at 10When a consumer purchases an IoT device (or a product using AI technologies), they buy the device itself (the hardware), and a license granting the right to use the software. The licensing conditions may limit the degree to which a product may be repaired, modified, resold, or interoperable with other devices. This may undermine traditional consumer assumptions regarding ownership.¹⁴
- **After sales support**Most IoT devices require software support and Internet connection to work effectively. If a manufacturer withdraws software support, this could mean a device does not function as intended. Further, a lack of support could make a device vulnerable to security breaches, which could result in risks to privacy, security or even. Products using AI technologies could similarly require aftersales support to ensure that they continue to function as intended.¹⁵
- **Consumer Grievance Redressal**The grievance redressal mechanism in cases of disputes between the consumer and e-commerce businesses is ambiguous or in certain cases doesn't exist. The consumers who become victim of online frauds or unfair trade practices of the e-commerce entities lack awareness as the authority that should be approached for redressal of their grievances.
- **Jurisdictional Issues**The last factor is that the online transactions are not restricted to geographical boundaries. A national consumer protection law will only regulate the transactions between parties located within the municipal jurisdiction to which the law extends. There are no international laws protecting consumer rights of the global consumer. In such a scenario, it is often difficult for a common man to ascertain the applicability of jurisdiction in cases of cross border transactions. Authentication and Identification
- Every valid transaction must be authenticated and recorded. Similarly, transactions over the internet between competent parties without any pre-existing relationship requires validation of identity and authenticity with respect to the party's capacity, authority and legitimacy to enter the contract. Since, such transaction happens largely between complete strangers without any pre-existing relationship, risks related to fraud and misrepresentation cannot be ruled out.
- **Transparency and Disclosure**
- Transparency and adequate disclosures build trust and confidence among the customers. A lack of transparency and overly complex, legalistic, or otherwise inadequate disclosures about how consumer data is collected, used and shared, appears to be a common issue involving e-commerce transactions.¹⁰
- **Discrimination and Choice**The huge volume of consumer data collected, stored and processed by e-commerce enterprises helps in consumer profiling. While businesses can use these profiles to personalise offers in ways that benefit consumers, they could equally use them to discriminate against consumers in terms of pricing, the offers presented, or the way that information is presented. While personalisation may be economically efficient, and may benefit few consumers, leading to an unfair commercial practice. ¹¹
- **Refunds**For every failed transaction where consumer account has been still debited, the refund process is long and, in some cases, require the consumer to make repeated follow ups to get the money back.
- **Manufacturing and Expiry Dates**While buying offline a customer can always check the best before or the expiry date of the product, but in case of online purchase, the consumer does not know such details.
- **Delay/Fraud in Delivery of the Goods**The goods, purchased online, are sometimes not delivered within the timeframe given to the customer. Additionally, either many a times consumers are delivered¹⁰ Challenges to Consumer Policy in the Digital Age, Background Report, G20 International Conference on Consumer Policy, Tokushima, Japan, Sep. 5 to 6, 2019, (Nov. 17, 7:38 AM), <https://www.oecd.org/sti/consumer/challenges-to-consumer-policy-in-the-digital-age.pdf>¹¹supra note 13the wrong product or the delivered product varies in quality, size or weight in comparison to the description of the product on the shopping portal.

- Origin of Goods

Sometimes consumers have to compromise with quality of the product, as the information regarding place of origin of the goods is not displayed at e-shopping platforms.

Privacy and security

E-commerce portals collect large volumes of consumer data including personal data as well as sensitive personal data. This poses a potential privacy and security risks if businesses do not implement adequate security measures to protect customer data.

- Product safety Goods and services provided online may pose IoT devices could also present a number of safety risks resulting from the failure to control such devices remotely. Connected products that were otherwise safe when placed on the market may become unsafe following, for example, a software patch or bug, or data breach.¹²
- Accountability Consumers may not be acquainted with the new technologies which may involve integration of different parties like the manufacturer, the seller and the intermediary, banks, payment gateways and delivery partners. Such a network may leave the consumer confused about the accountability and liability of the entities involved in a transaction if something goes wrong in a consumer transaction.
- Interoperability Interoperability is key to ensuring that different systems and devices can work together. While some restrictions on interoperability may spur innovation and could safeguard privacy and security, some level of interoperability is necessary in order to avoid “lock-in” and support consumer choice and competition. Alongside hardware and software interoperability, consumer data interoperability is likely to be important in facilitating consumer choice and competition.¹³
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- Cyber Attacks The customers are often victim of cyber attacks while transacting over the internet. This may include phishing attacks, identity thefts, denial of service (DOS) attacks, man in the middle attacks which jeopardizes the personal data as well as financial privacy of the customers. There are hardly any solutions available to the consumer in case such incidents happen during an e-commerce transaction.¹⁴ Id. at 10¹⁵ Id. at 10-11

5. LAWS GOVERNING E-COMMERCE: ANALYSIS OF THE REGULATORY FRAMEWORK AND GOVERNANCE MODEL

There are various laws in India, which regulate e-commerce operations within the country. These laws are:

- Indian Contract Act, 1872: The Indian Contract Act, 1872 govern all contracts executed between competent parties including e-contracts. The essential elements required for a valid contract like acceptance, revocation, etc. under Section 10 of the Indian Contract Act, 1872 are applicable to an e-contracts as well.
- Consumer Protection Act, 2019 (CPA, 2019): CPA, 2019 replaced the 3 decade old Consumer Protection Act, 1986 (CPA, 1986) was enacted regulate e-commerce transactions and to protect the rights of consumers. The Act provides six basic rights to the consumers viz., right to be protected against unfair

trade practices, right to be informed, right to be assured, right to be heard, right to seek redressal against unfair trade practice and restrictive trade practices and right to consumer education. The consumer has same rights if purchasing goods or services through e-platforms also.

- The Information Technology Act, 2000 (IT Act): The IT Act validates the electronic transactions stating: "An e-commerce transaction is legal if the offer and acceptance are made through a reasonable mode". The Act provides legal framework to internet governance and it also gives recognition to digital signatures and electronic records.
- The Information Technology (Amended) Act, 2008: To increase the security of e-commerce transactions, the Act was amended in 2008. The Information Technology (Amendment Act), 2008 introduced Section 10A which afforded validity to contracts formed through electronic means. The amended Act also provides for protecting sensitive personal data under Section 43A.
- The Information Technology (Intermediaries Guidelines) Rules, 2011 (IG Rules): IG Rules imposes liability on the intermediary to remove any prohibited information, published either knowingly or unknowingly, within 36 hours of its knowledge.
- FDI Policy: The Foreign Direct Investment (FDI) policy regulates foreign investment into the e-commerce industry.
- Copyright Act 1957 and Trademark Act 1999: Under these Acts, any seller selling fake goods of a well-known brand through e-commerce platforms are liable.
- Food Safety and Standards Act, 2006 and Drugs and Cosmetics Act 1940: Under these Acts, e-commerce platforms selling adulterated or prohibited goods are liable.

Despite of the multiplicity of laws in India, the consumer is yet to find trust and confidence while performing online transactions.

6. THE NEW CONSUMER PROTECTION REGIME IN INDIA

Enforcement of the new Consumer Protection Act, 2019 and the Consumer Protection (E- Commerce) Rules, 2020 has come as a relief to the consumers. We will see how far the new legislation tries to resolve the consumer protection issues discussed above.

The Consumer Protection Act, 2019

In India the Consumer Protection Act, 2019 (CPA, 2019) which came into effect on 20 July 2020 by replacing the three-decade old CPA of 1986, governs the sphere of consumer protection and regulates all transactions between consumers and service or goods providers including e-commerce transactions. The CPA, 2019 incorporated adequate provisions to regulate organizations involved in e-commerce. The key features of the CPA, 2019 are:

- The CPA 2019 covers rules for prevention of unfair trade practice by e-commerce platforms.
- In view of the Supreme Court of India judgement in M/s Afcons Infra Ltd. v. M/s Cherian Varkey Construction Company Ltd. and Other CPA 2019 has introduced mediation in consumer cases, where disputes can be referred to mediation either before the commencement of proceeding or at any time during the proceeding.
- CPA 2019 also includes a provision of product liability which makes manufacturers, traders, sellers and service providers liable from delivering defective products or deficient services.
- CPA 2019 establishes three-tier consumer dispute redressal machinery at the national level, with the National Consumer Disputes Redressal Commission (NCDRC), the state, with state commissions, and the district level, with district commissions.
- 'Transparency' and 'Accountability' are the fundamental aspects of the CPA, 2019. The Act makes it compulsory for every e-commerce entity to provide information relating to return, refund, exchange, warranty and guarantee, delivery and shipment, modes of payment and grievance redressal mechanism, among other things to enable the consumer to make an informed decision.
- The Act mandates that all e-commerce enterprises must establish adequate grievance redressal mechanisms and appoint a grievance officer to acknowledge and resolve every consumer complaint within a specified time.

- Under the new Act, e-commerce entities are required to obtain a clear consent from the consumers on its platform and such consent must not be recorded automatically or by pre-ticked checkboxes. Consumer Protection (E-Commerce) Rules, 2020 The Government notified Consumer Protection (E-Commerce) Rules 2020 (E-Commerce Rules) came into force with effect from 23 July 2020. The E-Commerce Rules acts is considered as complimentary to the CPA, 2019 in regulating e-commerce.
- Under the E-Commerce Rules e-commerce include all goods and services bought or sold over digital or electronic network including marketplace and inventory models of e-commerce.
- The E-Commerce Rules even applies to any e-commerce entities which are not established in India, but systematically offers goods or services to consumers in India.
- The Rules lays down duties of e-commerce entities, liabilities of marketplace e-commerce entities, duties of sellers on marketplace and duties and liabilities of e-commerce entities which including displaying total price of goods and services offered for sale along with a break-up of other charges, mentioning the 'expiry date' of goods offered for sale and the 'country of origin' of goods and services and mandating e-commerce players have to display detailed instructions about return and refund.
- The Rules prohibit e-commerce entities from quoting unjustified prices in order to gain unreasonable profit and prohibits discrimination between consumers of the same class or making arbitrary classifications between consumers.
- Any non-compliance of the Rules leading to injury or death of consumer may be punishable with imprisonment or fines depending upon the nature of non-compliance and the injury caused.

7. CONCLUSION: SUGGESTIONS TO A BETTER DIGITAL WORLD

Indian has many fragmented laws and regulations which apply to e-commerce transactions. The enforcement of the Consumer Protection Act, 2019 has to some extent mitigated some of the issues in relation to consumer protection in the virtual marketplace. The implementation of the new Act is yet to be tested. Whether the new Act will be effective in providing adequate protection to the consumers against malpractices by the goods or service providers is still unclear. The world of internet is so vast, and possibility of fraud is so high, it remains doubtful to what extent CPA, 2019 can be implemented. International guidelines to control e-commerce transactions like the UNCITRAL Model Law on Electronic Commerce (MLEC) has provided a set of guidelines for legislatures of member countries to frame domestic laws to regulate e-commerce. Based on the MLEC guidelines the author herein has outlined the following suggestions which may be helpful for the India to further strengthen the cause of consumer protection:

- The government must focus more on implementation strict norms for protection of online financial transactions.
- The Personal Data Protection (PDP) Bill, 2018 must be implemented at the earliest to ensure and safe and secure processing of personal data on the consumers including cross border data transfer to e-commerce companies based out of India.
- Regulatory framework must be developed to address issues related to cyber security and online financial frauds.
- MSME enterprises must be encouraged conduct their business using online platforms.
- The government should ensure that the reach of e-commerce should not be restricted to urban and semi-urban area only. The fruits of online businesses should reach out the larger population residing in the rural areas which will in turn strengthen the economy. Mass awareness programs must be carried out by the Government of India to educate the common men about their rights as a consumer.
- The grievance redressal procedures must be made simple, affordable and accessible to the common public.
- The government should educate the consumers about their rights and the liabilities and duties of the e-commerce entities and sellers under the new Consumer Protection Act, 2019.
- The government should run social media campaigns on consumer protection.
- India should develop coordination with other countries to create an atmosphere of harmony and international coordination

Thus, it may be concluded that an in-depth analysis of possible issues and risks that consumers will encounter while indulging in e-commerce transactions is the need of the hour and effective governance strategies must be developed to ensure that 'ease of doing business' doesn't deprive the consumers of their rights.

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CONSUMER PROTECTION AND E-COMMERCE

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ABSTRACT

In this paper the author tries to highlight the consumer protection and e-commerce industries under the lens of new legislation along with the replaced act through non-empirical research method.

The revolution in modern world has changed many aspects in human life which results in both boon and bane. One such experience is seen in the field of consumer market. Decades ago, we have seen people going around to markets and purchasing their needed products with all enquiries in person, still this practice is seen in some areas but largely the community is attracted towards "a new branch of old tree" i.e, Online shopping.

E-commerce has emerged as a modern space or platform for all the needs of the society from nook and corner. On the other hand, online shopping has an ideal medium for consumers of 21st Century is concentrating more on direct selling to the consumer without intermediators. New generation i.e., netizens are the pre-dominant invitees to this cyberspace. Online stores such as Amazon, Flipkart, Myntra, Ebay, Quikr, Shopify, jio mart etc., and banks services apps such KBL, YONO etc., and other money transacting app such as GOOGLE PAY, PHONE PE, PAYTM etc., the Drug and Cosmetic industries, Img Healthcare industries etc. having been in regularly attracting consumers by providing products from all the corners of the society and they have turned up to be a platform to many sellers too. Both the buyer and supplier are benefited by these online stores without making more hard work and just a click away the product is ordered.

The new generation digital consumers are demanding a better customer experience irrespective of companies being big or small or old or new, on the other hand companies are scrambling to deliver experiences according to consumers expectations and are detour the traditional practices. This actually as lead to dramatic shift to a practice of B2C by origin of digital avenues. In the present era, every companies are trying to build their own stores and creating platform to get closer to the consumer.¹

The victory/success or downfall of the business is dependent on the Consumer's satiation. Consumer's interest and E-commerce businesses' interest are protected by the enactment of legislation by appropriate Government to regulate and control the error, carelessness, wrong identification, fraud play, misconception in the field of ONLINE through the channels of consumer redressal forums in different tiers and consumer protection authorities along with other legislations. The more important task of the legislations and authorities are to curb these misleading, unfair practices, hidden agendas of the industries by implementing more stringent laws and also to create awareness regarding the rights of consumer's enshrined under the law.

Keywords: Consumer, Rights, Protection, E-commerce, Regulations, Implementation.

INTRODUCTION:

The origin of a consumer can be traced through survival of different industries with different products and services. A consumer is not only a salient backer to the industrialists but also the very backbone of the financial structure of society.² The ultimate destiny of these differently named industries is Consumer and consumer satisfaction. Every industry which are producing a product or serving any services have to keep in mind about the perspective of consumer and their interest. Every manufacturer or producer do produce with an intention of making profit and retain dominant in the market industry or to survive in the industry. In the process of competition for survival, they adhere to deviant practices such as misleading advertisement, manipulation, deceiving, replacing wrong objects etc. For instance – 'A' has ordered a mobile phone through a famous app, the product which is delivered is defective in nature, at this instance what are his rights and whom he should approach for redressal or grievances against the defective product and the manufacturer. Here comes the legislation as a rescuer to uphold the rights of the aggrieved consumers by enforcing and implement stringent rules and regulations with appropriate measures and authorities for culmination of these aberrant tendency by admitting and disposing the grievances of consumer speedily.

¹ Why direct to consumer - eCommerce, www.scalefast.com visited on 13.11.2020

² Direct selling laws in india, www.ipleaderblog.com visited on 13.11.2020

Who is a Consumer?

Sec.2(d) of the Consumer Protection Act, 1986 - consumer means any person who - (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment, and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment, and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person; (but does not include a person who avails of such services of any commercial purpose).¹

The Consumer Protection Act, 2019, has given wider definition of Consumer – as any person who buys any goods irrespective of offline or online, teleshopping, direct selling or multi-level marketing.²

Generally speaking, consumer is a person or group of persons who pay to consume or enjoy the product or services of the manufactures or sellers for a consideration with the approval of the seller, exclusive of commercial or resale interest. However, the beneficiary of the services is also a consumer.

RIGHTS OF CONSUMER

Consumer rights are immanent with the purchase of goods or services, which are guaranteed under the Act are as follows:-

- i. **Right to Safety**³: The right to be protected against the marketing of goods and services which are hazardous to life and property. Example: Expired products, Rotten consumables and unsealed packets, Appliances such as iron, microwave which are defective products.
- ii. **Right to be informed**⁴: Information provided by the manufacturer or sellers will entitle consumers to make rational decision. Some of such information are with regard to quality, quantity, purity, potency, standard, date of manufacture and method of using the commodity.
- iii. **Right to Choose**⁵: Consumers shall be given absolute right to choose any goods or services available in divergent varieties according to his/her/their interest and needs. There shall be no influences from the sellers which if done, shall be treated as interference with the right of choice.
- iv. **Right to be heard**⁶: A predominant right of a consumer. They can raise voice against the defective product and erring manufacturers/sellers/producer by registering complaint with the appropriate authorities such as consumer redressal forums at three level of tiers viz., District forum, State forum and National forum with prescribed pecuniary jurisdiction respectively and for quick redressal.
- v. **Right to seek redressal**⁷: This right provides compensation to the consumers against unfair trade practice of the seller. For instance, if the quantity and quality of the product do not conform 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, taking back of the product with refund of money, changing of the product by the seller.⁸
- vi. **Right to Consumer Education**: It means to have access to programs and information that help consumers make better decisions before and after purchase. Instructions and guidelines for consumers are issued by

¹ The Consumer Protection Act, 1986

² Consumer Protection Act, 2019 : A Primer, www.legaleraonline.com visited on 15.11.2020

³ <https://consumerhelpline.gov.in/consumer-rights.php>

⁴ ibid

⁵ ibid

⁶ ibid

⁷ ibid

⁸ Consumer Protection Laws of India, Author: Rajkumar S. Adukia visited on 30.10.2020

the government departments and NGOs.¹ Creating awareness by campaigns through state agencies regarding the consumer laws, rules and regulations.

CONSUMER RESPONSIBILITY

Rights are inbuilt house of responsibilities. It's a state of being accountability for the act performed or to be performed. Consumer who is exercising a right shall be more cautious about his responsibility or duty. Some of such responsibilities are as follows:-

- a. **Misleading information and Advertisement**² - both these play integral part of our lives which cannot be avoided, but makes to be more cautious of deceptive advertisement. For instance: - selling a product through a catchy advertisement and concealing information's without qualifying for the standards as per the rules.
- b. **Certified Products:** this is the process where the products undergoes all the required tests and analysis to put forth the quality, performances as per the standards fixed by government bodies such as BIS HALLMARK issued to gold jewelry for an example 916 hall mark, AGMARK issued to agricultural products, ISI seen in Helmets, FPO issued to processed foods such as ketchup, pasta, cheese etc., Non - polluting vehicles mark issued to emission standards, Organic foods.³
- c. **Demanding bill for the product:** Bill ensures the rights of the consumer and to fight for the cheap and adulterated products. On the other hand, it also ensures that the appropriate government receives tax from the products sold. Bill is conclusive evidence for the purchase. Hence, every consumer must demand bill for the all the products purchased, as it creates consciousness of being responsible.
- d. **Green consumer:** The green consumer is someone who is environmentally and socially conscious and which leads him/her to purchase the products that are eco-friendly. Over the last few decades, it is being observed that people are changing their trends and lifestyle in a more environment conscious way paying more responsiveness towards green oriented behavior worldwide.⁴ These are the products which are bio-degradable and environmentally friendly in nature and has more beneficial impact on the present life style.

E-COMMERCE

Electronic Commerce is a technologically driven and fastest growing industries in the global economy. Here the activities are carried out through devices which are engaged in online purchasing or selling of goods and services, transaction of funds and exchange of data in agreeable conditions. For example - Myntra.com, Amazon, Flipkart, Paytm, OLX, Quirk so on. In short, e-commerce is a platform for businesses with a moto of accomplishing the purpose of many knowns and unknowns. The activities of e-commerce are performed via., mobile apps, live chats, online shopping, websites, chatbots and online auctions.

E-commerce as commercial transactions, involving both organizations and individuals, that are based upon the processing and transmission of digitized data, including text, sound and visuals images and that are carried out over open networks (like, the internet) or closed networks (like, AOL or Mintel) that have gateway onto an open network.⁵

E-Commerce refers to all the legal and regulatory aspects of internet and the www and anything concerned with the activities of netizens which comes within the ambit of cyber law.⁶

E-commerce is operative in Four segments⁷ such as

¹ ibid

² Fundamental Rights and duties, article in www.lawyerred.in visited on 30.10.2020

³ <https://www.jagranjosh.com/general-knowledge/certification-marks-issued-for-different-products-in-india>, visited on 01.11.2020

⁴ Emerging Green Consumerism in India, Author: Seema Mahalwat, publisher -ignited mind journals, Volume 15 issue -7 E-ISSN: 2230-7540

⁵ The organization for Economic co-operation and development.

⁶ An Overview of E-commerce under Cyber Law, www.blog.ipleaders.in, visited on 08.11.2020

⁷ Emerging trend in business E-commerce, www.toppr.com visited on 01.11.2020

- a. **Business to Business** – here companies are doing business with each other such as manufacturers, wholesalers, retailers etc.,
- b. **Business to Consumer** – here companies sell the goods directly to its consumers through their websites based on the product reviews, products pictures.
- c. **Consumer to Consumer** – here consumers sell their own personal goods and assets we can see only direct contact between the consumers and no involvement of companies.
- d. **Consumer to Business** – here consumer provides goods or services to companies.

Advantage¹ and dis-advantage of E-Commerce²

ADVANTAGES

- a. Provides the sellers to reach the nook and corner of the globe without geographical barriers
- b. Higher margin of profit by eliminating maintenance cost of shop.
- c. Personalized messages at every step and tracking systems.
- d. Quick delivery of goods and savings of time and energy of both the consumer and company.
- e. Functional 24X7 no fixed timing for shopping.
- f. Direct contact without any intermediaries.

DISADVANTAGE³

- a. Higher cost for startup in setting up hardware and software, training employees.
- b. Failure, is at high risk for lack of maintaining the relationships.
- c. Impersonal, lack of tactile or personal touch of products such as interior design and jewelry.
- d. Breach of security, big concern about the customer information's.
- e. Problems with shipping, delivery and sometimes mix-ups etc.

Outcome of E-commerce

Electronic commerce emerged as a new concept bypassing the conventional system of business and it's very evident that e-commerce or digital world is more affirmative and to make it more consumer friendly the new enactment Consumer Protection Act, 2019 is introduced by replacing the old enactment of 1986. The new act has more avenues or channel focused to enhance the implementation of the stringent rules for betterment of e-consumer's interest and to proceed against the e-commerce websites for violation of consumer rights. The act of 2019 envisages the guidelines of DTC to be applicable for e-commerce, as a matter of fact that the manufacturers distribute the product and service directly to the consumers via distribution centres across the country without entertaining pyramid scheme seen in chit funds and other companies. This ITBT era is witnessing DTC becoming an "integral part of retail trading like other verticals including big retail, small retail, e-commerce and self-employed groups."⁴

Direct to Consumer is a popular strategy played by manufacturers to avoid the active participation of middlemen or intermediators and to make direct entry to market. D2C develops closer bond with the consumers by eliminating barriers between them and exercises powers to control its brand, reputation of their brand, sales tactics, marketing⁵ these companies take full ownership and end-to-end customer experiences. On the other hands they have to compete with the already existing and gigantic entities who has huge customer followers for example Walmart and Amazon.

The provision of law mandates the entities of E-commerce or online platforms to get registered with well updated websites, relevant identity proof, pan, licensee of trademark or service mark, electronic details or

¹Emerging trend in business E-commerce, www.toppr.com visited on 01.11.2020

² E-commerce, author Valdimir Zwass, www.britannica.com

³ E-commerce, advantage and dis-advantage, www.blog.apruve.com visited on 01.11.2020

⁴ E-paper, The Economic Times, 13th November, 2020, English edition, visited on 13.11.2020

⁵ D2C: ways to get in 2020, www.cordena.com, visited on 13.11.2020

records to be maintained, contact details, quality information etc., to for quick and better access of consumers and they are obligated not to indulge in deceptive, misleading and misrepresentation or asking for any benefits relating to entry or renewal fee or recruitment fee.

In Direct selling both the direct seller and direct selling entities are bound by the contract as per Sec.10.¹ The agreement must be in writing with the content such as free consent, cooling-off period, buy-back or repurchase.² Consent is the heart and soul of every agreement and contract. If consent is due to cohesion the aggrieved party can approach the court to exercise their rights and to get compensated for the loss suffered or for damage. "Any person who sells or offers for sale, including on an e-commerce platform/marketplace, any product or service of a Direct Selling Entity must have prior written consent from the respective Direct Selling Entity in order to undertake or solicit such sale or offer."³ Hence there shall be code of ethics between direct selling entities and the online e-commerce platforms for smooth running or free flow of the trade from both the ends.

It would be incomplete if we don't talk about "Ignorance is bliss." Internet Service Provider are liable for the activities of its customers is generally based on a knowledge of the customer's activity. If unaware of the behavior of its customer, can withdraw from holding the ISP liable for that behavior. However, if the ISP becomes aware of the customer's activity, or should have become aware of the activity with reasonable diligence, it's more likely to hold the ISP liable for its customer's actions. In many instances ISP liability is equally applicable to service providers who do not connect directly to the Internet, such as bulletin board operators and proprietary information providers.⁴ Generally, information regarding the products and manufacturers are to be provided in marketplace model goods/services made available for sale electronically on website should clearly viz., name, address and other contact details of the seller, post sales, delivery of goods to the customers and customer satisfaction will be responsibility of the seller.⁵ E-commerce as an online platforms enjoys a status of intermediaries under Sec.79 of IT Act and to be a safe harbour protection⁶ as they are a mere facilitators and hosting Third party informer or data communicator. For retaining the continuous status of intermediaries, the online entities have to meet and comply the criteria as per the Platform's Policies as per the Intermediary Guidelines, 2011 and not to fall foul which requires intermediaries to remove or disable access to certain content on the basis of user requests.⁷ Whereas, the amended Rule, 2018 talks about the specific role of intermediaries such as not to host, display, upload, modify, publish, transmit, update or share any information which might affect public health and safety and Critical Information structure.⁸ To make the e-commerce more user friendly the government is taking more crucial steps by implementing technological automated tools and mechanisms for identifying and removal the apps which threat to public safety.

CONCLUSION

Decades ago no one believed the one could access to any thing and everything from nook and corner of the world just by a click to buy and click to pay. Never there was a imagination of working in computer's, watching movies, television shows in mobile, more to add services such as money transaction via bank applications and booking tickets, cashbacks etc., yes e-commerce did happen to be true. Elevating graph of Consumerism is seen in e-commerce or digital world. New legislations have been materialized to stop the fraud play, deviant or misdemeanour behaviour against consumer. The improvised legislation is upholding the consumer interest in many aspects by channelizing more resources to be resorted in case on any discrepancies, inconsistency or divergence. But still there remains a question Does the Act provide or grant orders at the

¹ Indian Contract Act, 1872

² Direct Selling Laws in India, www.blog.ipleader.com visited on 15.11.2020

³ Clause 7(6) of DSG, Amazon Sellers Service Pvt Ltd., V. Modicare and others, CM.APPL. 32957/2019 page - 5.

⁴ ISP Liability, www.bitlaw.com visited on 15.11.2020

⁵ Press note -2, Para 5.2.15.2.4, Ministry of Commerce and Industry

⁶ Sec.79(2), Information Technology Act, 2008

⁷ Sec.79(3), Information Technology Act, 2008

⁸ Analysis of Information Technology intermediaries guidelines amendment rule, 2018, www.mondaq.com visited 15.11.2020

earliest for the irreparable injury or loss suffered and suffering? Does the Mechanism set up will function in compliances with guidelines Or do we need more effective mapping of authorities?

CONSUMER BEHAVIOUR IN TIMES OF PANDEMIC

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ABSTRACT

Corona Virus Pandemic is not a normal crisis and the lockdown and social distancing mandates have disrupted the consumer habits of buying as well as shopping. The behavior of the consumer plays an important role in maintaining profit and market reputation of any product and it has been impacted severely due to COVID-19 pandemic. This exploration is focused on recognizing the factors which have triggered such changes and ranking the factors based upon the degree to which they have influenced the consumer behavior. The online cycle as simple as it tends to be for the customer, while preparing in the way to break down and track their conduct. The new habits are learned and improvised by the consumers. For instance, consumers cannot go to the store, so the store comes to home. It is likely Consumers go back to old habits, they will be modified by new regulations and procedures in this way consumers shop and buy products and services. In the long term Consumers are adapting new habits and behaviors that many anticipate will continue. It emerge by technology advances, changing demographics and innovative ways Consumers have learned to cope with blurring the work, leisure, and education boundaries.

Keywords: COVID Pandemic; Consumer habits: New Regulations for shopping; Customer experience

INTRODUCTION

The aim of this research paper is to examine the impact on consumer behavior in times of Covid-19 pandemic. Will the customers forever change their utilization propensities because of lockdown and social removing or will they return to their old propensities once the worldwide emergency is finished? Will there be new propensities customers will gain because of new guidelines identified with air travel, shopping at the strip malls and going to shows and games? Will buyers locate that setting off to a store or going to a function face to face is a very remarkable issue, and along these lines, it is smarter to let the store or the function come to home? Somewhat, this has been occurring for a long while in sports competitions and amusement by communicating them on TV and radio.

While utilization is ongoing it is likewise logical. Setting matters and there are four significant settings which administer or disturb buyer propensities. The first is change in the social setting by such life functions as marriage, having kids and moving starting with one city then onto the next. The social setting incorporates work environment, network, neighbors, and companions. The subsequent setting is innovation. Also, as advancement advances develop, they get out from under the old propensities. The most sensational innovation forward leaps as of late are advanced cells, web and online business. Online pursuit and web based requesting have drastically affected the manner in which we shop and buyer items and administrations.

A third setting that impacts utilization propensities is rules and guidelines particularly identified with public and shared spaces just as deconsumption of undesirable items. For instance, utilization of smoking, liquor, and guns are controlled utilization by area. Obviously, public approach can likewise empower utilization of culturally great items and administrations, for example, sun oriented energy, electric vehicles, and required auto and home protection administrations and immunizations for youngsters.

The fourth and less unsurprising setting are the impromptu catastrophic events, for example, quakes, tropical storms, and worldwide pandemics including the Covid-19 pandemic we are encountering today. Essentially, there are territorial clashes, common battles just as really worldwide wars, for example, the World War II, cold war, and Great Depression of the late twenties and the Great Recession of 2008–2009. Every one of them altogether upset both utilization just as creation and flexibly chain. The focal point of this paper is to inspect both the quick just as the drawn out effect of Covid-19 on consumption and consumer behavior.

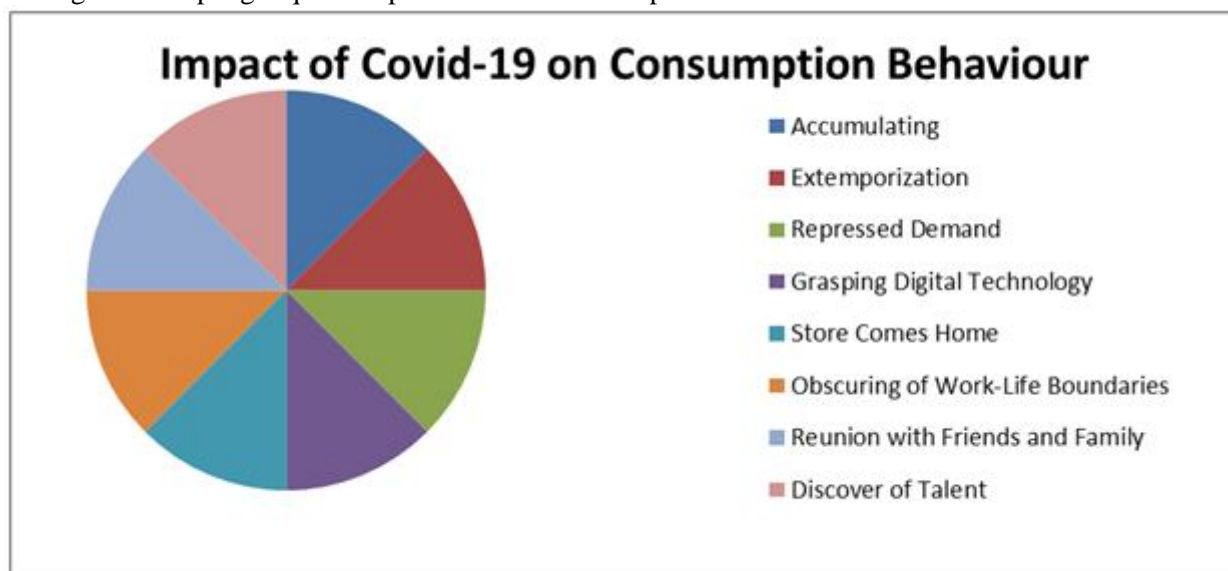
Immediate Impact on Customer Behavior

As referenced over, all utilization and purchaser conduct are secured as expected and spot. Since World War II, an ever increasing number of ladies have been working, bringing about a decrease in optional time. It is assessed that today in excess of 75 percent of all ladies with kids in the house are working all day. This has brought about time deficiencies and time moving in the family, just as close to home utilization. Monday through Friday, nobody is home between 8 am and 5 pm for administration professionals to perform apparatus establishments and upkeep, just as fixes to bombed warming and cooling frameworks. The supplier needs to plan to ensure somebody is home to open the entryway.

There is additionally an absence of time as the optional season of the housewife is presently non-optional because of her work. This lack of time has driven buyers to arrange on the web and have items conveyed to their homes. In like manner, the special seasons not, at this point last half a month at a time but are fairly mini vacations coordinated around significant occasions, for example, Easter, Christmas, Thanksgiving, Memorial Day and Labor Day on long ends of the week.

Work, tutoring, and shopping have all changed and restricted at home. Simultaneously, there is greater adaptability over the long haul as purchasers don't need to follow planned timetables to go to work or school, to shop or to devour.

Fig.1 sums up eight quick impacts of the Covid-19 pandemic on utilization and consumer conduct.



Prompt Impact of Covid-19 on Consumption Behavior

1. **Accumulating:** Buyers are accumulating basic items for every day utilization bringing about transitory stockouts and deficiencies. This incorporates bathroom tissue, bread, water, meat, sterilizing and cleaning items.

Accumulating is a typical response to dealing with the vulnerability of things to come gracefully of items for essential requirements. Accumulating is a typical practice when a nation experiences out of control inflation as it is occurring in Venezuela. Notwithstanding accumulating, there is likewise rise of the dark market where unapproved brokers crowd the item and increases the costs. This has occurred as for items for medical care laborers including the N95 masks. At last, the impermanent additional interest made by accumulating, likewise energizes advertising of fake items. We have not done what's necessary exact examination on the financial and the brain research of storing in purchaser conduct.

2. **Extemporization.:** Customers figure out how to extemporize when there are requirements. All the while, existing propensities are disposed of and better approaches to devour are concocted. The Covid released the inventiveness and strength of customers for such convention bound exercises as weddings and memorial service administrations. Walkway weddings and Zoom burial service administrations substitute for the customary area driven functions. This was additionally valid for faith gatherings particularly on Easter Sunday. Spontaneous creation to oversee deficiency of items or administrations is another zone of future examination.

3. **Repressed Demand:** During seasons of emergency and vulnerability the overall propensity is to defer buy and utilization of optional items. Regularly, this is related with enormous ticket tough products, for example, cars, home etc. It additionally incorporates such optional administrations as shows, sports, bars, and cafés. This outcomes in move of interest from now into what's to come. Repressed interest is a recognizable result when admittance to advertise is denied for a brief time frame for administrations for example, parks and amusement, films, and diversion.

4. **Grasping Digital Technology:** Out of sheer need, purchasers have embraced a few new advances and their applications. The conspicuous model is Zoom video administrations. Just to stay aware of loved ones, most family units with the web have figured out how to take an interest in Zoom gatherings. Obviously, it has been stretched out to distant classes at home for schools and universities and to telehealth for virtual encounters with the doctor and other medical services suppliers.

Most purchasers like web-based media including Facebook, WhatsApp, YouTube, WeChat, LinkedIn, and others. The web is both a rich medium and has worldwide reach. The biggest countries in populace are no longer China and India. They are Facebook, YouTube, and WhatsApp. Everyone has in excess of a billion endorsers and clients. This has significantly changed the nature and extent of verbal advices and suggestions just as sharing data. One of the quickest developing regions is influencer advertisers. A considerable lot of them have a large number of devotees. Effect of computerized innovation by and large and online media specifically on shopper conduct is enormous in scale and unavoidable in purchaser's day by day life. It will be intriguing to check whether innovation reception will bring an end to the old propensities. While we have read dissemination of advancement for phones, TV, and the web, we have not encountered a worldwide appropriation of online media in exceptionally packed cycle.

5. Store Comes Home: Because of complete lockdown in nations like India, South Korea, China, Italy, and different countries, buyers can't go to the supermarket or the strip malls. All things being equal, the store returns home. Work does as well and instruction. This switches the stream for work, instruction, wellbeing and buying and utilization. In home conveyance of everything including real time features, for example, Disney, Netflix, and Amazon Prime is getting out from under the odd propensities for actually going to physical spots. It is likewise upgrading comfort and personalization in customer conduct. What we need is to observationally concentrate how "IN-home everything" impacts purchaser's motivation purchasing and arranged versus spontaneous utilization.

6. Obscuring of Work-Life Boundaries: Purchasers are detainees at home with restricted space and an excessive number of discrete exercises, for example, working, picking up, shopping, and socialization. Therefore, there is obscuring of limits among work and home and among undertakings and visits. Some kind of timetable and compartmentalization are important to make home more proficient and viable.

7. Reunion with Friends and Family: One significant effect of the Covid is to connect with inaccessible loved ones, halfway to guarantee that they are alright. This takes after secondary school or school reunions or family weddings. Emblematically, we are altogether sitting on our patio and conversing with our neighbors all around the world. The worldwide reach of the social parties through web-based media, for example, Zoom, Google meet and WhatsApp is incredible. We ought to expect emotional changes in purchaser conduct as a result of speedier and all inclusive appropriation of new advancements quickened by the Covid pandemic.

8. Discover of talent: With more adaptable time at home, shoppers have explored different avenues regarding plans, drilled their ability and performed imaginative and better approaches to play music, share learning, and shop online all the more inventively. With some of them turning into a web sensation, shoppers are turning out to be makers with business prospects. YouTube and its partners are loaded with recordings which have the potential for advancement and business triumphs.

Online Unexpectedly

It merits recollecting that Covid-19 has brought a large group of new clients (and new organizations) on the web — from the individuals who had essentially never attempted it, to those now hoping to get to items and administrations that once in the past, were just accessible disconnected. Consider how you can modify your administrations to make things significantly simpler for them.

This is an opportunity to dive profound into your computerized measurements, return to your information models and make something that gives you a constant image of how your clients are utilizing your advanced items. In the event that you can cause the online cycle as simple as it to can be for the buyer, while heating in the way to investigate and follow their conduct, you won't just lift change yet in addition become better ready to foresee your client's activities and forward arrangement likewise.

Will old propensities pass on or return?

It is normal that most propensities will return back to ordinary. Notwithstanding, it is unavoidable that a few propensities will pass on in light of the fact that the purchaser under the lockdown condition has found an elective that is more advantageous, moderate, and open. Models incorporate web-based features, for example, Netflix and Disney. They are probably going to change customers from heading out to cinemas. This is like ride sharing administrations, for example, Uber which is more easy to understand than calling a taxi administration. Due to Covid, shoppers may think that its simpler to work at home, learn at home and shop at home. To put it plainly, what was a fringe option in contrast to the current propensity presently turns into the center and the current propensity turns into the fringe.

There is an all inclusive law of shopper conduct. At the point when a current propensity or a need is surrendered, it generally returns as an entertainment or a side interest. Models incorporate chasing, fishing, planting, heating bread, and cooking. It will be fascinating to perceive what existing propensities which are surrendered by embracing the new ways will return as pastimes. All in all, will shopping become more an open air action or leisure activity or amusement?

Modified Habits

By and large, existing propensities for shopping for food and conveyance will be changed by the new rules and guidelines, for example, wearing masks and keeping the social distance. This is apparent in Asia where purchasers wear covers before they go for shopping or utilize the public travel frameworks. It will likewise turn into a reality for going to galleries, parks and amusement focuses, and shows and get-togethers, just to give some examples.

New Habits

There are three variables which are probably going to create new propensities. The first is public strategy. Similarly as we are utilized to security checks at the air terminals after 9/11, there will be additionally screening and loading up methodology including taking the temperature, testing for the presence of the infection and getting onto the flight. All significant aircrafts are currently putting new methodology for leaving and landing travelers.

As referenced before a second significant driver of purchaser conduct is innovation. It has changed shopper conduct fundamentally since the Industrial Revolution with the creation of vehicles, machines, and planes. This was trailed by the phone, TV, web and now the online media and the client created content. The advanced innovation is making needs into needs. For instance, we didn't miss the mobile phone yet today you can't live without it. Today web is as significant as power. How innovation changes needs into needs has huge effect on growing new propensities, for example, web based shopping, web based dating, or internet anything.

The third setting which produces new propensities is the evolving socioeconomics. A couple of models will outline this. As cutting edge economies age, new requirements for wellbeing conservation (health) and abundance protection (retirement) emerge. As more ladies enter the labor force, the family is carrying on more like a flat mate family. Eating suppers together at home each night is not, at this point conceivable, it is even more an errand to be finished as quick as could be expected. Just after the supper every relative goes to their own private room or space and participate in instant messages, YouTube, or sitting in front of the TV. There is likewise a developing pattern of living alone by decision, as today there are single grown-up family units.

Decoding Consumer Behavior

The WHO proclaimed the novel (COVID-19) flare-up a worldwide pandemic on March 11, 2020. Because of disturbance in ordinary activity, there has been a consistent back-and-forth between lessening the spread of the infection toward one side and getting the economy back on the track then again. Metropolitan India is all the more unequivocally hit when contrasted with the country.

Family units are confronting another ordinary with kids adjusting to self-teaching and indoor life. Work-life balance is totally shaky in this new ordinary. The pandemic has upset monetary and social cycles and frameworks. In any case, we actually don't have the foggiest idea whether this is a transitory wonder while the dread of pandemic endures or it's a change that is staying put.

Shifts in Consumption Behavior-"The 3 Es gain"

Ecommerce

One of the significant movements in conduct was the selection of online business. Out of our example, 58% new clients are added to the online staple market and 38% would keep on shopping on the web. India needs to increase its gracefull chain and coordinations to update internet business administrations. 19% online purchasers have been on internet business stage previously while 23% buyers didn't utilize it in any event, during the pandemic. Customers have additionally gotten more OK with computerized exchanges and utilization of advanced installment techniques. Organizations like PayTM and Google-pay have seen extraordinary development because of dread of actual trade of cards or cash. 53% new clients have embraced advanced installments during these occasions. Just 5% of our respondents have not utilized any advanced installments till now.

EDUCATION

Individuals have utilized the leisure time accessible during pandemic to redesign their insight and abilities. They accepted that this time could be better used to upgrade their CV and furthermore exploit top colleges offering on

the web courses. 54% new clients were added to the internet learning market during the pandemic, out of these 36% might want to keep looking for online courses. We accept that however the instruction area will see an ocean change in their teaching method, conveyance and markets in future occasions with more prominent adaption of innovation. Individuals will proceed onward with their lives, work and search for instruction openings that really supplements their profession decision and desires.

Entertainment

With conclusion of shopping centers, film corridors, theaters, parks and so forth, individuals needed to discover amusement alternatives at home. Satellite TV depended on the re-run of certain works of art. Despite the fact that the broadcast of Ramayana surprised the country as it completed 30 years back; the greatest development was seen in OTT(over the top)stages. They offered new shows, motion pictures, and so on this new charge turned into a key piece of families. OTT stages have gathered 33% new clients who intend to keep watching films and substance there. Buyers appeared to be snared on to these for assortment, economy and comfort. 33% new clients, generally Gen Y and Gen Z, bought in to enrollment of these OTT stages. The selection of this new type of amusement stays comparable across different locales and pay gatherings. As we would see it, however individuals will most likely be unable to invest comparative energy on these stages post pandemic, they have snared on to the propensity for on-request diversion. This would advance to be another developing area in India.

Administrative Implications

There are three administrative implications from the effect of Covid-19 on customer behaviour. To start with, similarly as shoppers have figured out how to ad lib, business additionally needs to figure out how to ad lib and turn out to be more inhabitant during the pandemic.

Luckily, as more enormous undertakings have progressed to distributed computing, it has been simpler to extemporize. This has been the situation with general stores and enormous retailers, for example, Walmart and Target. So, organizations can figure out how to make their foundation, frameworks and cycles to be stronger.

A second administrative implication is coordinating interest and flexibility. At every retailer going from the markets to hyper stores to sedate stores, there were ongoing deficiencies because of accumulating and "run on the bank" mindset of customers in an emergency. Gracefully chain, coordinations, and warehousing activities are basic capacities which should be incorporated with the unstable vacillations popular.

A third implication for the executives is that purchasers will return to their old propensities except if the innovation they figure out how to utilize, for example, Zoom video administrations and internet requesting acquires critical transforms them. Clients involvement with the virtual world just as post buy administrations (client service) will be key speculations.

Research Implications

As the lockdown and social distancing upset the entire scope of buyer conduct (going from issue acknowledgment to look from data to shopping to conveyance to utilization and garbage removal), it has produced a few new examination openings secured to moored to this present reality.

A social significant zone for the scholarly examination has to do with purchaser flexibility and impromptu creation. It is another field of exploration and the Covid-19 emergency has surfaced it as an extraordinary examination opportunity. For instance, are there social contrasts in extemporization over the globe? What are the various strategies utilized by shoppers all around the world to segregate themselves from the contamination?

Basically, Covid-19 has expanded the utilization of web-based media on Facebook, Instagram, WhatsApp, Twitter, and Zoom. They are producing colossal measure of information on verbal. The virtual world is getting additionally intriguing to customers contrasted with the actual world as we have found in computer games and virtual games. Will fake become genuine? For instance, is a relationship with a chatbot sweetheart more agreeable and charming when contrasted with a genuine sweetheart or beau? In an ongoing article Parmy Olson depicts a few accounts of how people are associating with chatbots¹. To put it plainly, the counterfeit has gotten genuine.

CONCLUSION

We've been a Consumer society for very long time. But never before had been seen so forcefully and painfully accepted this fact. This pandemic has required everyone to force the extent to which our lives are paralyzed

¹ See <https://www.wsj.com/news/author/parmy-olson> for more information on people who are associate with chatbot

without consumption, without the market place. Consumption is the scaffolding on which hangs everything from how the economy works, to how we manage our family time.

What this pandemic has also shown us dramatically, is the extent to which it is impossible for us to step away from our role as consumers. This sudden contraction of our life has been painful, but there has been one significant, positive outcome. As the economy shrunk, the environment improved.

The need for perspective-taking, to consumer perspective is not about studying data to identify a market. It is about understanding what we will do in our multi-faceted lives. It requires the ability to be a reflective and critical thinker. We should tap into our experiences as one at the receiving point and develop strategies in order to truly understand what happen where faced with odds of life.

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JUSTICE AND SATISFACTION FOR CONSUMERS WITH RIGHTS – CASE STUDY

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ABSTRACT

Once upon a time while exchanging goods and services in the local areas one can see 100% honesty. As the days going a lot of adulteration started in each and everything. Producers or middlemen started to cheat the consumers or purchasers. In entire India, the cheating business increased and consumers deprived of real satisfaction. And afraid to purchase the items. As there is a paradigm shift in the process and now a day's lot of people are purchasing items online. The consumer is not aware of whom he is purchasing items other than the firm and brand name. On the other hand, only the name and postal address are known to the producers or sellers. The real product while taking photo images may or may not be the same, the color, and size quality may differ. The producer may send the items which we have not ordered or the required quality and quantity. This leads the customer or consumer unrest and raises the complaint.

Earlier there was no law and cannot be protected the interest of the consumers. The necessary makes to form the law affecting this and emerged Consumer Protection Act, 1986, and of course, it is amended in the year 2019 and 2020 again. There was a conflict between Mr. Subhan Pasha N B and the Samsung organization. The items were purchased through Amazon logistics. Subhan Pasha N B received a defective item and not to the satisfaction level. He approached the consumer court and got justice. In another case, one more conflict between Readers Digest India Pvt. Ltd. and Mr. Suheeb Pasha ordered business India Magazine for two years validity with a public offer of mobile phone and was waiting for mobile phone which he has not received. After approaching several times through Consumer Grievance Redressal Cells, he got justice and received a mobile phone.

KEYWORDS: *Introduction – Consumers definitions – Producers' definitions – the relationship between Consumer and Producer-Consumer Rights – Right to Safety – Right to be Informed – Right to Choose – Right to Heard – Right to Seek Redressal – Right to Consumer Education – Case 1 - Producer Samsung Company – Product Mobile Cell Phone – Amazon Shipment – Consumer Mr. Subhan Pasha N B – Case 2 – Producer Readers Digest – Product Purchase of Business India Magazine for two years – Gift Public Offer – Product 4G Mobile Phone Free of Cost – Consumer Mr. Suheeb Pasha – The Insurance Act, 1938 – Consumer Protection Act, 1986 – The Legal Metrology Act, 2009 – The Bureau of Indian Standards Act, 1986 – National Test House Department of Consumer Affairs – Consumer Court Awards – Conclusion.*

INTRODUCTION

There was a time in India to purchase any product or food materials it was genuine. A genuine certificate was not at all necessary as the product itself is guaranteed. As the day's last people have learned in their marketing business or sales to make a profit. Sellers are not bothered about the purchaser somehow seller wants to dispose of his commodities to consumers by hook or crook. He is ready to do anything and telling a lot of lies about the product and misleading advertisements which are not so. He highlights the qualities of the product which he is not aware of considering the case of food materials one has learned in his social studies about adulteration of food ingredients viz., mixing of Water to Milk, adding Wood Potato Powder to Butter, Vanaspati to Ghee, Papaya Seeds or Datura Seeds to Kala Mirchi, Jaggery to Honey, Stones to Rice, that is substandard materials to the good quality standard materials so that they can make profits. They forget that the consumer or customer is the king of the market. Purchaser deprived to get satisfied commodities.

To curb this corruption, the adulteration Government of India commissioned One-Act to say "Consumer Protection Act, 1986" with the sole objective of making the customer or the consumer or purchaser to be satisfied for the money which he has paid. Consumer Protection Act, 1986 has given some rights to the consumers they are Safety, Know Information of the commodity or the product completely such as date of manufacturing, date of expiry or best use before date, Ingredients which contained in the product, exact weight quantity, the quality of the product, manufactures name and address, and certification from the concerned authorities, whether it is vegetarian with a Green logo and non-vegetarian with the Red logo to be indicated.

Customers have to choose from the available different producers of the same product. Brands logo such as ISI (Indian Standards Institution) mark from electronic items, AGMARK (Agricultural Marketing) logo or FSSAI (Food Safety and Standards Authority of India) logo for food items to be displayed mandatorily in the packaging itself either to be printed on the package itself or a label contained should be visible in the package

before the purchase of the materials, the warranty period. In case of any defective materials, it is to be accepted and to exchange without any delay finally consumers should get satisfaction.

Now a days some big companies have set up redressal cells in their organization to hear the grievances. If the customer is not satisfied with their reply then he can approach the consumer court with the proof of documents such as a bill, date of purchase, whether within the warranty period, amount, invoice number, delivery proofs what is the defect, and why the customer is not satisfied? Many times, consumer court refers to Mediation or Arbitration even if the reply is not satisfied court will take up the case and justifiably dispose of the cases. Now a day's consumer has a big relief after introducing this Consumer Protection Act, 1986 and amended in 2019 and 2020.

CONSUMER DEFINITION

Oxford English Dictionary: A person who purchases goods and services for personal use.

Wikipedia: A consumer is a person that buys goods for consumption. No intention to resale the goods again. A consumer is a person who pays the money needed to buy goods and services produced. Production is made only for distribution through channels to the consumers as end-users.

Sharanya Mathaji defines 1. "Consumer as the person who buys from the producer to consume the items" in her manuscript titled "Consumers and his obligations", 1st Edition 1989, Printed and Published at Prasant Tarafdar Printers, Kolkata, West Bengal, India, Page No 14.

1. Manuscript Consumers and his obligations", with oral permission from the author

Sara Devi defines 1. "Consumers as one who consumes the product as an end-user and will not be any part or whole will be saleable or distributable for further transactions". It may be eatable items or non-eatable items for example Stapler is a capital item and stapler pins are consumable items. The book titled "Relationship between consumers and producers" 1st Edition 2016, Printed and Published at Sara Printers and Publishers Limited, France, Page No 28, - Line number 9.

Vishwanath K defines 2. "The Manufacturer or the producer after producing will dispose of the product either directly or through wholesaler - a middleman - retailer and reaches to end-users either for money receivable or in cash or bill of exchange" His book titled as "Producer to consumers" 2nd Edition 2017, Printed and Published at Saraswathi Printers, Bangalore, India, Page No 30, Line number 7.

Philip Kotler's famous author seen marketing as "The Art and Science for finding new possibilities, inventions and finishing handing over its real value for satisfaction of shoppers and to earn benefit for their survival. Marketing identifies unfulfilled needs and desires. His book is titled "Consumer Marketing" 5th Edition 29.03.2011, Idea Bite Press, SAGE Publications Ltd. Australia. Page No. 16 & 17.

PRODUCERS

A producer is someone who creates and supplies goods or services. Production units combining the man-hours and with that of total investment beyond the expectation of the Production Unit survival are taken into consideration of profit enterprises and are normally economists or financial analyzer thought in their mind favouring the producers.

RELATIONSHIP BETWEEN CONSUMER AND PRODUCER

Without consumers no producer and producer no consumer. They are depending on each other. In case no consumers are available then the manufacturer will lose all his materials. On the other hand, if producers are not available the consumer has suffered a lot without ingredients

1. Sara Devi Relationship between consumer and producers with oral permission from Author

2. Vishwanath K Producers to Consumers with oral permission from the Author

and hence there shall be a mutual understand relationship to be maintained. Now a day's people are getting benefitted by sitting at one place they can get everything. The online mode of purchasing is excellent but it differs from real appearance.

B.M.S. College of Law in its conference brochure has given some information about Consumers Rights on 3rd page of total 5 pages on "one-day National Level Multidisciplinary Conference" on Protection of Consumer Rights during the COVID-19 Pandemic which is imitated by IQAC and jointly organized by Consumer Law, Advocacy and Research Centre (CLARC) and Consumer Rights, Education and Awareness Trust (CREAT) to be held on 20th November 2020 virtually.

Objectives of the Virtual Conference 1

On 15th March 1962, speaking on the Bill of Consumer Rights, John F Kennedy, the then President of the US, said that 'Consumers, by definition, include us all. Shoppers are the biggest group of finance/economics in the current scenario and who are affected including private or public at the time of decision making.

75% of the shoppers who utilize their financial resources are neglected by the finance analyst groups and also nobody is caring for them but they are significant contributors to the economy. Things have not changed much in the last six decades. The reasons are not lacking laws or legislation, but lack of a strong consumer voice. The Government of India in its enthusiasm to protect consumers has enacted several laws covering food safety, weights and measures, misleading advertisements, drug safety, and the like. The most far-reaching law is the Consumer Protection Act, enacted in 1986. A new law on consumer protection (The Consumer Protection Act, 2019) has been enacted during 2019 which takes into account the enormous challenges that the market has witnessed in the recent past issues like product liability, e-commerce, mediation, etc. have been included in the Consumer Protection Act, 2019.

The entry of e-commerce on a large scale has put the consumers on a different footing. While the digital economy has brought many advantages to the consumers, it is also threatening the rights of consumers like data privacy, etc. For the past few months, the whole world is in the grip of COVID-19, a pandemic that has derailed the entire economy. Governments across the

1. BMS College Conference Brochure issued for circulation

World are struggling to protect their citizens from the onslaught of the pandemic. Reports indicate that the market is taking advantage of the crisis at the cost of consumer safety and consumer protection. It is in this background, the conference on "Protection of Consumer Rights during the COVID-19 Pandemic" is being organized by the B.M.S. Collage of Law virtually to create awareness among real consumers. The conference aims to bring Scholars, Activists, Researchers, Students, and other stakeholders who will deliberate on various aspects of the Consumer Protection Act, 2019 keeping in view the main theme.

Here the Author emphasis the two cases**1. Subhan Pasha N B V/S Samsung Telecom Company****2. Suheeb Pasha V/S Readers Digest India Pvt. Ltd.****Case One: Subhan Pasha N B V/S Samsung Telecom Company**

Mr. Subhan Pasha N B was planned to purchase a new brand mobile telephone and he was searching online. He was also comparing the product features with other telecom manufacturing Companies' on Wednesday 11th February 2020 around 20:00 hours through his DELL Company laptop which is having a Jio network. He has seen iPhone, Redmi, Samsung Oppo, Galaxy, One Plus, Nokia, and he has made an option to purchase the Samsung with the following specifications.

The product summary and specifications as mentioned in the advertisement is as follows:

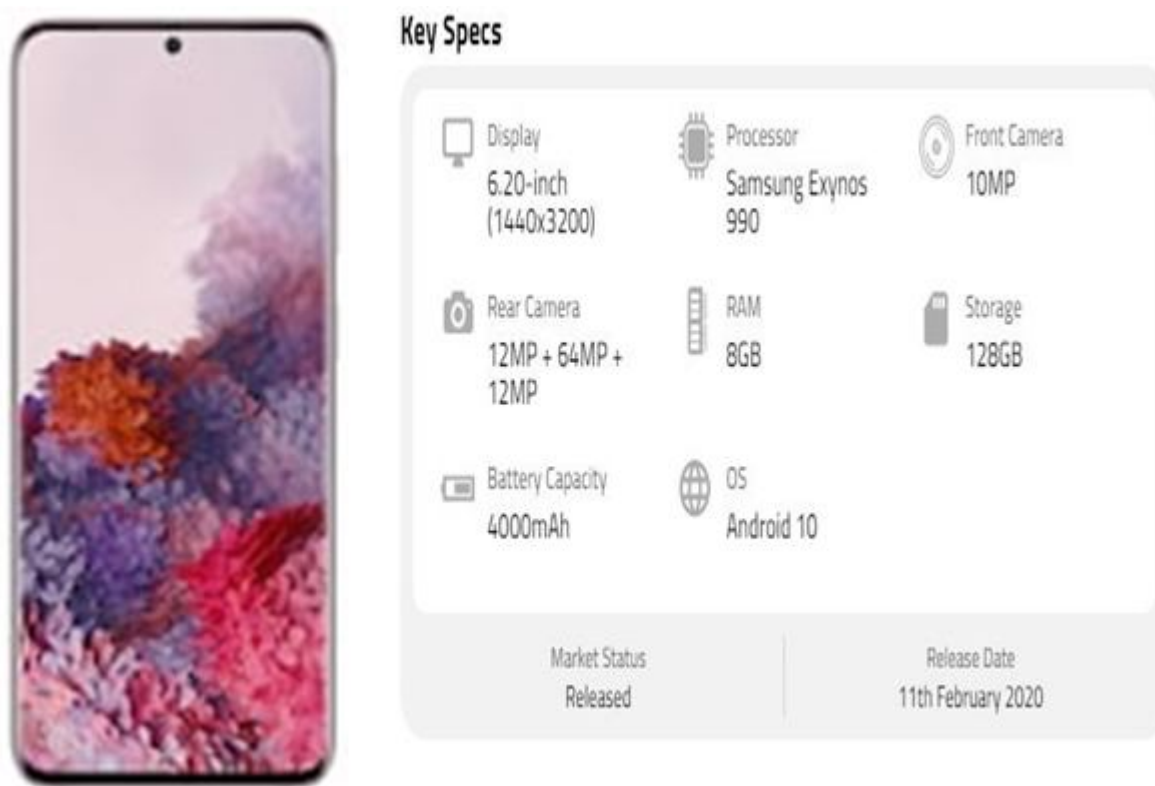
Samsung Company released a new smartphone Galaxy S20 to the public to be made available to purchase from 11.02.2020. The size of the smartphone is 6.20 inch and with a special touchscreen display it has 1440x3200 pixels resolution and a 20:9 aspect ratio Samsung Galaxy S20 is powered by octa-core with 2GHz together with Exynos 990 processor includes cores clocked at different GHz viz., 2, 2.5, 2.73 for features 2, 2 and 4 cores comes with 8GB of RAM. The Samsung Company's smartphone "Galaxy S20" operates on "Android 10" which consumes the power capacity of 4000mAh and the Non-removable fixed Lithium led battery. This mobile can be charged very fast without a chord.

There are 3 cameras fixed in this mobile with an autofocus and sports competition too with 10 megapixel which is a front Selfies camera with f/2.2 aperture.

- ❖ A rear camera as a primary camera with 12 megapixel and f/1.8 aperture
- ❖ A second camera with 64 megapixel and f/2.0 aperture
- ❖ Third camera 12 megapixel and f/2.2 aperture
- ❖ Runs One UI 2.0 based on Android 10
- ❖ 128GB of inbuilt storage that can be expanded via microSD card (up to 1000GB)
- ❖ Dual-SIM (2 GSM) supports 2 Nano-SIM cards
- ❖ Cubic volume 151.70 x 69.10 x 7.90mm (height x width x thickness)

- ❖ Weight 163.00 Grams
- ❖ Available colour types: Cloud (Blue, Pink, Grey)
- ❖ Water and Dust Proof rate IP 68
- ❖ Glass body
- ❖ Face Unlock
- ❖ Sensors for accelerometer, ambient light, barometer, compass/magnetometer, gyroscope, proximity, fingerprint
- ❖ Connectivity:
 - i) Wi-Fi 802.11 a/b/g/n/ac/Yes
 - ii) GPS
 - iii) Bluetooth v5.00
 - iv) NFC
 - v) USB Type-C, 3G, 4G (active 4G on both SIM cards)

1. Samsung Galaxy S 20 specification of the Mobile Android



Samsung Galaxy S20

The price in India starts at Rs. 49,899.00

Subhan Pasha N B (Consumer) Section 2 (b) (i) has paid this money to the vendors of Samsung Company through Amazon as it is available only in two stores 1. Amazon and 2. Flipkart. Through Credit Card of State Bank of India and showing us the amount paid in the invoice raised by the Amazon and the same as indicated in the bank statement. The goods are delivered after making a payment within 5 days.

Amazon insured the product as per the Insurance Act, 1938 open cover all-risk policy for 4 weeks.

But, unfortunately, the product is not as per specifications. The outer cover is the same as the specifications but inside the features are very old and not updated ones and hence it is declared as defected materials. And further, it is a reverberated item and not fresh.

DEFECT – is explained in the Consumer Protection Act, 1986 which is amended in 2019 and 2020 in Section 2 (c) (ii) gives exact meaning for Defect as, “defect” means any fault, not accurate means low-performance inefficiency adulteration, substandard materials identified by law which is changing from time to time in force under any Contract, express or implied or as is claimed by the trader in any manner whatsoever concerning any goods”.

Section 8 Objects of the State Council

Section 8A. The District Consumer Protection Council

Section 8B. Objects of the District Council

The consumer Mr. Subhan Pasha N B then searched all the documents, invoices, the payment received acknowledgment and his specifications copy as indicated in the order. And wrote a letter to Amazon Company stating that he has received a defective material. And he will return the same and asked for a good brand-new phone.

Amazon told the consumer Mr. Subhan Pasha N B that already return time is over and it cannot be replaced now. However, they have forwarded the communication received from the consumer Mr. Subhan Pasha N B to the manufacturer since it is a defect from the manufacturer.

Mr. Subhan Pasha N B has approached in the local area of the consumer forum. They told us that this is not coming under our jurisdiction as per **Section 11 Jurisdiction of the District Forum** of the Consumer Protection Act, 1986, and hence, we cannot accept your complaint. And advised him to approach the Maharashtra state District Consumer Forum since the jurisdictional area comes under that state. Subhan Pasha N B submitted his application of complaint as per the **Section 12 Manner in which complaint shall be made** to the Maharashtra District Forum because it is less than Rs. 20 Lakhs. And he has paid a duty or fee of Rs. 100 since it is less than Rs. 1,00,000.00 and he has taken the help of an NGO (Non-Governmental Organization) the International Consumer Rights Protection Council Section 2-b-ii in filing and forming petition at nominal charges. The consumer should file the complaint in the district forum which has under its jurisdiction Section 11 the other party's residence or office of profit or the area where the project is located. And also, the location of the shopper's product available.

1. Consumer Protection Act Bare Act

2. District Consumer Forum Court.

In this case, the following acts are covered

- **The Consumer Protection Act, 1986**
- **The Legal Metrology Act, 2009**

The Act assures the product's correct weight in measurements as per the tariff unit rate fixed for the goods which are also having numbers to remove any deficiencies to regulate the untraded practices in the market and for matters connected therewith or incidental thereto.

- **The Bureau of Indian Standards Act, 1986**

The Act inducts for developing harmonious relationships for the activities such as to fix the product quality standard and to issue certificates for that effect and issuing Quality certification for the said goods and services and any other related matters discussions in the Bureau jurisdiction.

- **The Indian Contract Act, 1872**

Offer, Acceptance, Agreement, Leads to a valid contract, and both parties willingly accepted without any cohesion and mentally sound for some consideration.

The consumer form of the district called a written explanation from the Samsung Company who was the manufacturers of the mobile phone and also consumer Subhan Pasha N B to produce all the documents for verification.

National Test House Department of Consumer Affairs

As per Section 4.7, 4.7.1, and 4.7.2, the mobile phone of Samsung Galaxy S20 was collected and sent to comparative tests and found that consumer is severely affected.

Supreme Court Observations

1. For entitlement to compensation, it is essential to prove loss or damage as stated by the Supreme Court regarding Subhan Pasha's case very important and critical points observed before ordering an award for the quantity of compensation to the shopper made easy in the claim.
2. Limitation provision in the Consumer Protection Act cannot be strictly constructed to the disadvantage of the consumer.

Bare Acts of**1. The Consumer Protection Act, 1986****2. The Legal Metrology Act, 2009****3. The Bureau of Indian Standards Act, 1986****4. The Indian Contract Act, 1872**

3. That is a dispute concerning a consumer, the Courts must take a pragmatic view of the rights of the consumer principally since it is the shopper who is the sufferer and put in adverse *vis-à-vis* the supplier of goods and services. It is to overcome this disadvantage that beneficent legislation in the form of the consumer protection act was enacted by Parliament.
4. That the **provision of limitation in the Act cannot be strictly construed to disadvantage a consumer** in a case where a supplier of goods or services itself is instrumental in causing a delay tactic to settle the claim of the shoppers.

The form ordered to refund the complete amount along with the interest and mental agony compensation totalling Rs. 1,21,626.00 on or before three months from the date of award of this order.

The consumer Mr. Subhan Pasha N B received the said amount as compensation and the case closed.

Case Two: Suheeb Pasha V/S Readers Digest India Pvt. Ltd. *

Mr. Suheeb Pasha was a regular subscriber for Readers Digest since 28th September 2007 and he has received a promotional offer letter stating that if he subscribes to Business India Magazine which is a weekly magazine for two years period, he will get one free telephone as a gift. To receive this offer, he accepted and paid two years subscription amount through Vijaya Bank (now it is amalgamated with Baroda Bank) Cheque Dated 28.09.2016. This is a valid contract since both parties in sound mental health and legal age. There is a written agreement for this effect. Readers Digest told the subscriber here referred to as consumer that he will receive within 10 months the mobile phone to the person in the given address at the time of subscribing to the magazine.

Mr. Suheeb Pasha waited for complete 10 months and he has not received any communication regarding the phone and he has sent a mail to the Readers Digest on 30.7.2017. And Suheeb Pasha received a reply from them on the same day stating that already dispatched on 16.12.2016 ie. In the 3rd month it and we have received an acknowledgment also from your end which has been sent by DTDC courier service on 21.12.2016.

1. Consumers Redressal form Maharashtra District jurisdiction

Mr. Suheeb Pasha was surprised to receive this statement from Readers Digest and asked for an acknowledgment which he has signed. Readers Digest replied that Savitha one of your family members has received this. Suheeb Pasha approached the Consumer Grievance Redressal Cells and explained everything and also, he told that he is not married and nobody in the house how he will receive this phone?

The Consumer Grievance Redressal Cells conducted a police inquiry to gather correct authenticated information that one of the employees is noting the details in the register is to fill up the wrong information and taking the phone for his family use. He was caught red-handed later Readers Digest has identified the similar cases received earlier and arranged to dispatch the telephones for everybody. Now Suheeb Pasha receives the telephone. Suheeb Pasha was not a law student or the family circle was not well educated. But Suheeb Pasha was moving with the friends having abundant knowledge and he was aware of the consumer rights a little bit and hence he got justice.

CONCLUSION

Every human being is one way or the other will be the consumer as said by John f Kennedy in the year 1962 itself in an economic scenario. It is essential to know and enrich the knowledge of the Consumers Protection

Act, 1986, 2019, and 2020 to get justice. And also, to get complete satisfaction with the product which is going to receive from the producer. Many times, Acts are interrelated.

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15. The Indian Contract Act, 1872

IMPACT OF PANDEMIC ON THE SUPPLY OF ESSENTIAL COMMODITIES CONCERNING FARMERS AND SMALL SCALE INDUSTRIES:**Vishnu V K**Student, 3rd Sem., LLM, Criminal Law Branch, University Law College Bangalore, Bangalore University

ABSTRACT

This is a study regarding the impact of the Covid19 pandemic on the supply of essential commodities. As part of the research, I came through the difficulties faced by the farmers and small-scale industries during the lockdown, which is prevalent since March and continues in many parts of the country. I understood that even though the production sector was alive there was a lack of proper transportation and distribution facilities for the agricultural and small scale industries during the lockdown situation which was imposed by the Government to curtail the spread of the Corona disease by stopping all the economic and social activities in the country.

The travel restrictions during the pandemic situation affected badly the essential commodity supply and distribution. So this indirectly paved way for crooked vendors to sell essential commodities for a higher price than the market price. This also caused the loss of jobs for lakhs of daily labourers in India.

By the end of 2019, there was heavy rain in central and south-western India because of which the perishable vegetable cultivation was badly affected. Therefore such items were scarce and the price of vegetables increased heavily. But this situation changed by March when the production became normal. By the end of March when the lock-down was imposed in India, the price of essential commodities again increased, and also there occurred situations of non-availability of essential commodities in the market. This time it is not due to the lack of production, but due to the inefficient supply because of the absence of proper transportation facilities and the unavailability of vehicles for the movement of the products. Similarly, there was an incidence of lack of enough workers for the supply of agricultural and small-scale production. Here is what my study focuses on.

Central Government can, in case of an extraordinary situation, regulate the market price of the essential commodities, its distribution, supply, trade, and commerce, as per the Essential Commodities Act of 1955. This also was not effectively enforced during the early months of the lockdown period.

Keywords: Lockdown, Pandemic, Essential commodities, Farmers, Small scale Industries.

INTRODUCTION

This work is a study conducted by me regarding the difficulties felt by the Farmers and small scale Industries for the supply and distribution of their produce during the Pandemic period due to the Lockdown imposed by the Central Government to control the spread of Covid19 disease.

The motive behind the Imposition of the Lockdown was good because Corona being a communicable disease and there is no effective medicine for the disease invented to date, so the chance for spreading is more if the Economic Activities and Social Interactions are not controlled. But the aftermath of Lockdown was more dangerous than even the Covid19 because the rural farmers and small scale industries such as cottage Industry, Fishermen, Rural workers were able to produce their products but were not able to supply or distribute them due to lack of workers and Vehicle for the proper distribution and Supply of the produce.

So my research focuses on the difference in the Scarcity of essential commodities during both the environmental calamity circumstance that happened last year due to heavy rain in southern and southwestern India with the scarcity that happened due to Lockdown.

RESEARCH QUESTIONS

1. How does the Pandemic affect the Farmers and Small scale Industries?
2. Is the aftermath of the Pandemic affected to the Farmers and Small scale Industries was similar to that of the Natural Calamities that occurred during the previous year?
3. How was the Production during the Pandemic period, whether it increased or decreased?
4. Was there able to distribute or Supply all the agricultural produce to the intended population?
5. Is production only the prerequisite for the proper availability of essential commodities?

RESEARCH OBJECTIVE

- To find out how did the Pandemic affect the farmers and small scale industries.
- To find out whether the Pandemic or the Government mismanagement of the Lockdown imposed to control the pandemic affected the farmers and small scale industries more.
- To find whether the production increased or decreased during the pandemic period and to study why there occurred a scarcity for essential commodities even after the production was normal.

RESEARCH PROBLEM

The problem arose in this research work is that, why do there arose a scarcity of essential commodities even if the production of agricultural, rural household, cottage, handicraft sectors were normal and even increased during the pandemic situation.

The answer which I found is that there was lack of adequate supply and distribution of essential commodities during the lockdown imposed by the central Government in order to curb the spreading of the Covid 19 pandemic in India.

In the early months of Pandemic due to the Lockdown many daily wage workers& migrant workers lost their job.

LITERATURE REVIEW

This work is an effort by me to find out the reason for the scarcity of essential commodities during the initial months of the pandemic situation in India.

First of all, we shall focus on the normal circumstances under which there occurs scarcity of the essential commodities produced by the Farmers and rural small scale household, Cottage, cotton, fishing industries, small scale shop vendors, etc.

FARMERS:

¹Farmers in India are the route of Indian economy. India predominantly being an agricultural based society and economy should have to take the concerns of farmers seriously, but during the lockdown period the farmers very much suffered due to the travel ban, ban on movement of agricultural produce from one place to another place. Because of this, the farmers had to store their produces instead of trying to sell their produce because of lack of Vehicles for transportation, lack of availability of workers for manual works in the farm land and also the farmers themselves could not travel to their farm. In many parts of the country we also witnessed many migrant farmers could not travel from the workplace to their native villages during the lockdown imposed by the central Government.

Many farmers in India were actually had only one time food available during the lockdown period. The Government could not provide adequate facilities to the rural farmers to sell their produce during the lockdown period so this badly affected India s Agricultural production. So they started storing their produce in order to sell in future at higher price.

The production was normal but the distribution or supply was affected by the lockdown.

**SMALL SCALE INDUSTRIES THAT WERE AFFECTED BY THE PANDEMIC
FISHING SECTOR**

²Fishing is one of the major small scale industry that affected due to the prohibition on travel and on fishing using boat or the supply of fishes to the needy during the Lockdown imposed by the central Government for controlling the spread of Covid 19 Pandemic. The fishermen were not allowed to go in groups and fisherwomen who were the small scale vendors of the fishes lost their earnings and job, also many fishermen who went to the sea for fishing used to go to sea in order to get adequate fish for their food.

So the Fishing sector was badly affected during the Lockdown period, which led to starvation of many fishing communities. The Government allowances came very late and that even in the actual case was mostly got to those involved in fishing business not to the normal fishing community or to the small scale vendors of fish.

¹ The Indian Express Newspaper, May22, 2020, Report by Seema Chisti.

² Firstpost News, April 5,2020, Report of Sarita Fernandes.

COTTAGE AND HANDICRAFT INDUSTRIES

Cottage Industries means household producers of pots, weavers, home made food producers, wooden bag, umbrella producers, Craftsmen, Bamboo crafts makers etc. So these producers were seen suspiciously by the Society during the pandemic period due to unhygienic conditions. Beyond this, during the lockdown period the cottage and handicraft Industrial produces were not able to transport from one place to another and markets were not functioning so their supply and distribution was also not possible. Like in other small scale industries in this field also the lack of Governmental protection was visible. Even if the production was normal there occurred lack of facility to supply and distribution of the commodities. Most of the Cottage industry products are made by rural, tribal people or women. So they only depend on these products for their livelihood. So this lockdown clearly destroyed their livelihood. So they are on the verge of total starvation.

SMALL SCALE VENDORS OF FISH, COTTAGE PRODUCTS OR HANDICRAFT PRODUCTS

Small scale vendors who get the fish directly from the fishermen could not sell it during the lockdown period because the fishermen were not allowed to go in boat or in gang to sea.

Also the markets were closed, transportation was banned, So the cottage, handicraft products vendors were also not able to get the products due to lack of movement of vehicle or workers.

HYPOTHESIS

The pandemic affected the farmers and small scale industries, not because of the lack of ability to do their job or facilities or not because of any natural calamities but because of the Lockdown imposed by the central government without proper planning for protecting the agricultural and rural household small scale industries. The recovery planning of the Indian economy was done very late only after two or three months of early complete lockdown which made the entire rural economy worst ever. Even though the purpose of the imposition of lockdown was to contain the spread of the Covid19 pandemic, it was done without taking enough precautions for the protection of the rural economy.

From my study, I found that the rural Agricultural Farmers and rural small scale Industries such as small scale vendors, weavers, fishermen, etc. were badly affected by the restrictions made by the Government on the free movement of Citizens and Vehicles, coupled with the job loss of daily labourers who were supplying or distributing the products.

CONCLUSION

The actual problem faced by the farmers and small scale industries for the supply of their produce was not due to reduction in production but due to the Lockdown imposed by the Central Government in order to control the spread of Covid 19 Pandemic. The production sector in Agricultural, Cottage, Handicraft, Fishing Industries which I researched was normal and many have even increased during the pandemic period but their supply and distribution was not possible due to the lack of vehicular movement and workers.

UNFAIR TRADE PRACTICE DURING COVID-19 PANDEMIC - AN EXTRACT

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ABSTRACT

17 November 2019 when COVID-19 emerged in Wuhan city of China an emergency exists. China instructed the citizens of other country nationals to go to their respective nations to avoid the unnecessary spreading of the diseases. The people accordingly moved to their respective countries and carried the COVID-19. This disease spread across the globe. It is a question of survival for everybody and started to give wrong information to the concerned authorities who control this spread.

Later they focused on everybody to curb the spread by making them live in an isolation and with treatment. People have suffered a lot for their food and money. Subsequently, the nation declared lockdown by using its power as laid down in the disaster management of 2005 many business entrepreneurs took this as an opportunity to make money and started to cheat the public in different methods which are called unfair trade practices.

The Central Consumer Protection Authority established to supervise and monitor and also take controlling measures and to give fair chance for the customer, the possible areas of unfair trade practices are worth to mention here are Over Riding on customers, falsely showing products, False / Hired endorsements, Guarantee, and assurance, Suppress the information, Hiding the hidden prices of the products, provoking information's.

Keywords: Unfair Trade Practices, Central Consumer Protection Authority (CCPA), Types of Unfair Trade Practices, False/Hired Endorsements, Guarantee and Assurance, Provoking information's, Malls, Refund Guarantee, COVID-19 & Consumer Protection Act, 1986 which is amended in 2019 and 2020.

INTRODUCTION

Many times, consumers will be duped on certain occasions. And the aggravated consumer hits back with his full force. The government has observed these unfair trade practices and to give a permanent solution and hence established consumer rights by commissioning the Section 2(1) r of the Consumer Protection Act, 1986 which is amended in 2019 and 2020. Consumers wish to purchase many times not only online but also physically by going into malls or markets where commodities are available of their choice.

On some occasions, some malls say that you can purchase certain commodities at Rs. 1.00 per kg and only 1 kg will be given per person. This type of advertisement attracts the customers and he will enter the mall. Later he will be informed that other terms and conditions which are written in the small letter which is not visible in naked eyes for seniors and color blind people and defective eye persons. If and only if the purchases Rs. 799.00 worth he is entitled to purchase Rs. 1.00 item otherwise he is not entitled. The customer must observe all the information before he purchases the commodity.

To make good practice in the trade for the business entrepreneur and also to the customer and any violation on either side leads litigations then you shall approach an advocate who is an expert in dealing the cases of unfair trade practices with the help of Consumer Protection Act, 1986. We come across issues like misrepresentation of funds, quality, and quantity, and color, time of delivery, designs measurements, misrepresenting advertisements, and inappropriate endorsements etc.

Nowadays everybody in their schedules and they will never read the instructions which are written in very small letters which is very difficult to read and further they do not have time and patience to go through in detail also. In hurry, they will purchase the commodities and reach the house where they will check and found discrepancies. This will happen mainly because of tricky methods that the businessmen apply and the consumer will be cheated and many books were written on the subject which is as follows.

DEFINITION

1. **Sara Devi:** Defines "Unfair Trade practice as the transaction with an intention to Beguiling, Deceitful, false misleading specious to its customers" written in her book titled "Fair and Unfair Trade Practices" published and printed in SARA Printers and Publishers in France 2016 in pages 2, 8 and 9.
2. **Sharanya Mathaji:** Defines unfair trade practice as the seller sell his goods to the customer who later found that seller was cheater, cunning, slick, foxy Printed and published in Prasant Tarafdar Printers and

Publishers at North Paragana, West Bengal book titled as "Fair or Unfair Trades" 4th Edition Page No 1 in the year 1985.

3. **Vishwanath K:** Defines Unfair Trade Practice as "Misleading the people in price, and other information's taking advantage of the customer's innocence" in his book titled "Fraudulent Practices in Business" Printed and Published at Saraswathi Printers and Publishers 2017, 7th Edition 30th page.
4. **Shakila Banu:** Defines Unfair Trade Practices as "misleading advertisement to dispose of the goods to the customers with fake endorsements for profit" for example, Atiya Banu states that the products are excellent in the testimony of Afiya Banu which is not true and Mansoor Ahmed says the product is not good and this information will be removed from the endorsements itself. In the book titles "Fake Endorsement in Trades" published by Guljar Bhanu and Printed at Bashir Ahmed Printers in Itanagar, Arunachal Pradesh 1st Edition year 2005 and reprinted in 2012 Page No. 9 and 14 - Page No. 5 and 31.

The Central Consumer Protection Authority (CCPA) established by passing the bill in the parliament as an executive agency to protect the interest of the consumers beguiling arising from unfair trade practices the agency can intervention when necessary to prevent misleading and to initiate and enforce the laws against false trade practices and by the consumer to recall, refund and return of products. Here consumers will be given a revelatory chance to open and honest information to share the rational decisions about the goods and services they purchase. The agency keeping in mind determines and think to overcome and improve the way to deal with customers.

Normally everybody wants to the free-from disputes or litigation straightforward transactions. By chance if you are accused of an unfair trade practice in a civil action, the plaintiffs do not have to prove your intentions, they only need to show that the practice itself was unfair or dishonest. The consumer or the customers normally be involving in some common mistakes that lead to accusations of unfair trade practices - and how those can help to do avoid those mistakes with the following seven (7) illustrations.

1. Over Riding on customers
2. Falsely showing products
3. False/Hired endorsements
4. Guarantee and assurance of refund to dissatisfied customers with the time limit
5. Suppress the information
6. Hiding the hidden prices of the products
7. Provoking information's

1. Over Riding on customers

The language is the barrier to understand clearly about the products the rural area individuals who aren't fluent in the link language English and Senior citizens are targeted particularly as vulnerable consumers. Many of them have fallen prey to false claims made by the fraud. The delusory persons have been creating intense pressuring tactics while you aren't necessarily trying to mislead potential purchasers, customers should always use their best judgment and common sense be as clear as possible and cheaters do not answer any questions might have asked by the customers.

2. Falsely representing products

If you are a customer before purchasing online ask for product descriptions and understand clearly other information's terms and conditions. And to be very careful about the words they use for example they may stick to new arrivals. How long it will be a new product normally more than 6 months is not a new item. The term "Cotton Fabrics" means it shall be 100 percent cotton or only 10 percent cotton you shall know otherwise case may be land up in court. Here honesty is very important.

Another for the word cotton fabrics has no meaning to this context. Ayurveda Doctor from Mysore told the media that he has found new medicine for COVID-19 and also started issuing the medicine and many customers have purchased the same and with no effect, many people died even after consuming the medicines. And at the same time, they made huge money for their pocket.

3. False/Hired endorsements

Certain organizations will be hired to indicate false endorsements such as the product is excellent. If it is food products say that prepared by pure ghee sweets in the Venkateshwara Sweetmeat stall they use to say that it is

prepared by Pure Gee Mysore pak and later it is found that they used animal fat instead of pure gee. The customer went to court and after a complete investigation, it is found that they used animal fat instead of pure gee and instructed to close the unit itself.

Later after complete rectification now again opened and it is very difficult for them to gain the confidence of the public once again. Due to the false endorsements, it is happening like this. And correct endorsement is very much essential. On many occasions, the endorsement will be displayed without the notice of the endorsee. It means the endorsee has told anything about the product even then they will display this is also a false endorsement.

4. Guarantee and assurance of refund to dissatisfied customers with the time limit

Some organizations offer a guarantee of satisfaction of the customers and in case of customer feels dissatisfied completely for some reason about the product which they purchased the organization who gives an advertisement has to refund the complete amount to the customers apply to the product of promises of guarantee and assurance this is fair trade practice for some reason by guileful persons money will not be refunded which leads unfair trade practice.

Case 1: 1 scissor and 4 knives were purchased at a cost of Rs. 399.00 from amazon online product seller but received knives 4 in number in good condition and scissor 1 in number is not in good condition and it is a partially defective material there is no replacement facility or return possibility from ILKAL and when a customer contacted to the Amazon they agreed to refund the said amount in their account within 3 days. And offering to retain the good knives with the customer only this type of honesty leads free from unfair trade practices or say a fair-trade practice. This is a partial defect item. This illustrates to us that the ingredients, quality, and effectiveness is important before selection and purchase and to receive an offer like this.

Case 2: Everybody wants to play a different role in their life for achievement. If you get a frugal comfort without working hard on that and that too in a small period who will miss this opportunity? If you listen to Hypnosis audios your life will be manifested and you can achieve what you want by transforming your mind. There will a 6th sense which is already programmed in your brain for deficit financial resources and hence you are in a shortage of money. You have to reprogram this brain to attain finance in abundance through an online offer.

Further trying for the product, you are not losing anything since it has 60 days guarantee it means you have to make payment and experience the same through MP3 audio there are 4 types of audios and each type contains two parts viz., Part A and Part B first you have to listen Part A it will run for 50 minutes and Part B will run for 45 minutes condition is that at least 4 times you have to listen both the audios and the further condition is that first type of audio you have to listen for one week and go to 2nd type of audio that also to be tuned for one week, similarly all the four audios is to listen in 4 weeks by that time you will be transformed completely. You have to remember the purchase order number and amount and also the product name.

Here CLICK BANK stands guarantee and payment will be received by an online process through credit card or debit card money will be under the control of CLICK BANK and it will be transferred to the vendors. During the process, if the customer forgets or lost the details refund is impossible. And many times, he will forget the date of purchase also then after completing 60 days guarantee period lapses and he is not at all eligible to claim.

Shri Venkateshwara (name of the person) has purchased this hypnosis series at the cost of Indian Rs. 2,359.98 product name is Amazing You Order No. HZSIRNZM the amount was deducted from the Yes Bank Account and debited with the details as PCA2200818903: 3710620008649: 59: Click Bank*com at 08:09 PM on 10th October 2020 accordingly click bank has sent an email communication for the receipt of the said amount also.

Shri Venkateshwara was waited for 50 days for a life change unfortunately no improvement in his life. As per the guarantee of assurance asked for the refund to click bank, they contacted the vendors a series of reasons and conversation made from both sides of customer and vendors. The vendor unable to satisfy the customer and the hence dissatisfied customer asked to refund the amount paid. And within 5 working days click bank remitted the complete amount and the customer is still having his product which he has received on email and it cannot be refunded whereas physical objects have to be returned. This is a fair-trade practice. In case of all his efforts unable to receive the refunds, it is an unfair trade practice.

5. Suppress the information

Suppress information is a criminal affair as per passport office and police verifications. Consider the case of medicines the packets are to be disclosed with price, weight, date of manufacture, batch number, and best before use date, and place of manufacture, marketed by name. In case of the last date is over for the "best before use

date" product somehow or the other the seller will remove the date of manufacture and best before use dates and dispose of the medicines so that he will not incur any loss.

At the same time, the customer who consumes may hurt his health. This is an unfair trade practice. During the period of COVID-19, the material availability is difficult and hence the customer has left with no option he will purchase the items and consume the same.

6. Hiding the hidden prices of the products

Research Scholars have to publish at least 2 articles in some universities and 3 articles in some other university it is depending on the type and practice made in the manuals. After due payment and copy write submitting the same will be published at the agreed cost there afterward they ask for courier charges for dispatch this is an additional expenditure they will charge Rs. 1,000.00 extra as a courier charge they say that during COVID-19 pandemic we are taking the risk to dispatch with sanitization, double packing cooling period of the consignments and they give a lot of excuses. This is also an unfair trade practice.

It is essential to buy the thermal scan, sanitization, masks, face cover shield to monitor themselves concerning COVID-19. As the availability of the material is in scares demand is more and supply is less. The prices charged by the sellers are beyond one imagination. It is more than 5 times the original prices. The ordinary protected COVID-19 kit is available at Rs. 1,000.00 but hospitals are charging nearly Rs. 10,000.00.

The COVID-19 patients have to be isolated from the public otherwise corona spread to everybody and during this period many authorities have hired beds per day basis at an estimated cost of Rs. 800.00 per day per person and needed several thousands of beds and hence they made a lot of money from this. Unnecessary medicines, even though they do not use ventilators they say we used ventilators.

The same ventilator might have used for several patients and made money each time. In another instance, the hospital authorities will ask the patients to purchase the items from the pharmacy and after purchase, unused items will be returned to the pharmacy and made money for the account purpose, they say that the items are all consumed.

Even though the patient died they give artificial shaking instruments and from the far of a distance to the relatives of the patient and after 3 days they say sorry we could not do anything despite our best efforts he is not responded for our medicines. For your kind information till this day of writing articles nobody found the suitable medicine for COVID-19 in the entire world how these doctors are making bill 15 lack, and above from one person.

And imagine how many patients in Karnataka as per today's 03.12.2020 statistics in Karnataka alone COVID-19 infected patients rose to 8,87, 6667 one doctor COVID-19 warrier in the USA made 1.87 billion US\$ and he was arrested and ceased his assets when the opportunity arises cunning people make use and make money they are not bothered about the society and the poor only rich people can afford to pay their demands and middle-income group and salaried people not get any benefits from the government or they have sufficient funds to spend rich have sufficient funds and poor people will be supported by the government.

7. Provoking information's

During the period of COVID-19 if anybody says anything it will be heard by the public and fall into their traps. For example, COVID-19 protection one book they offered at the cost of US\$ 57. Further, they said only a few copies are left for the purchase of your tray before it exhausts. How these emails send information will be exhausted or check if it is still available these Willy people create an emergency and due to this provoking information's people will buy at an extra cost. Similarly, Readers Digest also gives provoking information's towards sweepstakes.

Case 3: One Mariam Color Laboratory was assigned a job to manufacture an electronic neon signboard with rotation features and includes a motor with AC/DC connection at an estimated cost of Rs. 35,000.00. By M/s Indian Telephone Industries Limited with clear instructions and specifications that goods to be supplied at the exhibition ground at Indian Institute of Science, Bangalore scheduled to be held from 26 to 30 September 2020 and the material have to be supplied on or before 25th September 2020.

The Mariam color laboratory has not supplied even on the day of the inauguration of the exhibition. When it is asked, he told that the material has moved from here by goods vehicles just 15 minutes back and it will reach within half an hour. One hour is completed, two hours are completed and 4 hours are completed but the material has not reached the scheduled place of exhibition.

Afterward once again contacted over the phone then he said that while in transit vehicle meets with an accident and the materials were broken and hence, I am redoing. He has taken an advance of Rs. 25,000.00 at the time of the job order with specifications. The terms and conditions indicating that he has to supply before the inauguration of the exhibition at least 4 hours in advance to set up the same.

One of the representatives from the organization went to the Mariam color lab and found that he has not yet started the work and all his statements were false and fraudulent. He has created the organization by giving false promises. With his unfair trade practice, the organization has incurred heavy loss and loss of reputation in the society and got the brand name that government officials are always lazy and they will get their salary why they bother about the image of the organization.

If somebody commits some mistakes and misleading others have to be blamed for the same for not monitoring the problems properly. This is a clear case of unfair trade practice.

CONCLUSION

Especially in India, it is very difficult to see the fair-trade practice except few and hence the customer is to be extra careful to follow the above said 7 information's before the purchase of the product. Withholding information is just as bad as using overtly inappropriate or Willy information. Therefore check the price of the product or services before accept.

Certain times by omission of information might influence the customer's decision to make a purchase and hence seller uses unfair trade practice. If you find any unfair trade practice and you become the victim of the unfair trade practice always you can approach the Central Consumer Protection Authority (CCPA) for justifications.

Always the Consumer Protection Act, 1986 will help the deceptive personnel. To prevent always get educated in this matter and save yourself the time and expenses of litigations.

ENDNOTES

1. **Sara Devi:** "Fair and Unfair Trade Practices" published and printed in SARA Printers and Publishers in France 2016 in pages 2, 8 and 9.
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7. Cases extracted from Consumer Court
8. Direct interaction with a customer who suffered from unfair trade practices
9. Information from the Central Consumer Protection Authority (CCPA)
10. Consumer Protection Act, 1986 which is amended in 2019 and 2020

ONE NATION ONE RATION CARD PLAN - AN ELIXIR TO EXISTING PROBLEMS OF PUBLIC DISTRIBUTION SYSTEM?

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ABSTRACT

Maintaining constant supply and distribution of food essentials during pandemic has been one of the most challenging tasks for the Centre and States. For those who were deprived of their daily wage income due to imposition of nationwide lockdown, many measures were announced under Pradhan Mantri Gareeb Kalyan Yojana including increase in the supply of ration. Many States introduced schemes for free supply of ration and increase in the quantity of ration supplied under NFSA. In spite of various promising schemes, consumers faced multiple problems while availing their rightful share. Data from State Consumer Helplines of 8 states indicate that a total of 11386 complaints have been registered pertaining to Public Distribution System (PDS) during March – July 2020. There has been 350% increase in PDS complaints from March to April at National Consumer Helpline. The analysis of the data depicts the initial hiccups faced by the authorities in ensuring 'Food for all' as promised.

Non-availability of stock at the allocated Fair Price Shops (FPS), FPS's denying to provide increased quantity of ration, unable to get ration due to closed FPS's and finger print mismatch due to technical difficulties etc. were some of the major recurring difficulties faced by consumers. 'One Nation One Ration Card' (ONORC) plan of Central Government aims at confronting the many hurdles faced by beneficiaries of NFSA by enabling Nationwide portability of ration cards. This has a targeted benefit to the migrant beneficiaries to avail ration anywhere amongst the integrated cluster of States/UTs. As on October 1st 2020, 28 States and 4 UTs are on board with this scheme. With the help of secondary data collected from website of Ministry of Consumer affairs and consumer grievance data reported at State and National Consumer Helplines, this paper aims to analyze the efficacy of ONORC plan in resolving the existing glitches of Public Distribution System.

INTRODUCTION

Public Distribution System in India is a channel established by Government of India to ensure food security to its population. Under this system, basic food essentials (rice, wheat, sugar and kerosene) are distributed at a subsidized price amongst economically weaker sections through government sponsored Fair Price Shops (FPS). Under this system while Central Government holds the responsibility to procure, store and bulk allocation of food grains, State Governments are responsible for identification of beneficiaries and distribution of food grains to them. In 1997, Public Distribution System was moved from universal system to that of Targeted Public Distribution System (TPDS) wherein, a demarcation of Below Poverty Line (BPL) and Above Poverty Line (APL) was made with each BPL family receiving a set quota of food grains per month at heavily subsidized prices. In the year 2000 several other schemes such as Antodaya Anna Yojana and Annapurna Schemes were introduced to emphasise on supply to poor and needy.

To overcome the recurring challenges of inclusion/exclusion error, leakage and corruption National Food Security Act, 2013 (NFSA) recognizing food security as for all as a legal right was enacted. NFSA categorises beneficiaries under two heads i.e., Priority House Holds (PHH) and Antyodaya Anna Yojana (AAY). Priority households are entitled to 5 kg of food grains per person per month, and Antyodaya households are entitled to 35 kg per household per month. The coverage of eligible households (i.e. priority households and Antyodaya households) covers to up to 75% of the rural population and 50% of the urban population. However, in spite of consistent efforts, diversion, leakage and exclusion error remains the big hurdle in ensuring the efficacy of PDS. Central vigilance committee headed by Justice D.P Wadhwa constituted by Supreme Court of India to study the implementation of TPDS in various states, in its report recommended the digitalisation of whole process of PDS system. It suggested that, automation of the complete channel and process involved in PDS using IT based technology would enable transparency and thereby put a stop to all problems of duplication, exclusion, diversion and leakage. The recommendation was based on study of already existing computerization methods implemented in the states of Kerala, Chhattisgarh, Gujarat and Karnataka.

Effective incorporation of Aadhaar in the PDS started in 2011-2012, with pilot projects undertaken at the local level in different states. These projects introduced Aadhaar recognition in the ration shop space that constitutes the last mile of the supply chain. Ration shops were endowed with biometric point-of-sale machines set to recognize beneficiaries through their fingerprint, hence delivering the exact monthly allotment to which each user was entitled.

Nationwide lockdown imposed during the pandemic brought a sudden halt to day to day activities of people. Of all, it drastically affected people dependent on daily income. Deprivation of livelihood placed them in a vulnerable position and made them greatly rely on government schemes for their basic essentials. As an offset reaction to increase in the duration of lockdown period, States encountered the challenge of migration. Movement of migrant labours due to indefinite unemployment and uncertainty posed yet another challenge in terms of food security. As remedial measure to tackle the economic impact of lockdown, government announced Pradhan Mantri Gareeb Kalyan Yojana (PM-KAY) under which additional to usual food grains under NFSA, 5kg of rice/wheat and 1 kg of chana dal per person was distributed free of cost to all the beneficiaries. This covered the population of 80 crore people. Through Atma Nirbhar Bharat Scheme (ANBS), a specific and separate scheme for migrants was announced by government, it covered all those people who were not able to avail benefits either under PDS or NFSA for not possessing required documents under the scheme. In spite of not having exact data or statistics of migration population either with centre or with state government, centre took a liberal view and with the help of NGOs, labour organisations, construction sites, quarantine camps etc it was decided to cover 8 crore people (against to the estimate of 2.8 crore migrant population)

One Nation One Ration Card (ONORC) plan under the scheme of Integrated Management of Public Distribution System (IM-PDS) was implemented in a cluster of 12 States from January 2020. During the period of Covid induced crisis, government expanded the implementation of this plan laterally and as on October 2020, 28 States are on board with this facility. ONORC with the help of IM-PDS portal using Aadhar authentication/biometric verification enables National Portability of Ration Cards. This facility allows the ration card holder to lift food grains from any e-PoS (electronic Point of Sale) Fair Price Shops (FPS) of their choice without having to apply for another ration card. This plan is aimed at benefitting migrant workers in general who were deprived of their access to food grains due frequent migration from home state to another state for the purpose of employment.

In the aftermath of lockdown and phased Unlock guidelines, nation is yet to recover from the economic burden caused by Covid crisis. One can expect re migration of population slowly as the economic activities pace up. Under these circumstances, it becomes vital to study the impact and efficacy of various PDS schemes aimed towards the benefit of vulnerable sections.

LITERATURE REVIEW

There have been various studies on Indian Public Distribution System and food security. Analysis have been made based on both qualitative and quantitative research as to its effectiveness in aiding the poor and numerous shortcomings have been pointed out based on those studies. PDS in its inception aimed at controlling upward price fluctuations of food grains owing to speculative activities of private traders. It mainly covered urban areas. However, during the period of 1950-60 nation confronted shortage of food essentials (draught and famine) and PDS was used as an instrument to bring market stabilisation in terms of prices especially for staple foods in urban areas. Literature suggests that it was only after 1980s green revolution that welfare component of Public Distribution System gained momentum. Due to universal entitlement without any preference based on economic strata it was argued that 80% of the rural and poor population are left outside the scope of the system. Urban bias was one of the key criticisms which led to the implementation of Targeted Public distribution System in 1997. The demarcation of below poverty line and above poverty line and thereby specifically targeting the actual needy broadened the scope of public distribution system making it available in the rural areas as well. However, a certain amount of dissent towards TPDS was voiced highlighting the exclusion of actual BPL due to arbitrary and unjust basis for identification of BPL and APL. Closing of Fair Price Shops across the nation was considered due to exclusion of APL members from the PDS. High rate of inclusion exclusion error highlighted the inefficient targeting under TPDS. Removal of non-random placement has been viewed as corner stone in assessing the impact of Targeted PDS.

Along with deficiency in targeting mechanisms, ineptness in efficiency of TPDS could also be attributed to persisting corruption and diversion/leakage at both micro and macro levels. Existing literature depicts the more than 50% leakage during 2004-05 which slightly dropped to 44% around the period of 2010-11. This low offtake of food grains by the poor attributed to number of reasons such as irregular supply, accessibility, poor quality and financial etc. However, the more important reason is the issue of gross failure of identification of the right beneficiaries.

Even with majority conceding to the failure of PDS in ensuring food security to all, uniform opinion acceded to the positive hope that enactment of NFSA 2013 would strengthen the existing PDS system by making food as a legal right. Justice D.P. Wadhwa Committee in its 2009 report suggested technology-based reforms to help plug leakages of food grains during TPDS. The Committee observed that end-end computerization could help curb

diversion and keep track of movement of goods from FPS to beneficiaries. In States like Karnataka computerization of existing beneficiaries under PDS had started as early as 2006 in the name of Ahara. Chhattisgarh, Kerala and Gujarat are other states which utilised IT to track leakages, diversion and malpractices.

The Central Government in October 2012 initiated the scheme of 'End to End computerisation of TPDS Operations' with a view to address various challenges of leakages and diversion of foodgrains in the TPDS supply-chain, fake and bogus ration cards, inclusion and exclusion errors, lack of transparency, weak grievance redressal & social audit mechanisms. In 2016 March Aadhar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act was passed as Money Bill. The Act empowered states to officially include Aadhar in welfare schemes and thus integrate Aadhar and biometric authentication within the PDS. However, the Act was vigorously challenged in Supreme Court contending that by making Aadhar mandatory, Act violates the fundamental right to benefit under social welfare schemes and also provisions of Aadhar violates Right to Privacy of individuals as there is no proper safeguards with regard to collection of personal details by private entities. In September 2018, upholding the constitutional validity of the Act, Supreme Court held that it empowers disenfranchised sections of society by providing them better access to fundamental entitlements, such as State subsidies. It put an end to the controversial debate of Aadhar and Right to Privacy.

Interlinkage of Aadhar to PDS has been opined as the 'problem solver' to rudimentary hurdles in public distribution system. Contradicting view also persists as to mandating Aadhar as violative of human rights and comprise added risk of exclusion error due to technological failures.

Since the inception of lockdown, PM-GKAY, ANBS and IM-PDS are the three schemes announced by government as a reformatory measure to ensure food security amongst the vulnerable section. Barring the exception of ANBS, workability of all the schemes are dependent on how better the Fair Price Shops are equipped in terms of IT Infrastructure. The review of existing literature in pre pandemic era gives mixed conclusions in relation to usage of IT enabled services and bio metric authentication for PDS. However, as per the press release by government and monthly reports of Department of Food and Civil Supplies, electronic point of services have been installed in 80% of the Fair Price Shops and transactions are being authenticated in one or the other way. Hence, assessment of these schemes by utilising the data pertaining to ration card transactions available in PDS portals would provide an accurate depiction of performance of web based authentication services and its impact on reformatting the Public Distribution System.

OBJECTIVE

To analyse the impact of PM-KAY, ANBN and ONORC (IM-PDS) Schemes in ameliorating challenges of food security during pandemic.

To investigate the effectiveness of Web based services, Aadhar and Biometric authentication and IT enabled services in resolving the rhetoric problems of Public Distribution System.

RESEARCH METHODOLOGY

The data pertaining to distribution of food grains during the period of March to October 2020 under PM-KAY, ANBS and ONORC has been collected from the secondary sources such as website of Department of Food and Civil Supplies, PDS portal (<https://pdsportal.nic.in/>), Annvitaran Portal (<https://annavitrان.nic.in/welcome>), National Food Security Portal (<https://nfsa.gov.in/>) and IMPDS portal (<http://www.impds.nic.in/portal>). Data given from Annual report 2019-2020 by Ministry of Consumer Affairs has also been utilised. Grievance data pertaining to PDS related complaints during the same period has been collected from INGRAM portal of National Consumer Helpline and State Consumer Helplines. Monthly reports, Orders and Press releases of Ministry as well as Department of Food and Civil Supplies has been utilised for the purpose of study.

RESULTS AND ANALYSIS

Analysis of the data from the sources is divided into following sections

- i) Change in demographics due to imposition of lockdown in March 2020 and subsequent changes thereafter
- ii) Access and Utilisation under PM-GKAY
- iii) Distribution under ANBS
- iv) Frequency and Usage of ONORC under IMPDS

i) Analysis of change in demographics due to imposition of lockdown:

The demographics analysis is based on the data of ration card holders. By the end of March 2020 around 21.99 crore RC holders did exist. It has been increased to appx. 22.50 crore with an influx of about 50 lakh RC

holders during the said period. Newly added RC during each month is shown as columns in figure 1. Cumulative increase is shown as a line. Cumulative trend suggests, in general, an increasing trend during the lockdown period. There are spikes in new RC holders during the month of May and August. The first spike suggests the people who responded after a brief period of uncertainty and realising the extension of this uncertain period. The second spike is observed during the month of August which is a period after travel restrictions are eased (during June-July). The sharp rise in number of beneficiaries transferred after August infers the large number of migration from employment states to home state.

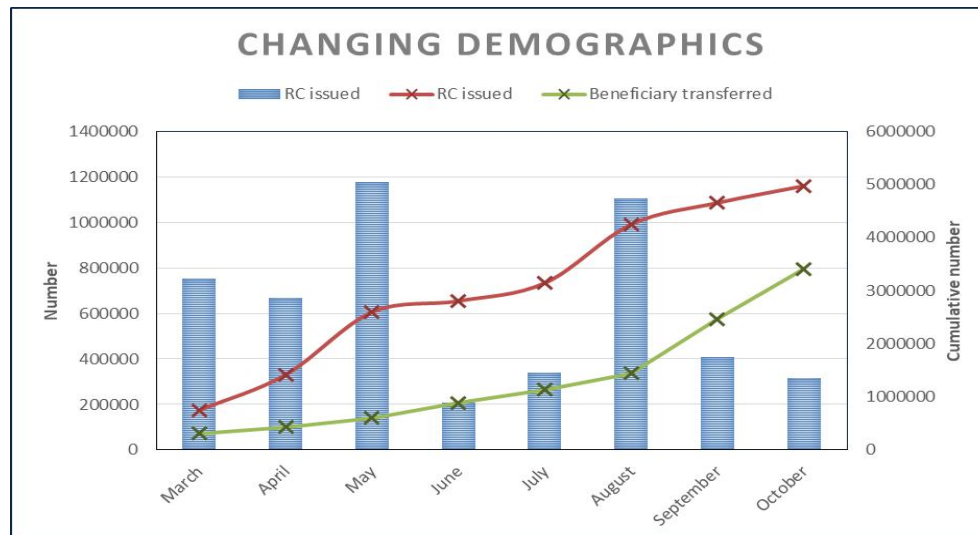


Fig. 1. Changing demographics due to lockdown

ii) Access and Utilization under PM-GKAY

It can be observed from figure 2 that number of states distributing food under PM-GKAY scheme are increasing steadily (except in the month of July). PM-GKAY covers all NFSA beneficiaries. It utilises Aadhar, biometric authentication for distribution of food. However, having considered the unusual situation government announced that, distribution shall be made manually in case of failure of biometric authentication. This depicts the clear intention of government that no person shall be left out of the scheme merely for not having proper authentication. It was instructed to state governments to utilise other forms of authentication like OTP, SMS etc as an alternative. After the announcement of scheme in March, there is a spike in demand for the month of April 2020, a month later nationwide lock down was imposed. Amplified transactions in April can be owed to nascent stage of scheme and also tendency of people to stock essential commodities due to the uncertainty about future. After April the demand is retained at a constant level. The increase in demand post April 2020 is about 35 times (3500% increase) compared to the demand in March 2020. Both authenticated and Non-Authenticated transaction under PM-GKAY has remained constant suggesting broader coverage for longer period.

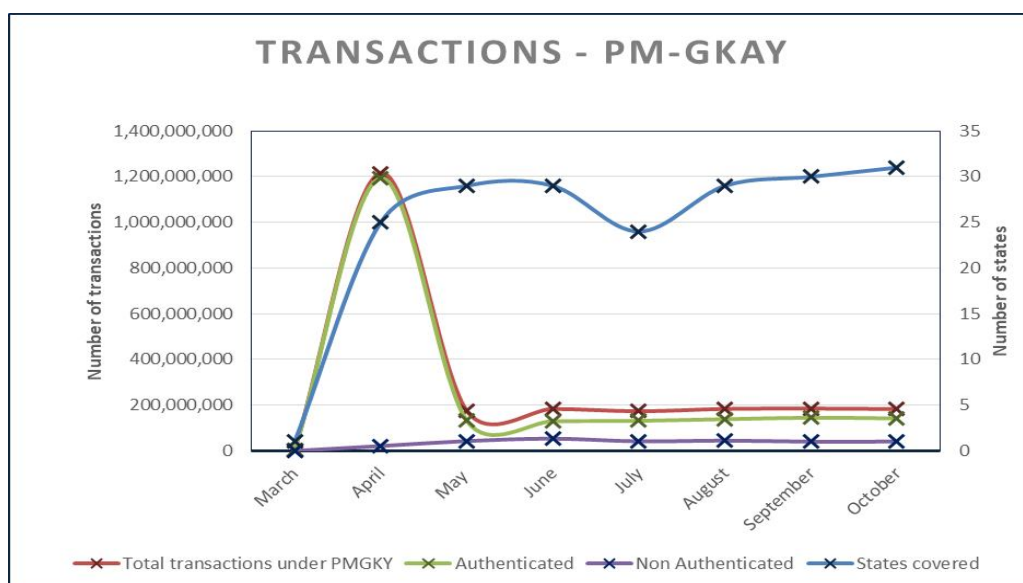


Fig. 2. Transactions under PMGKAY scheme during the lockdown period

Coming to the supply and distribution aspect of PM-GKAY, trend form the data represented in fig 3 suggests that, there has been more than 70% distribution of food grains allocated by centre under the scheme (except in the month of March, wherein it was utilised only by Telangana State). In the first phase of PM-GKAY food grains were allocated for three months (April-June) and in 2nd phase it was extended to five months (July – November). However, central governments allocation of food grains for distribution under the scheme has remained constant indication constant supply and data in table 1 indicates the steady increase in the distribution of allocated food grains.

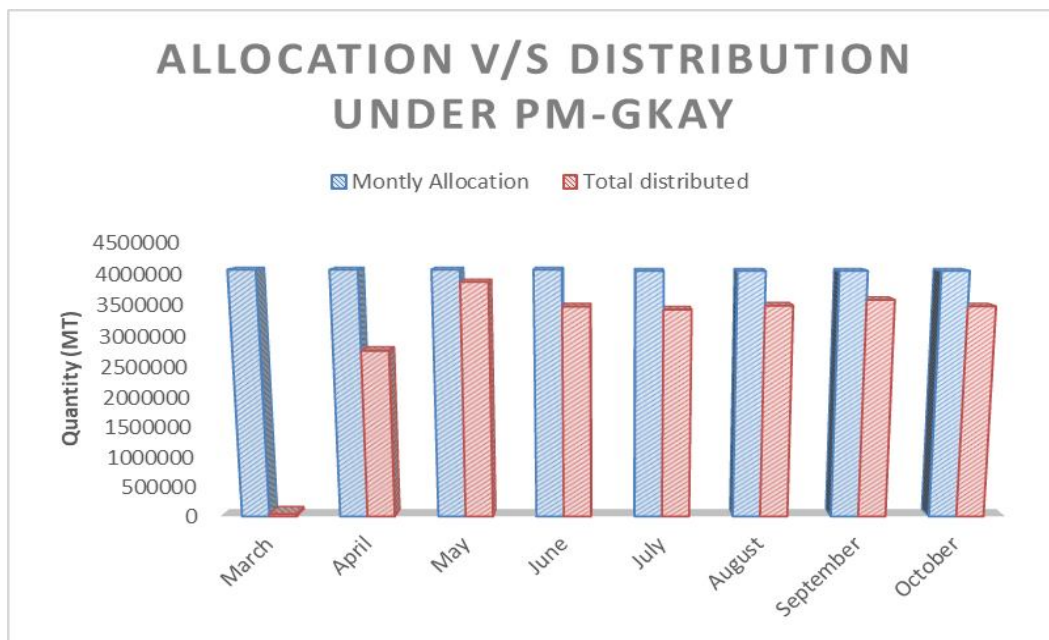


Fig. 3. Allocation vs. Distribution of food grains under PM-GKAY

Months	% distributed
March	1.01
April	68.00
May	95.24
June	85.52
July	84.80
August	86.33
September	88.63
October	86.05

Table 1. Percentage proportion of distributed food grains against allocated food grains

iii) Distribution of food grains to migrants under Atma Nirbhar Bharath Scheme (ANBS)

To aid the migrant workers stranded across the nation during pandemic, government announced free supply of food grains (Rice and Chana dal) for stranded migrants. To reduce the risk of exclusion and cover maximum migrants, distribution under this scheme was made to people not coming under either NFSA or any State PDS Scheme. Since there was no prior statistics on number of migrants state governments were asked to give an estimate through the help of NGOs, Quarantine centre, Industrial Associations, Welfare Associations, labor camps, construction sites etc. States/UTs collectively indicated a total population of about 2.8 Cr. such persons who could potentially benefit from the distribution of free-of-cost food-grains under the Atma Nirbhar Bharat Scheme (ANBS). Taking the liberal view Union Food Ministry had allocated about 8 LMT of food grains to all states/UTs under the package for free of cost distribution. (taking broad estimation of 8 Crore i.e., 10% of NFSA coverage). As per the information published by the Ministry of Consumer Affairs, Food & Civil Supplies, a total of 2.65 Cr people have benefitted from the above scheme.

Compared to the total allocation, there has been only 33% of food grains distributed under the Scheme. However, if we consider distribution against that of actual estimation of migrants not coming under NFSA or State PDS, i.e 2.8 Cr, 95% of the food grains allocated to migrants has reached intended targeted beneficiaries.

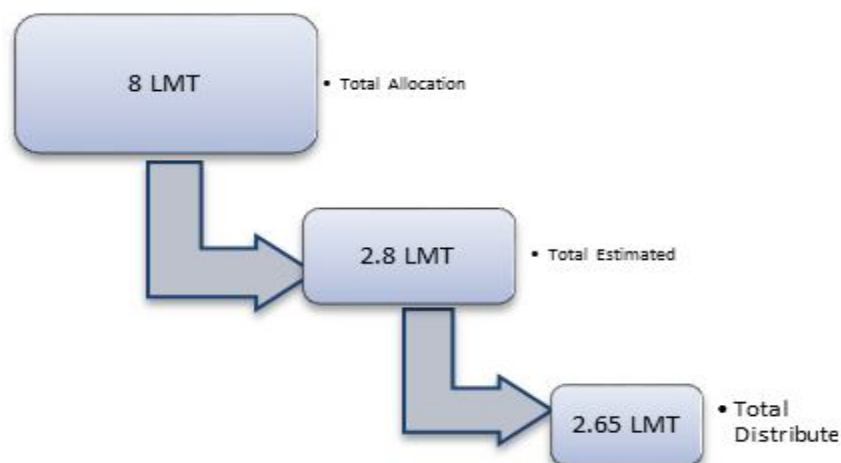


Figure 4. Quantity of foodgrains under ANBS

iv) Frequency and usage under ONORC – IMPDS

One Nation One Ration Card Scheme has been portrayed to be a magic wand to majority of the complexities in PDS. Through usage of ePoS and IMPDS portal, one can get their Ration from any fair price shop across the nation. This is aimed at giving an enduring solution to the problem of migrants as well as complaints relating to non-receipt of allocated ration by FPS. Right after lockdown in March data in Table 2 indicates 350% rise in PDS grievances at National Consumer Helpline relating to FPS's closed, not getting allocated share, Aadhar authentication not working, denied ration etc. Figure 5 represents the total transaction wherein food grains have been collected from state other than home state. One can see, there has been a steady progress in interstate transactions and it is on a positive trend. Notable co relation can be drawn here between increase in interstate transactions and reduced complaints pertaining to PDS having vice versa effect.

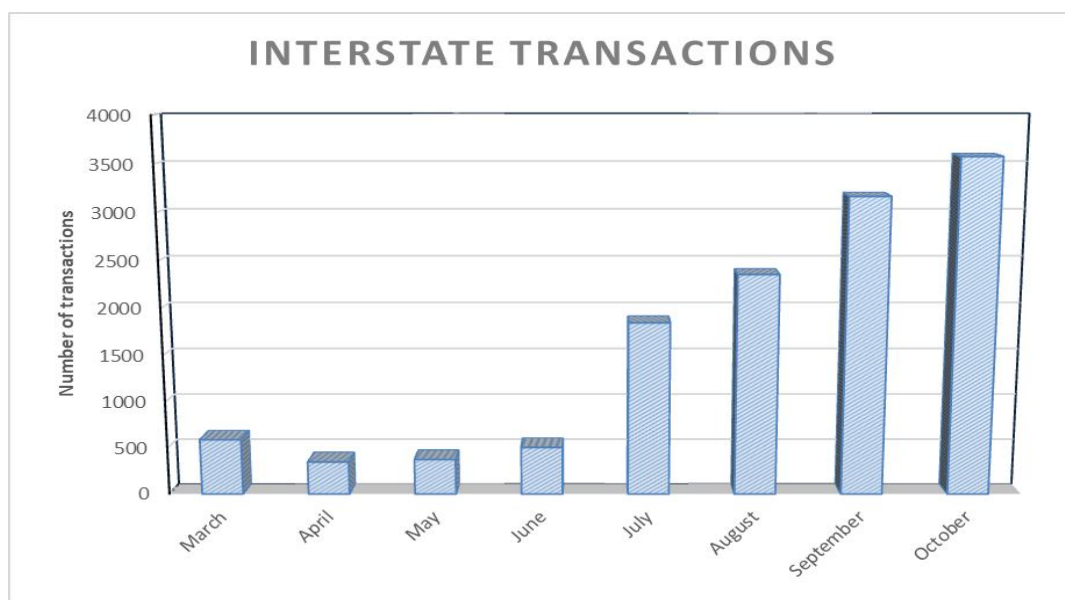


Figure 5 Total interstate transactions from the one nation one ration card scheme

PDS Complaints at NCH	
Month	Dockets Registered at NCH(including ZCH)
March	305
April	1373
May	802
June	360
July	541
Total	3381

Table 2 – PDS Grievances registered at NCH

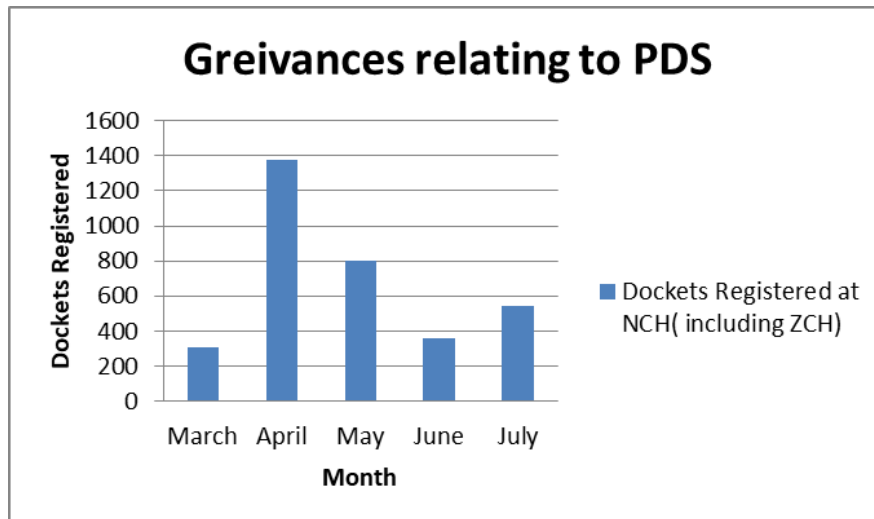


Figure 6 – Grievances relating to PDS

v) Technological hurdles

Majority of the PDS has been revamped with the inclusion of technology and beginning from allocation to off take and distribution, everything is accountable and visible to public. The existing data (fig 7) of failed transactions using ePoS indicates that 97% of the failed transactions are due to Aadhar related.

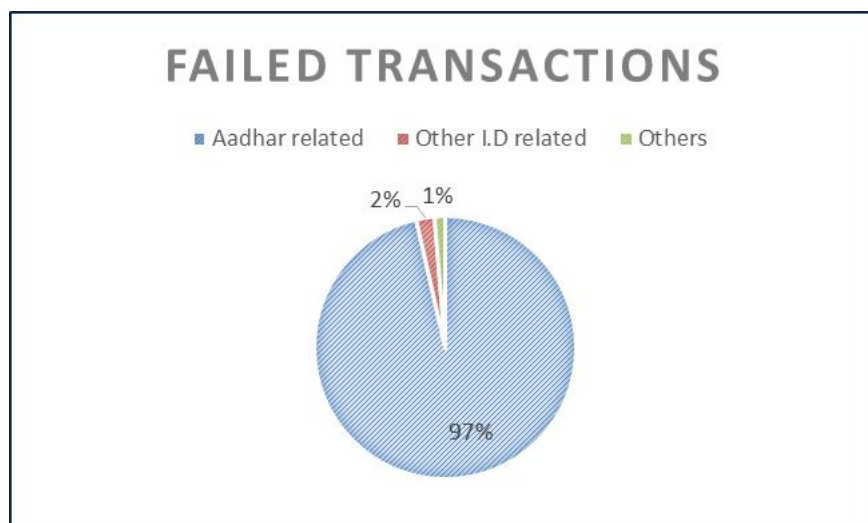


Figure 7 Statistics of the failed transactions

The data in figure 8 clearly indicates the existing gap in implementation of technological infrastructure at various fair price shops (as on 30th October 2020)



Figure 8 : Total FPS and FPS with working e PoS

CONCLUSION AND RECOMMENDATIONS

- Ensuring food security to all has been the most challenging task for State during lockdown imposed due to pandemic.
- Both Central Government and State government have made consistent efforts in ensuring no one is denied basic essentials during this period.
- With more than 80% consistent distribution to beneficiaries, PM-GKAY has been successful in distributing food grains to the needy.
- 95% of migrants have received benefits targeted to them under ANBS
- ONORC scheme is steadily reaching its targeted beneficiaries.
- PM-GKAY, ANBS and ONORC together have been effectively implemented towards ensuring food security to all.
- Since most of the successfulness of transaction under Public Distribution System is dependent on Information Technology and Web services, there is an urgent need to upgrade the infrastructure at Fair Price Shops accordingly.

Less transactions under ONORC is also due to lack of information regarding the scheme amongst people. Hence remedial measure with regard to information dissemination at the grassroots level has to be made.

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THE IMPACT OF COVID-19 ON CRIME RELATED TO SUBSTANDARD AND FALSIFIED MEDICAL PRODUCTS IN INDIA-LEGAL PERSPECTIVE

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ABSTRACT

The Covid-19 pandemic made Government to impose restrictions on movement had made impact on the trafficking of substandard and falsified medical products. The Ministry of Health reported that seizures of substandard and falsified medical products during the pandemic. The emergence of trafficking in medical products signals a significant shift in organised criminal group behaviour that is directly attached to Covid-19 pandemic, which has brought huge demand for medical products in short time. Challenges in pandemic preparedness ranging from weak regulatory and legal frameworks to prevention of the manufacturing and trafficking of sub standard and falsified products short comings were evident before covid-19, but the pandemic has exacerbated them and it will be difficult to make significant improvements in the immediate short term.

In this regard more Literature research will be carried to re-examine the Consumer Protection Act 2019 and to give good suggestions about the trafficking of substandard and falsified products during the Covid-19 and the possible alternatives to put in place a strong regulatory and legal frameworks to protect the health of general public.

INTRODUCTION

Right to health is a fundamental right in India and has been recognized both in international law as well as in the domestic law. The constitution of India provides that the right to health is an implied fundamental right under Article 21. As medicine are lifesaving entities and thus are more essential for the treatment. India is the developing country, many people accept, prefer and buy counterfeit or substandard products over genuine or branded products due to their cheap price, easy accessibility and availability in the market. Consumer does not know about the manufacturer or the quality of the product and many time they are unaware of expired, degraded or substandard products which ultimately results in failure of the treatment and with antibiotics this lead to antimicrobial resistance. Substandard product arises correspondingly due to lack of expertise, unfair manufacturing practices or in substantial infrastructure; whereas counterfeit is the product of black marketer. Poor quality drug does not bear any universal definition in general poor quality drug are the spurious/falsely-labelled/falsified/counterfeit drugs that can cause treatment failure. In India, as per Drug and Cosmetic (D and C) act, 1940, under section 17, 17A and 17B poor quality drug comprises of misbranded, spurious and adulterated drugs, respectively¹.

In order to break the chain link of corona virus and prevent the rapid spread of covid-19 Indian government declares the lockdown and imposes the restrictions on movement due to the COVID-19 pandemic have had an impact on the trafficking of substandard and falsified medical products. Well organised criminal groups have adjusted to the opportunities arising from the COVID-19 pandemic to exploit the vulnerabilities and gaps existing in health and criminal justice systems². They exploit fears and uncertainties among society and authorities to generate a demand for scarce medical products. The falsification of medical products at the manufacturing stage raises more risks for public health, as such products may not properly treat disease or illness and may leads to the development of drug resistance. The evidence to such criminality involving manufacturing and trafficking has closely followed the spread of COVID-19. During the pandemic, demand for medical products, including PPE to help prevent the spread of COVID-19, suddenly outstripped supply. Criminal groups swiftly adapted by providing substandard and falsified medical products, including PPE, and offering non-existent supplies of products to defraud individuals and procurement agencies. Public pressure on health systems to acquire sufficient PPE for a country's needs created an opportunity for criminals to take advantage of the situation and supply substandard and falsified PPE with lower good governance checks.

¹ Sri.A.N.Khan & R.K. Khar <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4355878/>

2.. COVID-19-related Trafficking of Medical Products as a Threat to Public Health-UNODC

https://www.unodc.org/documents/data-and-analysis/covid/COVID-19_research_brief_trafficking_medical_products.pdf

Taking of an opportunity provided by COVID-19 the quantities of substandard and falsified medical products increases worldwide indicate that criminal organisations have taken advantage of the situation. In this juncture an attempt has been made by the researcher in this article to analyse both civil and criminal laws relating to prevention of the falsified medical products and regulatory and adjudicative mechanism and the rights of consumers with relating to medical products.

Law Relating to drugs and Medical Products in India

In the beginning of the 20th century the drug industry was virtually non-existent in India and drugs were imported from abroad. Due to increase in demands of drugs and medical products some Indian companies started production of cheaper and inferior quality of drugs as compare to imported. To control the situation, government passed the poison Act and Dangerous Drugs Act in 1919 and 1930 respectively, but to have a comprehensive legislation in Indian government appointed a Drug Enquiry Committee under the chairmanship of R. N. Chopra to make recommendation about the ways and means to control the production and sales of drugs and medical products in the interest of Public health. On the basis of the recommendations made by the committee the Drugs Act was passed in the 1940 to regulate the import, manufacture, distribution and sale of drugs in India. Further drug rules were framed in 1945 to give effect to the provisions of the Act. Recently the Drugs and Cosmetics Act has been amended by the Indian Parliament to incorporate many stringent penal provisions for the manufacture and sale of counterfeit medicines and for various other offences.

In India the central Legislature has enacted many legislations to regulate the manufacture, sale, import, export, distribution, affordability, availability, misleading advertisements, pricing and clinical research thereof, listing few legislations

1. Drugs and cosmetics Act, 1940.
2. Drugs and Cosmetic Rules 1945
3. Pharmacy Act 1948
4. Drugs (price Control) order 1995
5. Narcotics and psychotropic Substances Act 1985
6. Drugs and magic Remedies (prohibited Advertisements) Act 1954
7. Medicinal and toilet Preparations (excise Duties) Act 1955.

There are few other laws which imposes some duties and liabilities on the manufacture, distribution and sale of drugs and cosmetics in India, the important ones are

1. The Industries (Development and Regulations) Act 1951
2. The Trade Mark Act 1999.
3. The Factories Act 1948
4. The Patents Act 1970
5. Indian Penal Code 1860
6. The Consumer Protection Act 2019

Article 47 of the Indian Constitution puts an obligation on the Centre and the States to take care that the adulterated and substandard drugs are not marketed in the larger public interest. In the List I Entry 59 provides for cultivation, manufacture and sale for export of opium. In the List II Entry 6 deals with public health and List III Entry 19 with Drugs and Poisons subject to the provisions of Entry 59 of the List I and Entry 34 of the List III provides for price control¹. It is obligatory on the part of the State to protect and take measures in improving the life of the people with adequate legislative and administrative measures. Therefore, keeping in view the Union Government enacted the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954. The Act got enacted under the Entry 19 of the List I which deals with the "drugs and poisons". Section 3 of the Act provides prohibition of advertisements of certain drugs for treatment of certain diseases and disorders. Specifically, section 3 prohibits the publication of any advertisement of any drug which suggests or is calculated to lead to the use of the drug for the purposes of the procurement of miscarriage in women or prevention of

¹ Constitution of India-professional book publishers -Bare Act.

conception in women; maintenance, improvement of the capacity of human beings for sexual pleasure; correction of menstrual disorder in women; and diagnosis, cure, mitigation, treatment or prevention of any venereal disease or any other disorder or condition which may be specified in the rules made under this Act. Section 4 further prohibits misleading advertisements relating to drugs.

The Union Parliament also enacted the Drugs (Control) Act, 1950 to provide for the sale, supply and distribution of drugs. The various States also enacted legislation for controlling the use of drugs. Section 4 of the Act, 1950 empowers the Chief Commissioner to fix the maximum price rate which may be charged by a dealer or producer. Section 5 imposes restriction on sale and in this regard a dealer or a producer cannot sell or agree to sell or offer for sale to any person any drug for a price or at a rate existing under the maximum limit fixed by the notification under section 4. Section 13 provides for penalties for the violation of the provisions of the Act with imprisonment for a term which may extend to three years or with fine, or with both.

In order to regulate the import, manufacture, distribution and sale of drugs the Union Government in pre-independent India enacted The Drugs and Cosmetics Act, 1940 in order to give effect to the recommendations of the 'Drugs Enquiry Committee' which was set up by the union government. Drugs and Cosmetics Act, 1940 provides regulation for the import, manufacture, distribution and sale of drugs and cosmetics. In order to keep a check on drugs which are contaminated with foreign matter or which are manufactured, packed or held in insanitary conditions whereby they have been contaminated or rendered injurious to health. In order to make the enforcement of the Act more effective, the Parliament amended it by the Drugs and Cosmetics (Amendment) Act, 1964. Under the amended Act Ayurvedic and Unani drugs have been brought within its purview. Then another amendment to the Act was made by the Drugs and Cosmetics (Amendment) Act, 1982. The Act of 1940 as amended lately by the Drugs and Cosmetics (Amendment) Act, 1982 provides for the Drugs Technical Advisory Board (Section 5), the Central Drugs Laboratory (section 6), Drugs and Consultative Committee (section 7) and with regard to the standard of quality and misbranded drugs (section 9) and misbranded cosmetics (section 9C). Section 9 A deals with adulterated drugs and 9B deals with spurious drugs. The Drugs and Cosmetics Act, 1940 as amended in 1982 has strengthened the enforcement machinery to rope the offenders and see to it that adulterated and spurious drugs and cosmetics are not manufactured and sold in the market. The Indian Parliament enacted the Narcotic Drugs and Psychotropic Substances Act, 1985 which is a significant landmark in making an important legislation to curb the drug menace. The Act has repealed the outdated Opium Acts of 1857 and 1878 and the Dangerous Drugs Act, 1930¹.

However, consumer interest has been protected by defining, 'Ayurvedic' and 'Unani' drugs which include "all medicines intended for internal or external use for or in the diagnosis, treatment, mitigation or prevention of disease in human beings", in processed and manufactured in accordance with the formula described in the authoritative books of Ayurvedic and Unani systems of medicine. In order to have the protective use of the drugs the repealed Opium Act, 1857 was enacted in order to consolidate and amend the law relating to the cultivation of poppy and the manufacture of opium.

The Indian Penal Code 1860 which is the substantive law of crime does provide penalty for adulteration of drugs under section 274, sale of adulterated drugs under section 275 and sale of drug as a different drug or preparation under section 276. Some other provisions of Indian Penal Code also provides punishment for offences of Sub-Standard and falsified products under section 415 and 486. Further sections 32, 190(c) 239, 259, 267, 268, 275, 351 (1) and (2), and 417, of Criminal Procedure Code are to be invoked to control business malpractices leading to adulteration. In this regard criminal law machinery must be active and efficient.²

Legal measures are provided under various statutes in India to deal with counterfeit/ pirated products. The first legislation in this regard is The Trade Marks Act, 1999 along with the Trade Mark Rules, 2002 are the primary legislation in India which deals with law relating to trademarks. When a person has registered a trademark he has the exclusive right to use the trademark in relation to the goods or services in respect of which the trademark is registered. Registration of a trademark under the TM Act grants a bundle of rights to the registered proprietor and if anyone violates such rights it is called infringement of trademark. The TM Act further provides that a trademark is infringed, when a mark is used in trade by an unauthorised person which is identical or deceptively similar to the registered trademark; and used in respect of goods or services, which are identical.

¹ Sri.A.N.Khan & R.K. Khar <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4355878/>

² . IPR Enforcement, Toolkit of Police, Ministry of Commerce and Industry, Government of India, <https://dipp.gov.in/publications/ipr-enforcement-toolkit-police>.

Section 102 to 107 of the Act provides for civil and criminal remedies against misrepresentation, false representation, infringement and passing off by the way of fine or imprisonment or both.

Further, section 63 to 69 of the Copyright Act 1957 and the Copyright Rules, 2013 provides punishment for infringement of copyright. Infringement of copyright happens when any person without licence from the owner of the copyright or the Registrar of Copyright, does anything, the exclusive right to do is conferred upon the owner of the copyright. Anyone who allows, uses, sells, shares, or otherwise exploits items protected under the Act without necessary authorization is liable.

The Patent System in India is governed by the Patents Act, 1970 and the Patents Rules, 2003. When a patent granted under the Patents Act, patentee have an exclusive right to prevent third parties from making, using, offering for sale, selling or importing patented products or product obtained directly from the patented process. The Patent Act protects the patentee's invention from false representation and infringement by way of civil remedies under Section 120 of the Act, which provides that if any person falsely represents that any article sold by him is patented in India or is subject of an application for a patent in India, he shall be punishable with fine which may extend to one lakh rupees. There are no penal provisions available to the rights holders in patent infringement cases.

The Designs Act, 2000 and the Designs Rules, 2001 were enacted to protect new or original design applied on products manufactured by industrial process and to ensure that the artisan, creator, originator of a new or novel design are not deprived of their bona fide reward. An industrial design is registered for a extended for five years) and after the registration of an industrial design it shall not be lawful for any person to apply or cause to be applied the design or obvious or fraudulent imitation thereof, to any article in any class of articles in which the design is registered. Section 22 of the Designs Act deals with piracy of registered design and provides that any person who acts in contravention shall be liable for every contravention to pay to the registered proprietor of the design a sum not exceeding twenty-five thousand rupees recoverable as a contract debt. There are no penal provisions available to the rights holders in design infringement cases¹.

Product Liability prior to the Consumer Protection Act, 2019

Prior to the Consumer Protection Act, 2019 ("New Act") there was no specific product liability theory in India. In the absence of a statutory law, courts were guided by the principles of justice, equity and good conscience. Prior to passing of the 2019 Act there were certain laws in India which protected the interests of the consumers against faulty products. Some of the laws which have protected the interest of the consumers against faulty products would include, among others:

- The Consumer Protection Act, 1986;
- The Indian Contracts Act 1872;
- The Sale of Goods Act 1930;
- The Drugs and Cosmetics Act, 1945; and
- The Prevention of Food Adulteration Act, 1954.

Though, these laws touched on product liability to some extent, none of them could lay a comprehensive legal framework. These statutes were not able to identify a particular individual or entity in the supply chain against whom a consumer could raise a complaint. Thus, it was the need of the hour to establish a detailed product liability doctrine which would safeguard the interest of the consumers. To strengthen the safeguards guaranteed to a consumer, the President gave his assent to the Consumer Protection Act, 2019 on 9th August, 2019. The New Act, introduces the concept of product liability, seeks to revamp the process and settlement of consumer disputes, establishes a Central Consumer Protection Authority as a central authority and Consumer Protection Councils at the district, state and national level, introduces penalties, covers unfair trade practices, unfair contracts, broadens the definition of a "consumer", among other changes.

The New Act defines product liability as "*the responsibility of a product manufacturer or product seller, of any product or service, to compensate for any harm caused to a consumer by such defective product manufactured or sold or by deficiency in services relating thereto.*"² The impact is that it is not only the manufacturer who will

¹ . IPR Enforcement, Toolkit of Police, Ministry of Commerce and Industry, Government of India, <https://dipp.gov.in/publications/ipr-enforcement-toolkit-police>.

² Consumer Protection Act 2019., Bare Act.

be liable to compensate a consumer but also the seller if it fulfils the conditions mentioned in the New Act. The New Act allows a person to raise a product liability action by means of filing a complaint before a District Commission or State Commission or National Commission.

Manufacturer Liabilities

The New Act sets out the following scenarios in which a product manufacturer shall be liable:

- the product contains a manufacturing defect, or
- the product has a defective design, or
- there is a deviation from the manufacturing specifications, or
- the product does not conform to an express warranty given by the manufacturer (even when the manufacturer proves that it was not negligent or fraudulent in making the express warranty for the product), or
- the product does not contain adequate instructions or any warning regarding improper or incorrect usage of correct usage to prevent harm.

Service Provider Liabilities

Similarly, a service provider shall be liable for:

- providing services which were faulty, imperfect, deficient or inadequate, or
- providing inadequate instructions and warning to prevent harm, or
- providing services which do not conform to the warranty or the terms and conditions mentioned in the contract.

Seller Liabilities

The New Act even makes a product seller liable for a product liability claim if:

- it has exercised substantial control over the designing, testing, manufacturing, packaging or labelling of the product, or
- it altered or modified the product and such alteration or modification was a substantial factor in causing the harm, or
- it has made an express warranty which is independent of the warranty made by a manufacturer and such product failed to conform to such express warranty made by the product seller which caused the harm, or
- the identity of the manufacturer is not known or if known the service of notice or process or warrant cannot be affected on the manufacturer or if the manufacturer is not subject to the law which is force in India, or
- the product seller has failed to exercise reasonable care in assembling, inspecting or maintaining the product or it did not follow the warnings or instructions for the product provided by the manufacturer while selling such product and such failure was the proximate cause of the harm caused to such product.

Exceptions to a product liability action claim

The New Act envisages certain scenarios where a product liability action cannot be brought against the product seller. No liability will be fastened on the product seller if at the time of harm, the product was misused altered or modified.

Further, a product liability action will not be fastened on the product manufacturer if it fails to provide adequate warnings or instructions, if:

- the product was purchased to be used at a workplace and the product manufacturer had provided warnings to such employer, or
- the product was sold as a component to be used in another product and necessary instructions and warnings had been given by the manufacturer, and the harm was caused to the complainant from the use of the end product, or
- the product was one which was legally meant to be used under the supervision of an expert or a class of experts and the product manufacturer had employed reasonable means to give warnings or instructions for usage to such expert or class of experts, or

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- the complainant was under the influence of alcohol or any prescription drug while using the product which was not prescribed a medical practitioner, or
 - such instructions or warnings are obvious or commonly known to a user or a consumer of such product or which the consumer should have known, taking into account the characteristics of such product.

Implications

As per the New Act if the central authority is satisfied on the basis of investigation that there is sufficient evidence to establish violation of consumer rights or unfair trade practices, it may pass an order which could include:

- recalling of goods or withdrawal of the goods;
- reimbursement of the price of the products or services so recalled to the purchaser; and
- discontinuation of practices which may be unfair and prejudicial to the consumers interest.

In addition, if the central authority is satisfied after investigation that any advertisement is false or misleading or is in contravention to consumer rights, it might issue a direction to the manufacturer or endorser or advertiser or publisher to discontinue such advertisement or modify the same. Therefore, we see that the New Act is being cautious to employ responsibilities even on the endorsers or publishers of an advertisement. In this regard, the central authority may impose a penalty on a manufacturer or an endorser which may extend to Rs. Ten lakhs (Rupees One million). A subsequent contravention may result in levying the penalty to the tune of Rs. Fifty lakhs (Rupees Five million). Further, the central authority may also prohibit the endorser from making endorsements of any product or service which may extend to one year and on a subsequent contravention to the tune of three years.

CONCLUSION

Preventing, detecting and responding to substandard and falsified medical product crime will require new or additional cross-skill training in the medical product sector to address current and future challenges. This may be best achieved through a coordinated effort by relevant Government bodies including private sectors, and other stakeholders. The Government has a responsibility to foster and facilitate shared approaches to developing global solutions for combating the trafficking of substandard and falsified medical products affecting individual and public health both nationally and internationally.

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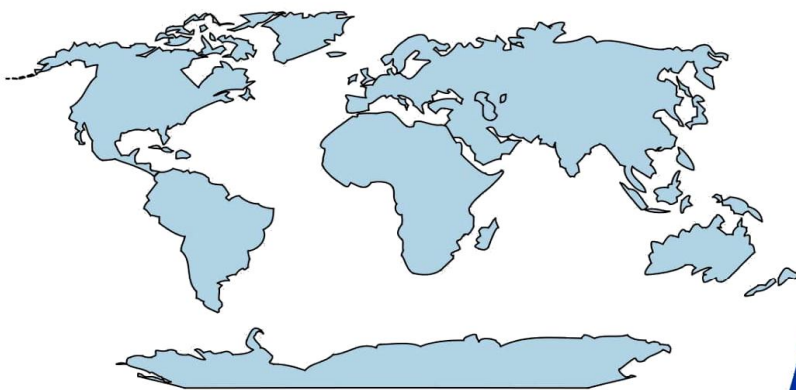
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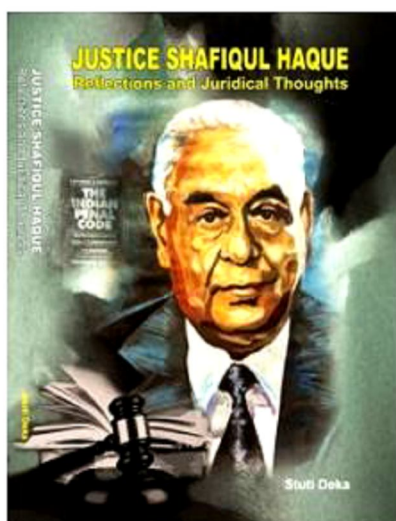


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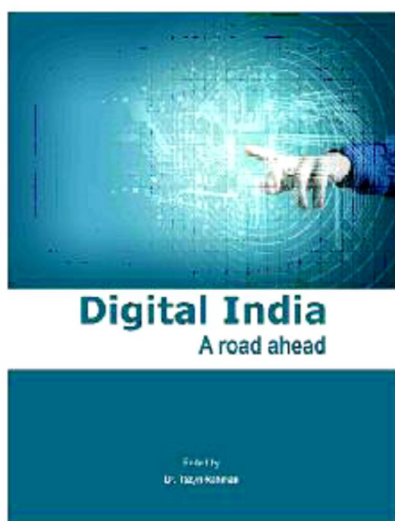
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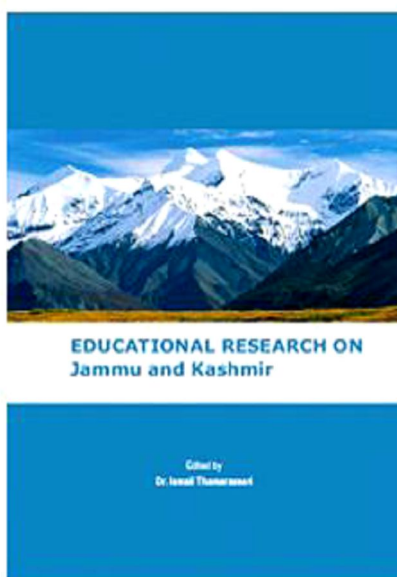
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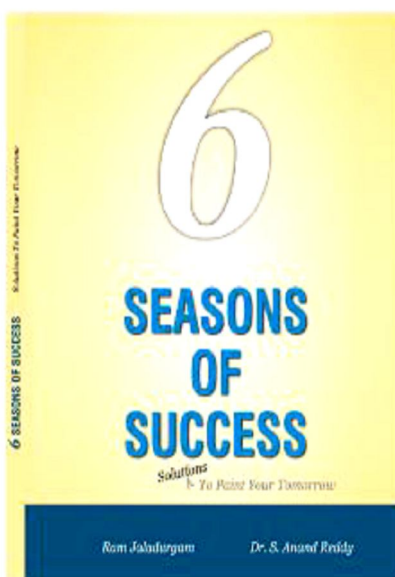
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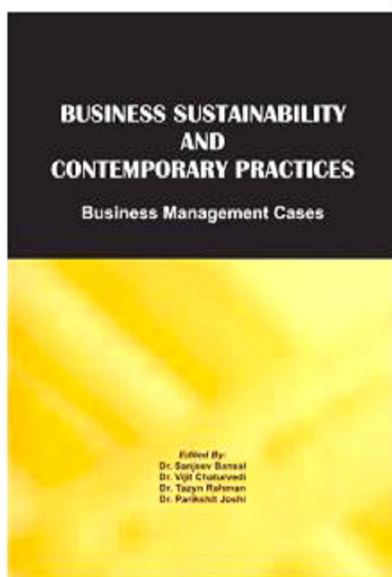
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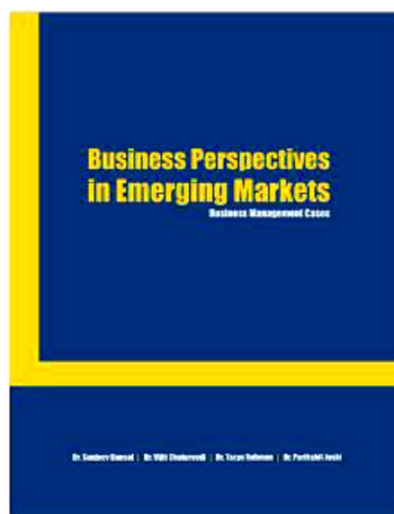
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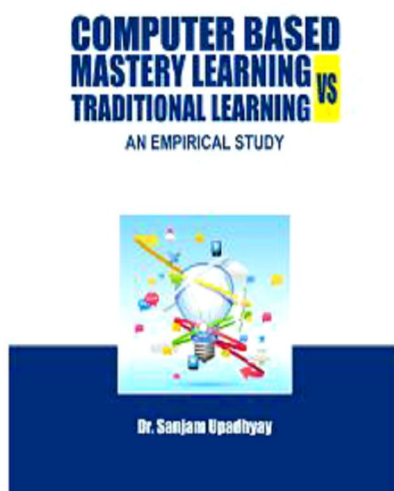
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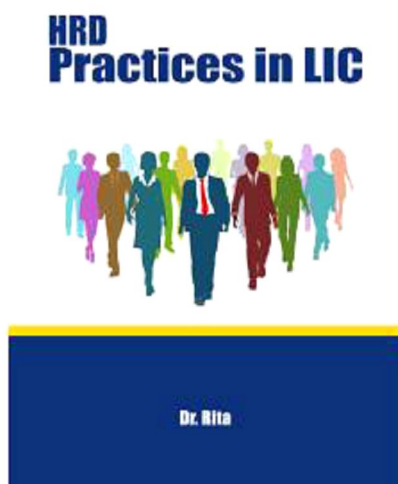
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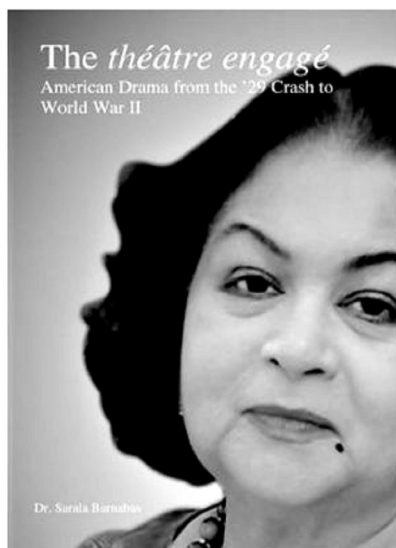
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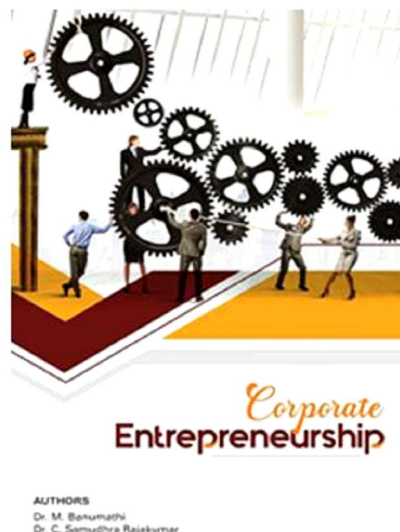
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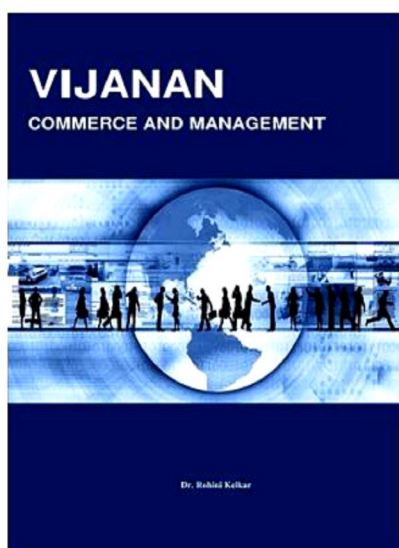
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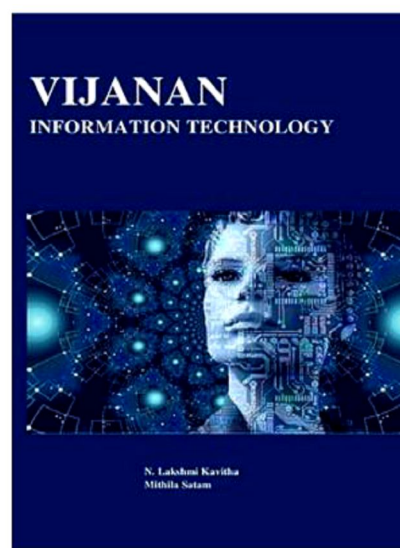
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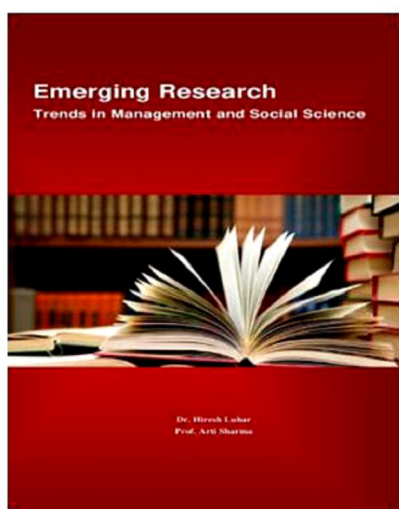
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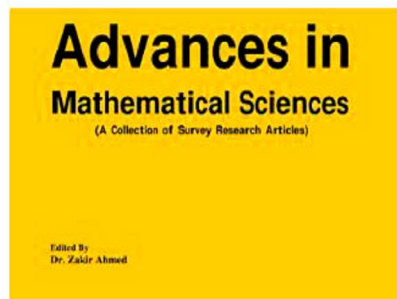
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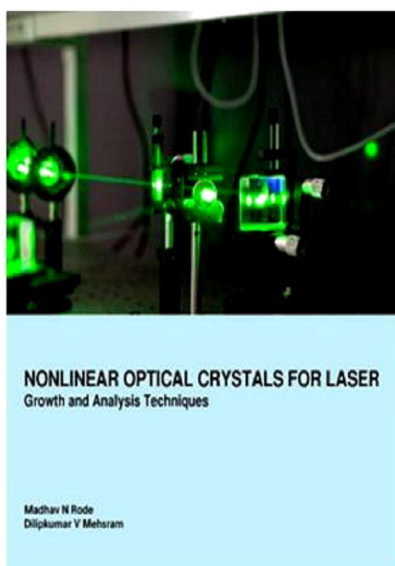


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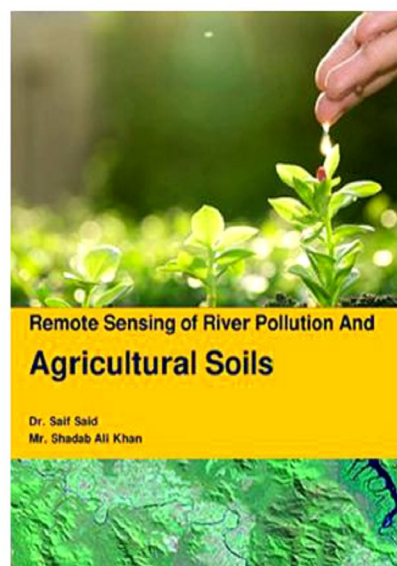
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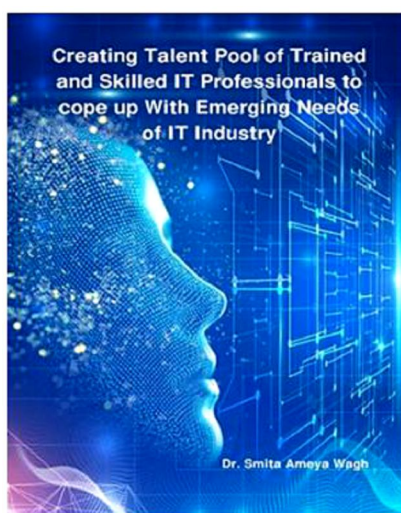
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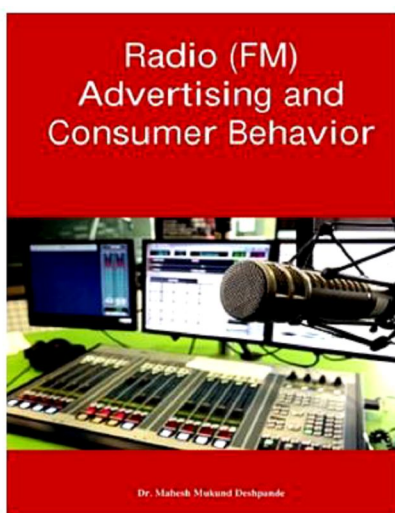
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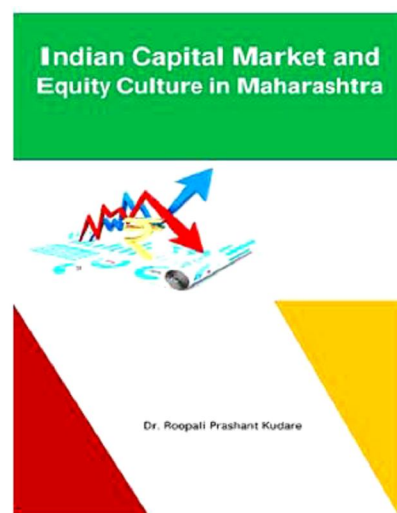
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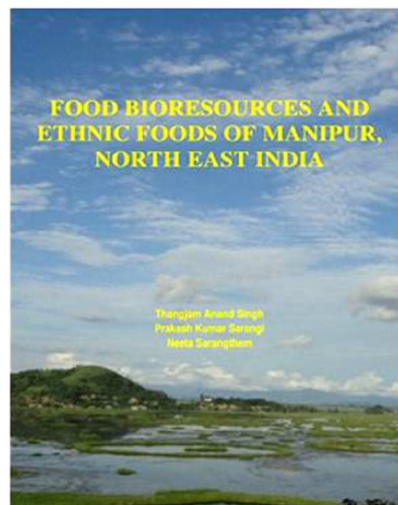
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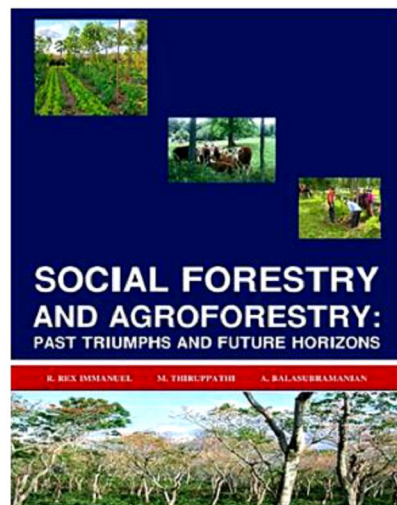
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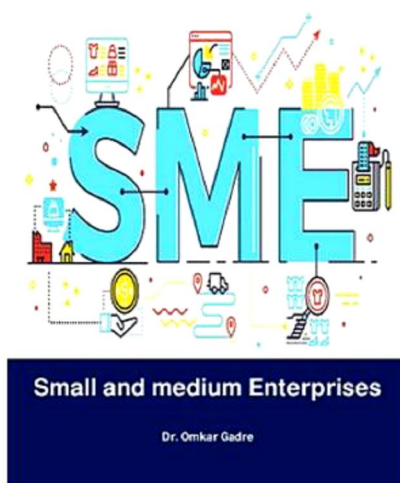
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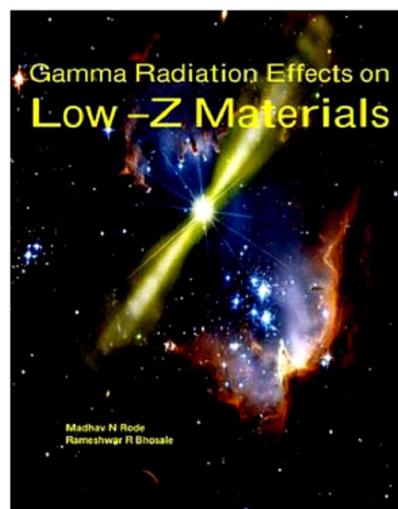
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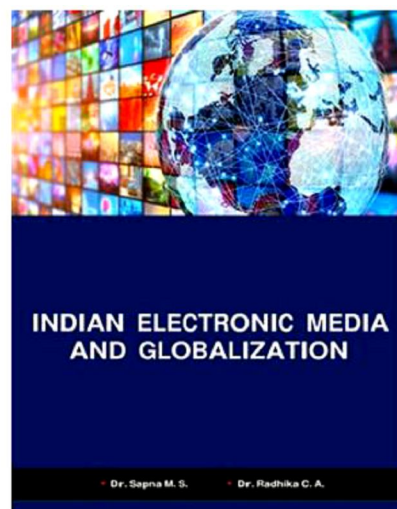
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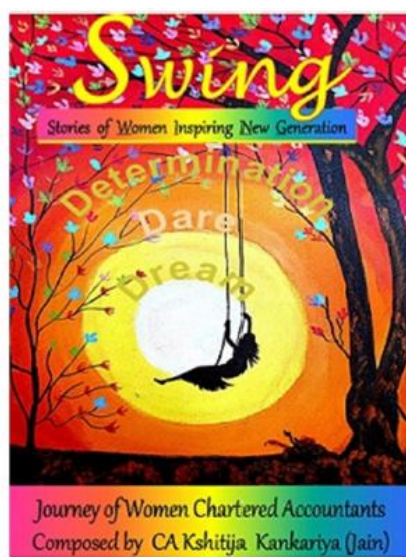
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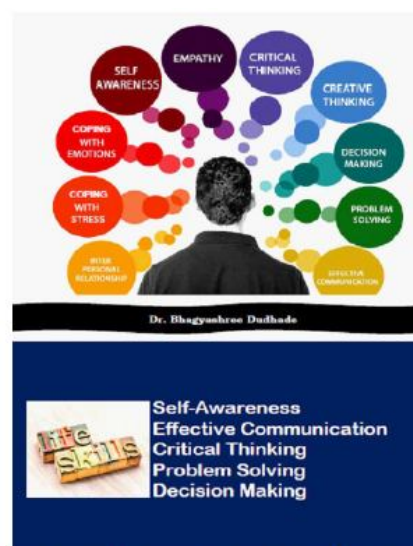


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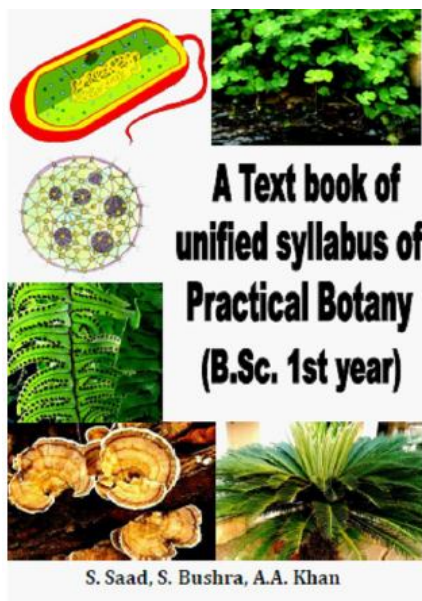
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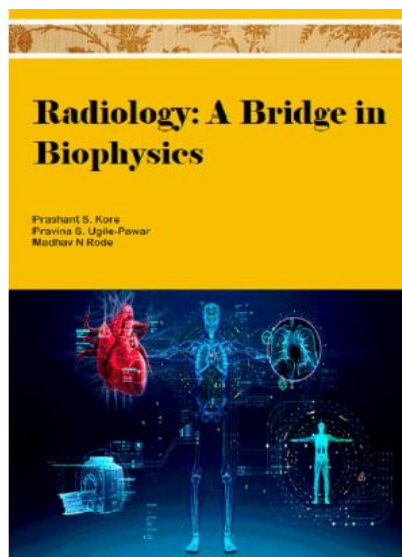
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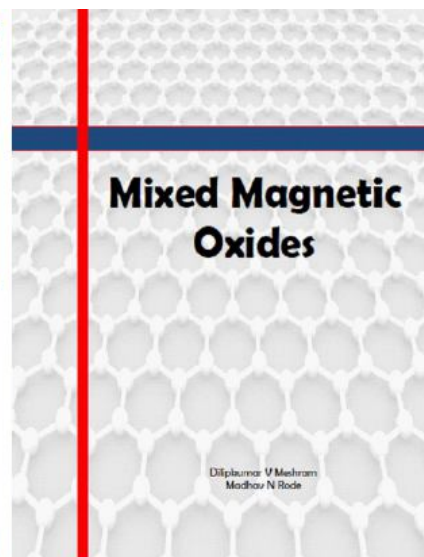
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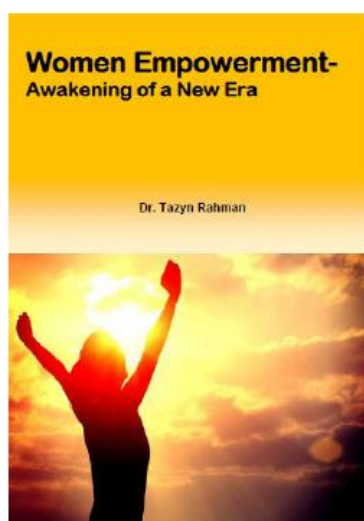
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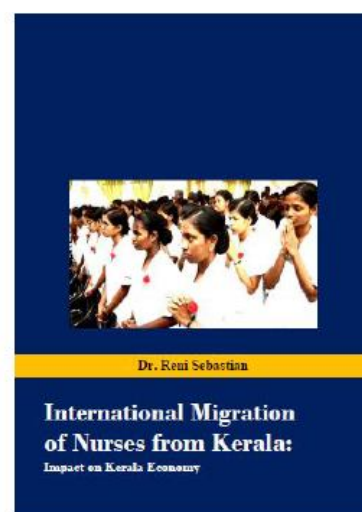
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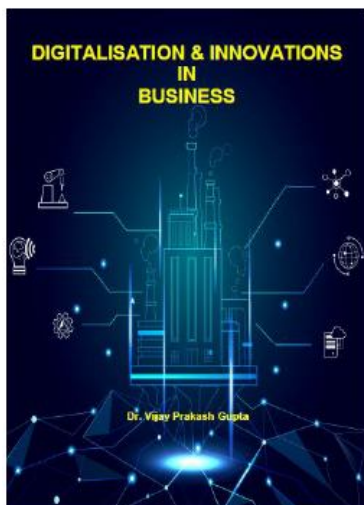
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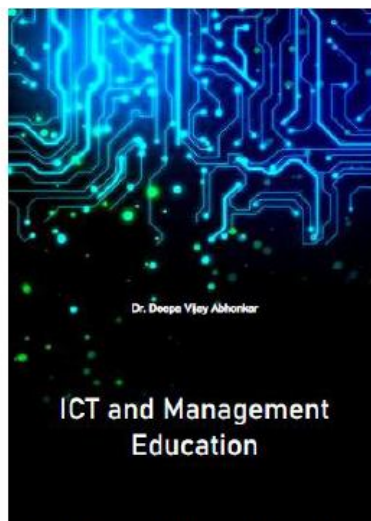
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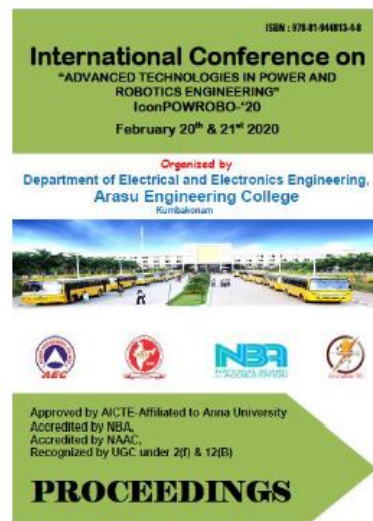
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