

PROTECTION OF CONSUMERS' RIGHTS IN THE ERA OF E-COMMERCE

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In

Department of Law

By

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DECLARATION

I declare that the dissertation entitled “Protection of Consumers’ Rights in the Era of E-Commerce” has been prepared by me under the guidance of Dr. Sukhwinder Kaur, Assistant Professor, Department of Law, School of Legal Studies and Governance, Central University of Punjab. No part of this dissertation has formed the basis for the award of any degree or fellowship previously.

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CERTIFICATE

I certify that Anjali has prepared her dissertation entitled “Protection of Consumers’ Rights in the Era of E-Commerce”, for the award of LL.M. degree of the Central University of Punjab, under my guidance. She has carried out this work at the Department of Law, School of Legal Studies and Governance, Central University of Punjab.

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ABSTRACT

Protection of Consumers' Rights in the Era of E-Commerce

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With the change of nature of the Indian economy from physical to digital economy, consumers have also been entered into a new online economy. It has not only made lives of consumers simple but has also ensured that the traders are able to sell their products worldwide, without any hurdles. While there is no particular definition of 'e-commerce' one could define it as a process that aids in conducting business through electronic means. Given the ever-changing lifestyle patterns in the present modern society, e-commerce is now considered as a necessity in today's world. With the development of the Internet economy, most people begin to accept online shopping. Online shopping and use of online services have become increasingly prevalent, due to convenience and often, lower prices and discounts offered. The only dilemma remains in the fact the Indian legal system does not cover the facet relating to consumer rights in case of e-commerce. Thus the vital need of the hour is to provide for express declaration of laws that would make e-commerce hurdle free and this would in turn encourage more people to resort to commerce through the internet. The research was focused upon the legal validity of the electronic transactions in e-commerce industry, growth of online shopping, security issues, and more importantly on the issues concerned with consumer protection and content regulation of the same. The Government of India enacted one Act for the protection of consumer's rights i.e the Consumer Protection Act, 1986. But this act does not cover the online transactions or online consumers. So the online consumers face a number of problems due to lack of

implementation and framing of proper laws. To cover this aspect of consumers and to provide faster redressal to the online consumer's grievances and to ensure unfair trade practices, the cabinet approved the Consumer Protection bill 2017 to amend the Consumer Protection Act, 1986.

Anjali

Dr. Sukhwinder Kaur

DEDICATION

I wish to dedicate this work to my late mother Mrs. Vipin Dhawan, who taught me to persevere and prepared me to face the challenges with faith and humility. She was constant source of inspiration to my life. Although she is not here to give me strength and support I always feel her presence that used to urge me to strive to achieve my goals in life.

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LIST OF ABBREVIATIONS

Sr. No.	Full form	Abbreviation
1.	All India Reporter	AIR
2.	Allahabad Law Journal	ALJ
3.	All England Reports	AER
4.	Annual Survey of Indian Law	ASIL
5.	Asian Journal of Multidisciplinary Studies	AJMS
6.	Automated Teller Machine	ATM
7.	Business to Business	B2B
8.	Business to Consumer	B2C
9.	Bureau of Indian Standards	BIS
10.	Consumer Protection Act	COPRA
11.	Consumer Protection Journal	CPJ
12.	Company Cases	Com. Cas
13.	Company Law Journal	Com. L.J
14.	Competition Law Review	Comp. L.Rev
15.	Computer and Telecommunications Law Review	CTLR
16.	Corporate Law Advisor	CLA
17.	Electronic Copyright Management Systems	ECMS

18.	Electronic Data Interchange	EDI
19.	Electronic Fund Transfer	EFT
20.	European Commission	EC
21.	European Court of Justice	ECJ
22.	European Community Reporter	ECR
23.	European Union	EU
24.	Federation of Indian Chambers of Commerce and Industry	FICCI
25.	Indian Corporate Digital Platform	ICDP
26.	Indian Institute of Corporate Affairs	IICA
27.	Indian Journal of Law and Liberty	IJLL
28.	Indian Law Institute	ILI
29.	Indian Law Reports	ILR
30.	Indian National Rupee	INR
31.	Internet Protocol	IP
32.	Intellectual Property Rights	IPR
33.	Limited	Ltd.
34.	Magazine	Mag
35.	National Capital Territory of Delhi	NCT
36.	National Consumer Disputes Redressal Commission	NCDRC

37.	Non-Governmental Organizations	NGOs
38.	Organization for Economic Co-operation and Development	OECD
39.	Office of Fair Trading	OFT
40.	Page	P
41.	Pages	Pp
42.	Small & Medium Enterprises	SME
43.	Supreme Court	SC
44.	Supreme Court Cases	SCC
45.	Supreme Court Journal	SCJ
46.	Supreme Court Reporter	SCR
47.	Telecom Regulatory Authority of India	TRAI
48.	United Nations Guidelines for Consumer Protection	UNGCP
49.	United Nations Commission on International Trade Law	UNCITRAL
50.	United Nations Conference on Trade and Development	UNCTD
51.	U.S-India Business Council	USIBC
52.	United States	US
53.	With effect from	w.e.f

CHAPTER-I

INTRODUCTION

1.1 Introduction

The 'e-revolution' developed the electronic commerce in which consumers from different countries do online shopping. At present time, the economy is a mixture of the traditional and the modern marketing pattern. The traditional marketing pattern has established their deep roots since the time immemorial. So, new technology has also been incorporated into the market for future growth. In the same way, for their convenience consumers are taking advantages of online shopping but still visit the physical market for human interaction and shopping. Consumers before finalizing any purchase, consumer looks, feels, touches, smells, tastes and satisfies themselves and chances of cheating are very less. But in online shopping, the consumer can satisfy themselves only with looks, advertisement of the variety of goods and remarks given by users for that product. Today there is a tendency of online shopping and it became a part of consumer life.

Even though the terms of e-commerce are not defined in any consumer legislation, but it includes those activities which relate to buying and selling of goods or services through internet. The scope of e-commerce has extended simultaneously with the growth of internet worldwide. E-commerce has not only provided benefit to the traders but the consumers also taking benefit from online shopping, for example, multiple choices, convenient delivery services, quality goods at competitive prices etc.¹ In physical commercial transaction for the consumer's protection the government of India enacted various laws. So, a new 'e-revolution' has been brought through internet where the natures of commercial transactions have developed very highly. On the other side, Information and Communication Technology is modified tool which has opened the doors of the

¹ Kanika Satyan, "E-Commerce and Consumer Rights: Applicability of Consumer Protection Laws in Online Transactions", *available at*: https://papers.ssrn.com/sol3/apers.cfm?abstract_id=2626027 (Visited on October 25, 2017).

digital world for the physical world. This shifting from the physical world to the digital world has established various problems for consumers and sellers.

The consumers are the main assets of the business. The consumers are the centre point of all the business activities and all activities revolve around it as the planets do around the Sun. There are deep roots of the concept of consumer's protection in the Indian civilization. It is a well-known fact that the consumer plays an important role in the market. The consumer is the maker who gives chance to perform an economic activity for the success of the country.

1.2 E-Commerce: A New Phase of Modern Commerce

The digital technology gives an effective communicative platform to the consumers so that they can communicate through online marketing or directly. At present, in all businesses worldwide the e-commerce taking the front seat. Due to the growth of an electronic environment in the present time the traditional business practices are going to slow. The fact is that before 30 years the e-commerce came into existence through Electronic Data Interchange (EDI), a standard way of exchanging data between companies. Internet e-commerce is only a part of overall e-commerce. E-commerce is a super-set of business cases which have been digitalized and work on the Internet. The business cases defined the category of an e-business but not through the technology how to implement it.

E-commerce involves the use of communication technology, information management skills in business and information technology. The companies, individuals, business and other organizations helped by the new technologies specially through the internet to move on business in an effective way. E-commerce includes stock exchange, banking and supply chain mechanism, advertising, cyber law, marketing, payment mechanism, taxation and the WTO relating to electronic dealings.

1.2.1 Background and Growth of E-Commerce

Economists indicate that we are moving from the traditional economy to digital economy which concentrates upon knowledge and information than anything. The e-commerce is the key to enter into new digital world, to indulge in

the exchange the transmission is the only way which includes buying and selling of services and products requiring transportation.² In the web world to ensure the protection of consumer's the commerce's act is produced, presumes the important terms of security and in the existence of new problems and consumer safety. But protection of consumers in new issues remains, which operates with physic-chemical characteristics, quality, validity term, warranty, certification etc. The developed environment of electronic business is the cyber world where new issues are arising.³

Our economy has developed rapidly from Industrial Age to the Information Age and then to the new digital world. In the 1970, there was an invention of EDI (Electronic Data Interchange) which use to sends purchase invoices electronically, in the late 1970s, so this was the fastest development of e-commerce. So, In 1990s it was the actual period for the economic development when Tim Berners-Lee introduced the "World Wide Web" to the economy. After that the e-commerce was introduced in a well-organized way on the web. E-commerce provided the secure connections to the web with internet marketing, electronic data transferring and electronic payment services. Now a day, e-commerce is being enforced on e-business. Electronic business' is not only used to exchange the information regarding selling and buying of goods but also grant service and support and gives information to consumers. Today most of the consumer's demand comes out on the internet more than any other mediums for the transmission. Today's, our ancient setup of economic are replaced by the new one and the people prefer new technology more than old setup of technology. The value for time has grown up and our activities are become more accurate, convenient and faster. It does not give us permission to go to the store and to purchase any given product. The products shipped in front of your door just with one or two clicks. Traditional transportation goods or services before received by the consumers had to pass over the various steps. Many steps have been skipped through e-commerce and the profits that have been given to us which has lost in those steps.

² S.N. Mandal, "E-Consumers Protection in India" 16 *GJI* (2016), *available at*: <https://journalofbusiness.org/index.php/GJMBR/article/download/2142/2044/> (Visited on December 11, 2017).

³ *Ibid.*

The emergence of e-commerce has begun with the establishment of two organizations; Amazon.com, Inc and eBay Inc. have been the early leaders of the e-commerce industry.⁴ The founder of Amazon is Jeff Bezos in 1994 in Washington and the website has launched in 1995. They started with an online bookstore. Amazon also provided to consumers to order hard-to-find books as easily as best sellers Amazon also developed systems; such as 'Search Inside the Book' and '1-click® Shopping' which make the company the pioneer of innovations. Being first in the market provided to Amazon.com a trusted brand. eBay is founded by Pierre Omidyar in 1995 and the first product had been sold in the same year by him as well. He says that 'it was a broken laser pointer, I was about to throw away'. A collector bought it and this leads to a new way of the commerce. In 1996, the company already reached 41,000 users. Since then eBay has its presence in 39 markets with more than 90 million eBay.com users worldwide.

There are many e-commerce milestones came into force in different years. Navigator launched by Netscape in 1994, first generally used web browser and on their websites Pizza Hut offers online ordering. In 1996, over 40 million people had started to access internet, and \$1 billion online sales surpass for the year. PayPal is founded in 1998 and it changes the people's way to make payments online. The first digital music store was launched by apple in 2003. In 2005, the term "Cyber Monday" is coined and becomes one of the biggest online shopping days of the year. Facebook starts selling advertisements in 2006. For the first time in 2008 the online purchases are made on mobile phones. In the year 2012, online B2C sales surpass \$1 trillion.⁵ In 2004, Payment Card Industry Security Standard Council (PCI) was formed to ensure businesses were meeting compliance with various security requirements. The organization was formed for the development and implementation of security standards for account data protection.⁶

⁴ Seda Yoldas, A Research about Buying Behaviour of Online Customers Comparison of Turkey with UK (2011) (Unpublished PhD dissertation, The Business School University of Roehampton).

⁵ Rebecca Stickler, "The Evolution of E-commerce", *available at*: <https://www.webpagefx.com/blog/general/the-evolution-of-ecommerce/> (Visited on January 9, 2018).

⁶ Miva "The History of E-commerce: How Did it All Begin" (2011), *available at*: <https://www.miva.com/blog/the-history-of-ecommerce-how-did-it-all-begin/> (Visited on January 9, 2018).

According to *Grant Thornton India and ASSOCHAM*,⁷ between the year 2010 and 2015, Compounded Annual Growth Rate (CAGR) in E-commerce was 38%. In India, CAGR is expected to grow at 73% in the year 2017. The reasons include penetration of mobile, internet and increased consumer demand. However, comparatively, India is almost a decade behind China in terms of the market size of e-commerce. China's market size was similar to India's in the year 2005. Online shoppers in India are expected to increase from 20 million in the year 2013 to 50 million in 2018. Extra 200 million people will have access to the internet in the next three years, mainly through smart phones. During the years 2015-2020, India's e-commerce market is estimated to grow at a CAGR of higher than 36%. E-services segment which includes online travel, online payments and online classifieds is expected to continue its domination until the year 2020. However, the electronic retailing (E-tailing) segment which includes electronics, apparels, accessories, health and personal care is expected to grow higher than e services segment over a period of next five years. During the years 2015-2020, the western region is expected to have the largest share of E-commerce in the country. In India, the major e-tailing players are Flipkart, Snapdeal and Amazon.

1.2.2 Types of E-Commerce

The 'e-revolution' has placed virtually the whole business trading in the digital world. E-commerce is a gateway to the technological success of the Indian business scenario in the era of information explosion. By using "fingertips" rather than your "feet" shopping can be done at any time with the help of e-commerce. The geographical barriers have become a blur. Whether the shop locates next to your home or in another country both are on the "one finger click" away. Through web the e-commerce does not create a relationship just for selling but it also e-commerce does not only create a relationship of selling through the web but it also handling the general relationship of customer. According to the buyer and seller relationship, e-commerce can be divided into following categories;

⁷ ASSOCHAM & Grant Thornton India, "Law & Technology: Evolving challenges as a result of fraud in E-Commerce sector" *Grant Thornton India LLP*, (2015), available at: [http://www.grantthornton.in/globalassets/ 1.-member-firms/india/assets/pdfs/ ASSOCHAM_e-commerce_in_india.pdf](http://www.grantthornton.in/globalassets/1.-member-firms/india/assets/pdfs/ ASSOCHAM_e-commerce_in_india.pdf) (Visited on December 9, 2017).

1.2.2.1 Business to Business (B2B): To make a new relationship with other businesses many businesses has conducted by e-commerce for managing several business functions efficiently. B2B e-commerce could consist of various functions, like procurement services, distribution services, a digital or online marketplace like services etc. B2B exchanges exist in India, for instance, Tradeindia.com, Matexnet.com, Alibaba.com, AuctionIndia.com, Indiamart.com, TeaAuction.com, MetalJunction.com, Chemdex, Fast parts and FreeMarkets. IndiaMART.com is one of the B2B online marketplaces which gives a platform for businesses to find other competitive suppliers. On the other hand, Ariba provides procurement services by providing access to the digital electronic market.⁸

1.2.2.2 Business to Consumer (B2C): Another type of e-commerce is business to the consumer which provides direct dealing between business and consumers. In a traditional B2C model, the distribution of goods starts with the manufacturer and goes through a distributor or wholesaler to retailer, who interacts with the customer. However, in an online shopping, one finds the manufacturer or the intermediary directly trading with the consumer. Some examples of exchange are Amazon.com, Yahoo.com and Schwab.com. In India, online services like ticketing, banking, tax payment, bill payment, hotel room booking, entertainment, online games, matrimonial sites, job sites are showing that there is development in B2C transactions.⁹

1.2.2.3 Consumer to Consumer (C2C): Consumers have traditionally deal with other consumers only when few of those activities were in a commercial sense. E-commerce brings together the strangers/ persons/consumers and giving a platform for them to trade on. C2C is done through auction sites. If a person wants to sell his goods, then such make list at the auction site and others can bid for the same. C2C transactions may or may not include the third party.¹⁰ For example, portals such as eBay and quirk enable consumers to negotiate with other consumers.

⁸ Nishith Desai Associates, "E-Commerce in India-Legal, Tax and Regulatory Analysis" (2015), available at: http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/E-Commerce_in_India.pdf (Visited on December 20, 2017).

⁹ Ramroop K. Sharma, "Growth of E-Commerce in India, Issues and Future Implications" 4 *IJEER* (2016), available at: <http://eprawisdom.com/jpanel/upload/articles/1238am15.Dr%20Ramroop%20K.%20Sharma.pdf> (Visited on December 20, 2017).

¹⁰ *Ibid.*

1.2.2.4 Consumer to Business (C2B): The consumer to work is a new business model that is the opposite of traditional trade models. In this type of transaction, consumers provide goods or services to companies and create value for the company. This type of transaction can be seen in online forums where consumers offer an idea through the development of a product or a platform on the Internet, and consumers offer a review of the product that is then used for advertising purposes.

M-COMMERCE (MOBILE COMMERCE)

E-commerce is electronic commerce in which transactions are made on desktop computers, laptops using the internet. E-commerce has the benefits such as around-the-clock availability, the speed of access, a wider selection of goods and services, accessibility, and international reach. People can visit the different websites and do online transactions, send emails, transfer funds, search for various products within a moment. The m-commerce is also part of e-commerce in which goods or services are buying and selling through wireless handheld devices such as mobile phones. M-commerce enables users to access the internet without needing to find a place to the plug in. Different types of online transactions are carried out by using mobile phones, mobile applications and internet. People can carry and access mobile phones with preserving the privacy. Thus, ubiquity, mobility, flexibility, reachability are features of m-commerce make people possible to do shopping, search various products, transfer funds, ticket booking, utility bill payment at any time anywhere. Mobile money transfer, the m-commerce services covers mobile ticketing, mobile vouchers, coupons, loyalty cards and information services, which are used by the mobile subscribers through different mobile applications using the internet.¹¹

Various mobile applications are developed for Smartphone users. State Bank Freedom of State Bank of India, IMobile of ICICI, Axis Mobile for Android of AXIS Bank are the mobile banking applications which are used for online fund transfer, utility bill payment. IRCTC Connect is used for railway ticket reservation, Mpesa by Vodafone is used to transfer fund, pay utility bills, and Book My Show

¹¹ Archana M.Naware, "M-Commerce in India" 5 *IJARCCCE* 913-915 (2016), available at: <https://www.ijarcce.com/upload/2016/april-16/IJARCCCE%20224.pdf> (Visited on December 15, 2017).

app is used to book movie tickets. The development of low-cost smartphones and low mobile tariffs helped for tremendous growth in mobile internet subscribers and hence tremendous growth of m-commerce in India. In India, 60% of internet users access the internet via their mobile phones. The number is expected to reach 315 million by 2018, Mobile internet is the next huge revolution in India and as per a study conducted by Google India and IPSOS, around 94% Indian Smartphone users have used their smart device to access the internet from their phone. 56% of smartphone users in the country access the internet multiple times a day (in the US, the number stands at 53%). 40% users surf the Net at least once a day. Only 6% never use their phone for connecting to the Web (11% for the US). About 76% of smartphone users in India access social networking sites on their devices compared to 54 percent in the US. 77% of smartphone owners listen to music; while 33 percent use it for playing games and 32 percent read newspapers or magazine. Thus India is going through a sort of e-commerce revolution and with more activities happening on the smartphones, experts believe that m-commerce is becoming the future of e-commerce.¹² M-commerce is helping from a development in consumer behavior and advancement in technology. More and more consumers are shopping across smartphones and tablets. Consumers are becoming more satisfied by using mobile devices for payment for everyday activities like buying coffee. These repetitive purchases with mobile apps not only open the way for larger transactions but provides companies more and more information about their customers to give more relevant offers and increase long-term customer value.

1.2.3 Advantages of E-Commerce

Electronic commerce is a commercial or commercial term that includes the transmission of information through the Internet. It covers a variety of many types of businesses, from retail-based consumer sites, through auctions or music sites, to the exchange of goods and services between companies. Electronic commerce allows consumers to electronically exchange goods and services without barriers of time or distance. Electronic commerce has expanded rapidly over the past five years and is predicted to continue at this rate, or even accelerate. In the near

¹² *Ibid.*

future, the boundaries between "conventional" and "electronic" commerce will become increasingly blurred as more and more businesses move their operations through the internet. The main advantages of e-commerce given as under;

1. E-commerce helped customers by offering more product / product options at a low price. They can make a comparison between the varieties of goods and choose a product. Electronic commerce allows customers to conduct electronic transactions 24 hours a day, from anywhere in the world.

2. Customers can get the information and many details about the product / products in some occasions. They can also interact or consult other websites on the Internet to consult product information.

3. It also provides an option to participate in virtual auctions, which are displayed online and are open to all.

4. The electronic / digital media have created a social environment and people can interact around the world, share ideas and ideas, compare different experiences and share the techniques that are produced.

5. Electronic media also gives a competitive environment among the different companies, which eventually benefit consumers in the form of interests/discounts.

E-commerce is the development that provides our traditional economy suitable for the new electronic world, using electronic technology through the Internet, leading to more competitions, markets and faster transactions, and more advanced techniques to make activities more active between customers and producers. Internet has changed so much the economy that most companies are on the web. It's government duty to provide security to protect electronic consumers. Consumers are also responsible for maintaining the integrity and security of electronic commerce so that electronic commerce is more reliable in the future, and everyone in the world will be able to benefit from electronic commerce.

1.3 Consumers in the Era of E-Commerce

“Consumer is the sole-end purpose of all production and the interest of the producer ought to be attended to only so far as it may be necessary for promoting that of the consumer.”¹³

The Indian e-commerce market reached 20 billion dollars, according to a report published by the Internet and the mobile phone network in India. The majority of industries in India are especially affected by electronic commerce. Other notable areas where electronic commerce has found its strength are the telecommunications industry, the online commerce industry, and so on. The Government has promoted large-scale electronic commerce and, in fact, is promoting electronic consumption activities, focusing mainly on the provision of services. However, legal control has yet to catch up with the offer.¹⁴

At present, the economy is a mixture of the old and the new. Most of the established companies are a combination of the old and the new. In the same way, consumers can now be seen admiring this mixed market. They benefit from online shopping, but still visit the stores for human interaction and the "shopping experience". However, it is true that in the world, electronic purchasing has been well adopted by consumers, where the consumer is not the king. In the physical market, the consumer uses five sensory devices, such as eyes, ears, skin (sensation), nose and tongue to examine the product. The Internet can now satisfy only two senses: eyes and ears (read comments and reviews published by users). Due to the lack of privacy, trust and security, this type of electronic commerce has the opportunity to die because of an untimely death. It has been improved based on electronic commerce through service-oriented products, such as hotels, tickets and online advertising bookings for marriage and the sale of products and buy them. In the real world, the consumer goes to the store and chooses the products and hands to pay for the products it carries. If things go wrong, the risk is very small; the consumer can usually exchange defective products. Consumers know where to go shopping because bricks and mortar rarely move at night. However,

¹³ Adam Smith, *The Wealth of Nations* 155 (J.M. Dent & Sons Ltd., London, 1937).

¹⁴ Subhalagna Choudhury, "Consumer Protection in E-Commerce" *Leaders* (2016), available at: <https://blog.ipleaders.in/consumer-protection-e-commerce/> (Visited on December 14, 2017).

when you trade online, things are not simple: you can dream of rolling by default it suddenly becomes a nightmare. On the one hand, working information technology, such as the gold thread in electronic commerce, on the other hand, misused to exploit the rights of consumers through fraudulent advertisements and offers attractive and offers information and false judicial price disputes and malicious at the time of electronic contracts between countries and the lack of regulation, global electronic commerce, etc.

E-commerce is global and local in nature, and comprehensive efforts have been made to guarantee its protection. In India, the relationship between the consumers and the suppliers of goods/ services is maintained by The Consumer Protection Act, 1986. There is no special law that regulates online transactions. The Consumer Protection Act was enacted to obtain consumer confidence in the law and the liability under this law arises, therefore, when there is a lack of services or a defect in the products or sometimes when there is an unfair trade practice.¹⁵ The Consumer Protection Act specifically excludes those services that are free. Depending on who is selling the real goods to the consumers, liability triggers. The distribution of goods falls within the scope of the Consumer Protection Act, which provides some of the kinds of protection in electronic commerce that are detailed below;

- Removal of defects.
- Replacement of goods.
- Return of price in case of discrepancy.
- Discontinue any form of restrictive trade practice.

1.4 Law and E-Commerce

The relationship between law and technological modernization must be interactive, dynamic and complex. Technology is evolving very fast, but the process of making laws about new technologies is slow and tedious. Therefore, there must be a gap between technological innovation and legal change. This gap

¹⁵ *Ibid.*

leads to greater legal uncertainty because the reactive parties cannot understand their legal rights and responsibilities derived from the application of technological modernization. However, on the contrary, this time gap is not only necessary to better analyze the results of the technology, but also before the enactment of laws, to help make a fair decision on ways to foster positive interaction between the parties to optimize satisfaction.¹⁶

With the growing implementation of the Internet infrastructure for e-commerce, there are drastic changes in our ability to store, process and transmit information, which leads to changes in the way products are packaged and delivered. As the techniques of electronic commerce are subject to modifications, they require a review of several laws, policies and institutional arrangements to address them. Until a new set of understandings is reached between the various interactive parties and States, leading to the enactment of appropriate legislation for the proper functioning of e-commerce processes in e-mode, the existing legal instruments will continue to be applied and developed through the court provisions.¹⁷

To cover the path of the development of e-commerce and to accept the international standard of legal uniformity and compatibility of rules and practices, the United Nations Commission for International Trade Law (UNCITRAL), established by The United Nations General Assembly in 1996, adopted the Model Law of Electronic Commerce in 1996. Its purpose is to facilitate the use Electronic data exchange, electronic mail, telegram, telex, telegraph, etc., providing criteria to assess their legal value.¹⁸ Laws which are provided for the protection of consumers rights have given under;

UNCITRAL Model Law of Electronic Commerce, 1996

The United Nations General Assembly adopted the United Nations Commission on International Trade Law (UNCITRAL) Model Law on E-Commerce through a resolution passed on 30 January 1997. The UNCITRAL Model Law on

¹⁶ M.M.K. Sardana, "Evolution of e-commerce in India: Challenges Ahead" (Part-2), ISID DN2014/08 (2014), *available at*: <http://www.isid.org.in/pdf/DN1408.pdf> (Visited on December 10, 2017).

¹⁷ *Ibid.*

¹⁸ Pranab Kumar Bhattacharya, "Legal Framework of Electronic Commerce: A Study with Special Reference to Information Technology Act 2000" 54 *IJC* 201 (2001).

E-Commerce was drafted with a view to providing a document that the various countries of the world could use and evaluate and amend their own laws and practices. UNCITRAL Model Law of E-Commerce provides a common legal platform on which all countries could make their domestic legislation. The main objectives of UNCITRAL Model Law of E-Commerce are to offer national legislators with a set of internationally acceptable rules as to how the legal hurdles in the communication of legal significant information through paperless messages, may be removed and how effective legal environment may be established for e-commerce. Any legislation pertaining to e-commerce will be a useless exercise unless it fills up the defectiveness in the existing law regarding the validity of online contracts. Recognizing this factor, the Model Law has incorporated a provision relating to the formation and validity of contracts, "In the context of contract formation, unless otherwise agreed by the parties, an offer and the acceptance of an offer may be expressed by means of data messages. Where a data message is used in the formation of a contract that contract shall not be denied validity or enforceability on the sole ground that a data message was used for that purpose".¹⁹

The Consumer Protection Act, 1986

The main objective of the Consumer Protection Act is to ensure the better protection of consumers. Unlike existing laws which are punitive or preventive in nature, the provisions of this Act are compensatory in nature. The Act is also intended to provide simple, speedy and inexpensive redressal to the consumer's grievances, and relief of a specific nature and award of compensation wherever appropriate to the consumer.

The Consumer Protection Act, 1986 provides various rights to consumers which are listed as under;²⁰

- Right to be protected against the marketing of goods and services which are hazardous to life and property of the people; Right to be informed about the quality, quantity, potency, purity, standard and price of goods or services so as to protect the consumer against unfair trade practices;

¹⁹ UNCITRAL Model Law of Electronic Commerce, 1996, art. 11.

²⁰ The Consumer Protection Act, 1986, s.6.

- Right to be assured, wherever possible, access to a variety of goods and services at competitive prices;
- Right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums;
- Right to seek redressal against unfair trade practices unscrupulous exploitation of consumers; and
- Right to consumer education.

In general, consumer rights, as is the case in national legislation, such as Article 6 of the Consumer Protection Act of 1986 in India, are also available for consumer mail, since there is no special law for electronic transactions mode. But because of the difference in nature and the workplace or the business center, some of the unique practical problems, such as the workplace, the judicial issues, and the lack of a common system for dispute settlement, since that there are many possibilities for the treatment of the electronic cross-border system (essential for electronic purchases), that is, purchases from a country from a seller from another country or vice versa, in the case of electronic transactions or e-commerce, which undoubtedly they require special measures not foreseen in the legislation of the current consumer. The right of consumers and electronic consumers is equally theoretical, but varies in process or enjoyment. Therefore, if you buy and sell products or services in the e-world defect, the buyer as the e-buyer knows, and knows the seller as the re-seller knows, retailer known as the e-retailer, and the consumer is known as e-consumer and know the transaction on behalf of the electronic transaction. Due to the ease of treatment, the number of electronic consumers is growing at an accelerated rate and in a very short period, the consumer will be defeated materially.

A consumer has many rights that are provided to them by the provisions of numerous consumer laws enacted in the country. In India the Consumer Protection Act, 1986 is the fundamental and principle Act that lays down and guarantees rights to consumers. This Act mentioned the three-tier redressal mechanism that exists in India namely at the District, State and National levels to redress any consumer dispute. However, the law until recent times was ambiguous as to whether such provisions would be applicable to online

transactions.

Information Technology Act, 2000

Information Technology Act, 2000 is another functional and comprehensive legislation which provides a legal framework for e-commerce. It essentially covers commercial transactions, in specific between the government through of its many functionaries and the citizens. The transactions are focused towards e-governance and are aimed at implementing measures for authentication of the electronic records by usage of digital signature certificates²¹etc. for carrying out day to day business transactions like filing and viewing official documents in the electronic format. The IT Act, 2000 is an effort by the Indian govt. to digitalize its workings by making every piece of information available online and further ensuring that such transactions are secured. Further, it provides for remedial measures like the appointment of Controller²² and to impose penalties on the cyber offences a Cyber Regulations Appellate Tribunal laid under Section 43 to 47 of the Act.

The objectives of the Act as stated include facilitation and giving legal sanction to electronic fund transfers between banks and financial institutions in addition to giving legal recognition for the keeping of books of accounts by bankers in electronic form. Though nowadays such facilities have been made possible, no legal framework for the protection of consumer rights is mentioned under the IT Act. Thus, this important aspect of e-commerce is not covered.

The Indian Contract Act, 1872

Each transaction made, especially if it is a business-to-consumer model, is essentially an electronic contract for all effects and purposes. The elementary and essential elements for the valid contract mentioned under Section 10 of the Indian Contract Act, 1872 which are equally applicable to an electronic contract. In this way, legal recognition to the e-contracts provide by both the Consumer Protection Act and IT Act. Further, Information Technology (Amendment Act), 2008 introduced Section 10A which deals with the validity of contracts formed through electronic means. Section 10A states that:

²¹ The Information Technology Act, 2000, Chapter IV.

²² The Information Technology Act, 2000, s. 17.

“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 un-enforceable solely on the ground that such electronic form or means was used for that purpose.”

1.4.1 International Organizations

Many organizations are working for the protection of the consumers. Some of them are as follows;

1.4.1.1 United Nations Conference on Trade and Development (UNCTAD)

The General Assembly, in its resolution 70/186, decided to constitute the Intergovernmental Panel of Experts on Consumer Protection Law and Policy, within the framework of a Committee of the Trade and Development Board of UNCTAD, to provide the international institutional mechanism guidelines for consumer protection. Explain the functions of the Intergovernmental Group of Experts in the guidelines. UNCTAD, through the Intergovernmental Panel of Experts, provides an international forum for dialogue, communication and the exchange of experiences and best practices in the field of consumer protection.²³

There are some challenges in consumer protection, particularly in developing countries, such as lack of human and financial resources, inadequate communication of information technology, lack of network facilities and insufficient experience in specific legislation. UNCTAD recognizes these challenges and requires immediate steps to develop proper legal frameworks and strong institutions to protect consumers in electronic commerce. UNCTAD's mandate on consumer protection, including e-commerce, includes exploring the interaction between competition and consumer protection issues, reviewing and advising Member States on consumer protection laws and policies and conducting activities

²³ UNCTAD, “Consumer protection in electronic commerce, *Intergovernmental Group of Experts on Consumer Protection Law and Policy*” Second session, Geneva, (2017), available at: http://unctad.org/meetings/en/SessionalDocuments/cicplpd7_en.pdf (Visited on December 10, 2017).

of training and capacity building in consumer protection for Member States and to support regional and multilateral initiatives.²⁴

1.4.1.2 Organization for Economic Co-Operation and Development (OECD)

The e-commerce guidelines provide much assistance to the government, consumers and the business sector and are practically feasible. They have flexibility to respond to age. The guidelines also obtained a standard of consumer protection in the online digital market.²⁵ They facilitate online commerce and, therefore, do not implement any restrictive trade policy. Some of the global guidelines for consumer protection in electronic commerce are the following;

- Electronic commerce should receive the same protection when purchased online or when the same products are purchased at a local store.
- There must be complete information about the goods and services provided. The electronic customers must know the transaction and agree with it. They should have full knowledge of what they are buying and what transactions they are dealing with.
- The confirmation process should provide a fair opportunity for the consumer to review the products that he intends to buy, in case of cancellation.
- More importantly, the payment system must be safe and reliable.
- In the case of an international transaction, if a dispute arises, it becomes difficult to compensate. Therefore, it is advisable to use an alternative dispute resolution system here.

The OECD recommendation urges governments and stakeholders to establish minimum levels of consumer protection for electronic commerce payments, regardless of the payment mechanism used. The Consumer Policy Directive of the Organization for Economic Cooperation and Development (OECD) on mobile or online payments aims to shape consumer protection practices and

²⁴ *Ibid.*

²⁵ OECD Recommendations, "Consumer Protection in E-commerce" OECD Publishing, Paris, (2016), *available at*: <https://www.oecd.org/sti/consumer/ECcommerce-Recommendation-2016.pdf> (Visited on December 10, 2017).

industrial practices in online and mobile payments, recognizing the benefits of innovative consumer payment systems.²⁶

1.4.1.3 International Chamber of Commerce

The Organization published the "Guidelines for Internet Advertising and Marketing" in 1996. The guidelines of the ICC were applied to all promotional activities, such as marketing and advertising on the Internet. They establish standards of ethical conduct that must be observed by all participants in the previous activities. Your specific objectives with regard to consumer protection in electronic commerce can be verified at a glance:

- Improve and instill the public confidence in advertising and marketing through the new system.
- Protection of freedom of expression for publicists and labels.
- To reduce the need for governmental legislation or regulation.
- To meet the consumer's expectations of privacy.

1.4.1.4 International Consumer Protection and Enforcement Network

ICPEAN aims to safeguard and protect the interests of consumers around the world. Information on cross-border activities that can be useful to consumers and promote their well-being is shared to promote global cooperation among law enforcement agencies.

The Okinawa Charter on the Global Information Society addressed substantive issues such as the use of digital opportunities, bridging the digital divide and promoting global participation. To achieve its objectives, policies and guidelines have been developed, which translates into greater access and participation in global e-commerce networks. Here are some general principles

²⁶ OECD, "Consumer Policy Guidance on Mobile and Online Payments" *OECD Digital Economy Papers*, 236 OECD Publishing, Paris (2014), *available* at: http://www.oecd-ilibrary.org/science-and-technology/consumer-policy-guidance-on-mobile-and-online-payments_5jz432cl1ns7-en (Visited on December 20, 2017).

that have been recommended and universally accepted, to protect consumer interest in electronic commerce:

- Consumers involved in electronic commerce must have transparent and effective consumer protection, in which the government and its stakeholders can work together.
- Companies should not, under any circumstance, participate in the representation or practice of anything that leads to error or that works on the right of consumers.
- Companies should never hide any condition or condition that may affect the consumer's decision regarding the transaction.
- If the term contract stipulates that financial damage must be done in case of breach of contract by the consumer, it must be guaranteed that said compensation is proportional to the damage caused.
- Companies should not restrict the consumer's ability to conduct negative reviews or dispute rates or file complaints with the government and other agencies.
- Advertising and marketing should be clearly defined as such.
- The declared price should not hide the total cost of a good or service.

The absence of specific regulatory laws and policies that govern electronic consumer transactions and many cases reported through print media, as well as electronic media, demand measures to protect consumers. In the e-commerce process, consumers seek appropriate consumer protection regulations to protect their rights in e- transactions.

1.5 Research Problem

The last years of the 20th century have been witnessed tremendous growth and development in the field of information technology, which has been changing the shape of human civilization. The most important development in the Information Technology through internet has been the geometric expansion of trade and commerce. With the use of information and digital technology the e-commerce became the reformed business activities. The universal development has been made through the growing interdependence of the world economy which

focus on the promotion and protection of the rights of consumers. On the other side, with the development of information technology some new kinds of challenges are facing by the consumers like plastic money fraud, cyber crimes and cheating in e-banking transactions etc. these issues affect the interest of consumer's. 'Consumer is the king' is nothing more than a myth in the present scenario, particularly in developed societies.

At the beginning of 20th century, many consumers had heard about the internet, e-mail and the World Wide Web (WWW). Today these are the common tools for many online services or work and these applications are use by a lot of consumers. These applications have given speed, global choices in services, goods, convenience and most importantly price to the consumers. This type of Modern technological developments has made a great impact on the availability, quality and safety of goods and services. But still the consumers are victims of unfair and exploitative practices. In the e-commerce the digital world imports new hurdles for the consumers. Shopping in the offline world is totally different from the shopping in the borderless digital world through internet and the result is also different. The consumer's condition in the electronic world is absolutely weaker relating issues like payments, transactions and privacy.

The new emerging system of trading practices and communication in the borderless world through internet is completely different from the old practices and rules of trading and communication and these are largely incompatible with the new digital world. Thus to cover the international level of compatibility of practices and rules and to accept the legal uniformity and for the development in the world of e-commerce, the United Nations Commission on International Trade Law (UNCITRAL) established by the United Nations General Assembly in 1996 has adopted the Model Law of Electronic Commerce in 1996. On the basis of UNCITRAL Model Law of Electronic Commerce in 1996, India has enacted the Information Technology Act, 2000. The other Acts providing helping hand to it are the Consumer Protection Act, 1986, the Indian Penal Code, 1860, the Criminal Procedure Code, 1973, the Indian Evidence Act, 1872 and the Indian Contract Act, 1872.

1.6 Objectives of the Study

The main objective of this work is to conduct a study on the consumer protection laws in India and to conceptualize legal provisions for protective and secure online shopping. There is need to change the laws which are only made for the traditional world for the new digital world. This work is an interdisciplinary study by connecting computer terms, legal terms and commercial terms.

The secondary objectives of the studies are as follow:

1. To explore the historical background of e-commerce in India.
2. To find out the growth factor of e-commerce and online shopping in India.
3. To identify the problems of consumers in the era of e-commerce.
4. To analyze the existing consumer protection laws and to observe how far online consumers are legally protected.

In this study, the researcher is also aimed to evaluate the implementation of various legal provisions such as the Consumer Protection Act, 1986, the Information Technology Act, 2000 and the Indian Contract Act, 1872 specifically in the areas which are related to online transactions and its safety mechanism while doing transactions through online. The researcher personally feels that the Information Technology Act, 2000 is like a skeleton legislation where all provisions are decorated in a very systematic way, however, these are not worth for an ordinary consumer who is not a lawyer or computer engineer or cyber expert but a victim of online frauds.

1.7 Research Hypothesis

Hypothesis facilitates direction to the research and provides the investigator with a forward look. 'George Lundberg' defines Hypothesis as "A tentative generalization, the validity of which remains to be tested".²⁷

E-commerce though not specifically defined in our consumer protection and welfare laws, is in general what others will call e-business, internet or online shopping. We have witnessed the increase in the number of online shopping portals like Flipkart, Amazon, Myntra, Jabong, etc., where the physical presence of

²⁷ S.R.Myneni, *Legal Research Methodology*, 61 (Pioneer Books, Delhi, 1997).

the customer in the supplier's store has been dispensed day by day. The traditional physical presence of a customer to order for the goods or services has been substituted with an online offer and acceptance. Are these transactions within the purview of our laws though not expressly stated? If not, are they applicable by implication to guarantee consumer rights generally? What protection does the customer information available online? Finally, the remedies available to the consumer community when a dispute arising out of the online transactions. These challenges in online shopping and the rights of consumers while doing shopping through online will be the main focus of this work.

Consumers have various rights that are granted to them by the provisions of our Consumer Protection Act. However, these laws are ambiguous as to whether such provisions would be applicable to online transactions. The Consumer Protection Act of 1986 was enacted to allow consumers to resist the power of large corporations and prevent unscrupulous businessmen from taking advantage of the weak position that consumers place in their nature under the old Indian judicial system. Special courts and simpler procedures have been established and special provisions have been issued to help consumers obtain a better negotiating status for manufacturers, retailers, etc. However, since this law has been enacted for more than a quarter of a century, it is not oriented to the protection of consumer rights in the digital era. However, this does not mean that it does not make sense in the Internet environment, although it certainly needs some key provisions that must be understood to highlight the conditions and practices of the online market in particular.

In addition to the Information Technology Act of 2000 and the various circulars made by the Reserve Bank of India with respect to Internet banking activities and the transfer of funds considered more general in an attempt to secure space on the Internet as a all, there are no specific laws that protect consumers in the online space. However, this does not necessarily mean that consumers have no recourse. In this work, the researcher will examine whether the Consumer Protection Act of 1986 can also be used to protect consumer rights in the Internet environment.

Hypothesis 1: Online shopping portals ensure numerous options for a wide range of goods online with quick and effective delivery systems. On the other hand, online operations are undertaken by Indian Railways, electricity boards, banks, movie theatres, etc. for payment and booking purposes. Thus the feasibility of operations that online transactions have brought about to the Indian trade industry and other transactions is remarkable. However, the sad reality on the other side of the coin is that even with such increased scope, there is a disadvantage of entering into such online transactions, being the ambiguity in the laws relating to them.

Hypothesis 2: Information Technology Act, 2000 does not holistically cover all the aspects of e-commerce with respect to consumer rights. It primarily covers business or commercial transactions that are undertaken by business to govt. or vice versa. An ordinary Indian man does not, in his daily life enter into such transaction; instead, they mostly utilize electronic commerce for online shopping, online banking and money transfer activities etc. No specific provisions for the same have been laid down under the Act even though it is the need of the hour for the enactment of such provisions.

Hypothesis 3: The Consumer Protection Act, 1986 becomes applicable when there is a 'defect in goods' or 'deficiency in services'. Hence, only if one of the above criteria is satisfied the Consumer Protection Act, 1986 would come into play. In the case of online shopping, the major concern is about the efficient delivery of the goods. However, there is no redressal provided if goods are not delivered in the time specified. Such intricacies create more trouble for the online consumers due to the anonymity of the seller. Complaints filed by online consumers regarding the same in consumer forums had not been entertained due to unclear and ambiguous laws.

1.8 Outlines of the Study

With the development of the Internet economy, most people begin to accept online shopping. From the perspective of information economics, consumer credit market is particularly important. The protection of consumer rights can improve the shopping satisfaction, and thus to overcome the negative impact of the information

asymmetry and the moral hazard. The scope of e-commerce has grown simultaneously with the growth of internet worldwide. The huge platform that e-commerce has provided the Indian traders for trade and commerce is noteworthy. Not only have the traders benefitted from transgressing territorial boundaries for the sale of their products, the consumers of goods and services have been provided with such advantages like multiple choices, convenient delivery services, quality goods at competitive prices etc. The Internet has thus revolutionized the way Indians and the rest of the world buy and sells their products. The feasibility of operations that online transactions have brought about to the Indian commerce sector is remarkable. However, the sad reality on the other side of the coin is that even with such increased scope, there is a disadvantage of entering into such online transactions, being the ambiguity in the laws relating to them.

Hence, the researcher has made an earnest attempt to evaluate the provisions of the Consumer Protection Act, Information Technology Act and the Indian Contract Act with regard to consumer welfare in the era of electronic commerce and in also in the light of the economic changes being undergone by the Indian economy. All the hypotheses and research problems formulated have been adequately addressed. Considering all the above aspects and to facilitate the discussion and for a thematic development of the subject, the research work is divided into five chapters. A brief overview of each chapter as follows-

The first chapter makes an earnest attempt at introducing the subject, its contours and dimensions. In this chapter, the researcher has given a brief overview of the emergence of the new environment for Indian commerce that is 'e-commerce' which has been absorbed by Indian economy in the 21st century. It goes on to present the e-commerce, its fundamental framework, its various types, growth, its impact on Indian marketing and entrance of consumers in the borderless market. The introductory chapter also discusses the objectives of the study, research problem and research hypothesis.

The second chapter entitled to review of the literature and has reviewed a number of books by eminent authors, articles, journals and other write-ups by academicians, law experts, jurists, NGOs etc. The researcher has taken ideas from the works done in the field of consumer law around the globe. The third

chapter covers the materials and methods used for the purpose of research. In the present study, the researcher has mainly relied on 'doctrinal method' of research.

The fourth chapter deals with the detailed discussion on the main theme of the research. It covers the provisions which are related to consumers and protection of their rights in the era of electronic commerce. The researcher has gone through the provisions of various acts such as UNICITRAL Model Law of E-Commerce, the Consumer Protection Act, 1986, and the Information Technology Act, 2000, etc. In this chapter, the researcher has also examined the Consumer Protection Bill, 2017. It is expected that this new law will completely reform the existing laws of the old the Consumer Protection Act of 1986. It is reported that the new bill takes into account the changing nature of the Indian economy, which has seen greater consumer and consumer awareness. a marked development in the economic panorama internet. The chapter is in fact based on the approach adopted in chapter III. This chapter reveals that in the new digital economy there seems to be a direct relationship between the "development of electronic commerce" and "consumer protection" in the Internet market for the overall growth of the Indian economy. To ensure the sustainable growth of the Indian economy, the government must actively address the issue of protecting the rights of consumers in electronic commerce in its political agenda. Unfortunately, along with the growth of the digital economy, there appears to be an increasing 'digital divide' between the profit and consumer rights in an online shopping.

The last chapter is the conclusions and followed by suggestions respectively, on the discussions made under chapter four.

CHAPTER-II

REVIEW OF LITERATURE

The present study is doctrinal and inter-disciplinary in nature. In this research primary as well as secondary data would be used for gathering information on the proposed topic. Some of the relevant sources like the Consumer Protection Act, 1986, the Information Technology Act, 2000, the Indian Contract Act, 1872 and United Nations Guidelines for Consumer Protection (UNGCP) for the digital era have used as the prime sources of law on the topic. In the present study, books written by eminent scholars, law journals, magazines, All India Reporters, Manuscripts and literature available on the internet have also used to gather information. A number of literature, research works, articles, and write-ups have reviewed for the purpose of conducting this work. They tried to focus on various aspects related to e-commerce, online shopping and also the existing laws for online consumers and protection of their rights.

Avtar Singh (2015): in his book discussed the Consumer Protection Act as one of the most important tools of social justice. This book explains the basic concepts and definitions used in the Consumer Protection Act of 1986 in general. This book focused on various areas of consumer goods and services and analyzed them according to the decisions taken by the State and National commissions. In this book, some practical observations have been made to allow readers to understand how consumer courts handle their orders. This book also highlighted that the main objective of the Consumer Protection Act of 1986 is to provide some protection measures for the consumer of goods or service users. In addition to discussing remedies under the Consumer Protection Act of 1986, this book also discussed the remedies available under the Sales of Goods Act, 1930. The author discussed in detail the practical application of the Consumer Protection Act of 1986. Author practically has touched all type of service within its jurisdiction with the pertinent jurisprudence²⁸

Paras Diwan & Shammi Kapoor (2000): in his book they focus on all legal issues related to electronic commerce. They explained that the dramatic

²⁸ Avtar Singh, *Consumer Protection Law and Practice* (Eastern Book Company, New Delhi 1st edn., 2015).

increase of the Internet and the World Wide Web has changed the way companies are carried out by improving accuracy, efficiency and speed. The industrial economy is developing today to become a new commercial environment in which money, goods, services and information are exchanged electronically. The main problem faced by electronic commerce is the absence of a well-defined regulatory framework throughout the world. India, with its complex regulatory framework, needs to define transparent rules for electronic commerce to keep up with global growth. You should review a number of issues such as taxes, fees, data protection, documentation, privacy and copyright from an electronic perspective. This is a new challenge for legislators. The authors appreciated organizations such as PMO, DoT, TRAI, IT Task Force, CII and FICCI, making the Internet accessible to all, because the backbone of all electronic commerce is the Internet. With a focus on the validity and applicability of electronic commerce transactions, this book analyzes the legal and commercial principles related to electronic commerce.²⁹

Gurbaksh Singh (1993): in his book talked about the history of consumers laws in different countries of the western words and also talked about the development of the movements on the consumer protection. The author also focused on the objectives of the consumer laws and the importance of consumer guidance. The author also included in his book the mode of complaint and appeal for the guidance of the consumers. The author also provides brief information on all of the aspects of consumer protection. The author also takes the help of some case laws to clarify the laws of consumer protection.³⁰

P.T. Joseph (2015): in his book discussed that with the inception of the Web, organizations and individuals are more and more making use of it to create new business ventures. The WWW is not only a definitive source of information but an astounding business opportunity as well. People throughout the world are venturing out on to the Web for buying and selling goods and services. The Web has indeed proved to be a boon to business, drawing its power from the flow of easy and instantaneous transactions worldwide. Online business is thriving and

²⁹ Paras Diwan & Shammi Kapoor, *Cyber & E-commerce Laws* (Bharat Law House, New Delhi 2nd edn. 2000).

³⁰ Gurbaksh Singh, *Law of Consumer Protection* (Bharat Law Publication, Jaipur, 2nd edn., 1993).

more and more corporate companies are joining the fray of electronic transactions. Thus, ushered in the era of 'E-commerce' has established a significant synergy between the use of digital information and computerized business. E-commerce refers aspects of online business involving exchanges among customers, business partners and vendors.³¹

Harish Chander (2012): in his book observed that in India Information Technology industry has witnessed phenomenal success through its varied software programmes for the upliftment of the society in general and industrial growth in particular. However, such a growth has brought inevitable legal problems too because of the change from only paper-based business and commercial transactions to e-commerce and electronic transactions. Such a growth of cyberspace and the utility of e-commerce and electronic business transactions have made it imperative to bring about legal changes in the form of the Information Technology Act, 2000, in India. This book confines itself to deal with the legal position of the Information Technology, e-commerce and business transactions; on the cyberspace under the IT Act in India.

Bakshi P.M and Suri R.K (2002): in their book observed that new horizons of knowledge and application of community technology forced to enter the e-commerce. Electronic commerce offers a great opportunity for global business through the use of digital technology. Digital technology has provided an effective communication platform for direct contact with the buyers and for this reason it is often called online marketing for the director. Regulation of e-commerce techniques requires that laws be introduced to thrive in online commerce.³²

Faye Fangfei Wang (2014): in his book has observed that the development of new technologies provides new challenges to the interpretation and implementation of legislation in the information society. The recent deployment of service-oriented computing and cloud computing for online commercial activities has urged countries to amend existing legislation and launch new regulations. With the exponential growth of international electronic commercial transactions, a

³¹ P.T Joseph, *E-Commerce: An Indian Perspective* (PHL Learning Pvt. Ltd., New Delhi, 5th edn., 2015).

³² Handbook of Cyber & E-Commerce Laws, *available at*: <https://trove.nla.gov.au/work/10962463?q&versionId=12817980> (Visited on November 4, 2017).

consistent global standard of regulating the legal effects of electronic communications, the protection of data privacy security and the effectiveness of internet related dispute resolution area motivating factors to build users trust and confidence in conducting cross-border business and sharing their information online. The author of this book has been adopted a 'solutions to obstacles' approach and analyzed the main legal obstacles to the establishment of trust and confidence in undertaking business online.³³

Ashim Sanyal (2015): in his article observed that in the last two years, electronic commerce has irreversibly changed the consumer experience. Ecommerce companies redefine how to buy customers and sell manufacturers, nowadays; even a housewife runs a small institution from home that can approach a global audience of buyers. E-commerce companies compete with traditional consumer goods companies to attract customers to their sites. With the passage of time and the growing success of the model, reservations about electronic commerce have faded. Consumers have seen competitive prices, convenience with a single click, easy access or product replacement. It was these aspects of electronic commerce that made it the second best option for the consumer retail sector, after opening direct foreign investment. The author considered that the country will have more than 300 million online shoppers in the next 15 years, which makes retail online in the largest online segment. It is important to conceptualize the regulatory framework in the country, taking into account the important interests of consumers in the country. If technology is available to reduce the costs of mediating consumer products, they should be allowed to use their full potential, as it will reduce the retail price of many consumer goods and benefit the middle class, which is most affected by price increases.³⁴

S. M. Imamul Haque & Md Anisur Rahman(2015): in their article observed that e-commerce involves the buying and selling of goods and services over the online portals or websites which has formed virtual and digital marketplace. It involves online transactions, supply chain management; e-marketing, electronic data interchange, automated inventory management

³³ Law of Electronic Commercial Transactions: Contemporary Issues in the EU, US and China (Routledge Research in Information Technology and E-Commerce Law, 2th edn., 2014).

³⁴ E-commerce-where consumer is king, *available at*: <http://www.thehindubusinessline.com/opinion/ecommerce-where-consumer-is-king/article7629819.ece> (Visited on November 5, 2017).

systems and automated data collection systems. Companies all over the world are finding e-commerce as the new platform for the business in the years to come. The authors claimed that India has the fourth largest Internet users in the world so it is expected to come among the top 10 e-commerce hub by 2015. The Indian e-commerce market has recorded an impressive growth rate of 47% to over Rs.46,000 crore in 2011 as compared to Rs.31,598 crore in 2010. This change is recorded mainly due to the sustained growth of online travel industry. For the faster growth and smooth running of e-commerce, it has become very important to have effective laws to cater the need of the time. There have always been threats in the processing of personal information due to phishing, spoofing, identity theft, fraudulent emails and viruses & malware attack. Another prominent issue is related to taxation on e-commerce transactions. E-commerce transaction raises several taxation issues because it is completed in cyberspace and there is an absence of national boundaries and in some cases non-requirement of the physical presence of goods and physical delivery. The main aim of this paper was to analyze the effectiveness of law in the present scenario of increasing cybercrime, identifying the shortcomings and find out the corrective means.³⁵

Grant Thornton & ASSOCHAM India (2015): in their study explained that the electronic commerce sector has experienced unprecedented growth in recent years. The market in India has grown almost 50% in the last five years. This growth was driven by the adoption of high-speed technology driven by increased use of mobile devices such as smartphones and tablets, Internet access through broadband, 3G, etc., which resulted in an increase in the base of online consumers. In addition, preferred demographics and a growing base of Internet users have helped support this growth. India is expected to experience unprecedented growth in the number of smartphone users to more than 650 million users over the next four years. With the growing number of smartphone users and key players in e-commerce, the number of users that depend on future application platforms will increase in the near future. In India, electronic commerce has received a great boost and is reinforced by Information Technology Act of 2000. In fact, Information Technology Act of India 2000 is a law that allows

³⁵ E-Commerce in India: Issues & Remedies, *available at:* http://www.academia.edu/6576029/E-Commerce_in_India_Issues_and_Remedies (Visited on November 5, 2017).

electronic commerce because it provides a framework legal for electronic commerce and solid bases for a greater growth of m-commerce and electronic commerce. Information Technology Act of 2000 was amended by the Information Technology (Amendment) Act of 2008. This scope of the Information Technology Act of 2000 has been extended to include all types of communications equipment and resources computer. The amendments entered into force on October 27, 2009 and provided an enabling legal framework for the growth of mobile commerce, which was part of the electronic commerce sector.³⁶

Sonnet Debbarma & Gypsy Nandi (2014): in their article observed that e-commerce has immensely increased economic growth in domestic welfare and changes have arisen in the market scenario too. The Internet represents a new environment for the extensive growth of e-commerce, providing an exchange of goods and services and also directing access to customer's own personal accounts online. E-commerce and online shopping in India are getting a noticeable growth as more usage of internet facilities, high educational standards, changing lifestyle and economic growth of the country reasons in the demand of e-commerce techniques and tools. There is also a significant national diversity in e-commerce adoption, particularly in downstream marketing, sales and other customer-oriented activities. Increasing Internet penetration and availability of more payment options boosted the e-commerce industry. The authors have explained that B2C involves a service or product exchange from a business to a consumer, whereby merchants sell products to consumers. E-commerce allows consumers and businesses to access global markets and also to improve the level of customer service, speed the flow of goods and information, reduce transaction costs etc. Developing countries face a series of challenges to take advantage of the benefits of increased revenue and trade flows in electronic commerce. A variety of technical, legal and international considerations must be addressed.³⁷

Renuka Sharma & Kiran Mehta (2014): in their work the introduction and application of Internet technologies has created a new market for manufacturers

³⁶ Law & Technology: Evolving challenges as a result of fraud in E-commerce sector, *available at*: http://gtw3.grantthornton.in/assets/ASSOCHAM_E-commerce_in_India.pdf (Visited on November 5, 2017).

³⁷ Promoting E-Commerce in India: Main Issues and Challenges, *available at*: https://www.researchgate.net/publication/268980551_Promoting_E-Commerce_in_India_Main_Issues_and_Challenges (Visited on November 5, 2017).

and service providers and has also provided a new space for innovative marketing strategies by professionals. There are several reasons to change customers who buy patterns from online retail stores. The advantage of comparing your product with competitive products based on price, color, size and quality is one of the greatest benefits of online shopping. In addition, the product remains in place until you buy it. The authors tried to explain in detail the online purchases. Other popular names for online shopping are the virtual store, the online store, online storefront, internet shop, web store, web-shop and e-shop etc. Also it is one of the popular selling point. The different coupon facilities and the discount scheme are also excellent for customers in online purchases. The main objective of his study was to understand the behavior of online shopping for consumers in India.³⁸

Kanika Satyan (2015): in her article discussed the scope of e-commerce has grown simultaneously with the growth of internet worldwide. The author explained the huge platform that e-commerce has provided to the Indian traders is noteworthy. Not only have the traders benefitted from transgressing territorial boundaries for the sale of their products, the consumers of goods and services have been provided with such advantages like multiple choices, convenient delivery services, quality of goods at competitive prices etc. The Internet has thus revolutionized the way Indians and the rest of the world buy and sells their products.³⁹

C.M Abhilash (2002): in his article has given an explanatory note on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on e-commerce and he had also given his expression on the enactment of the Information Technology Act in June 2000. The Act facilitates e-commerce and e-governance in the country. The law also establishes an organizational framework and establishes criminal systems for various crimes and cybercrime. The problems generally faced by developing countries render it more difficult to effectively implement such 'high tech' legislation as envisaged by the Model Law. This article is divided into three parts. The first gives a brief introduction to the Model law and

³⁸ Understanding Online Shopping Behaviour of Indian Shoppers, *available at:* <http://www.ijmbs.com/Vol4.3/sp11/renuka-sharma.pdf> (Visited on November 7, 2017).

³⁹ E-commerce and Consumer Protection, *available at:* <https://in.linkedin.com/in/kanika-satyan-49876957> (Visited on November 7, 2017).

an overview of the Information Technology Act. The second part points out the main differences in the Model Law and the Information Technology Act regarding the provisions relating to Electronic signatures and e-contracts. The final part addresses the difficulties that might arise while implementing the Act in a social and economic context and stresses the need to promote electronic governance. It is argued that the lack of adequate training of law enforcement personnel leads to undesirable results, as demonstrated in the 'first landmark case' in the history of cyber crimes in India.⁴⁰

Subhajit Basu and Richard Jones (2010): have claimed that electronic commerce; conducting business through network technology, will significantly impact the global economy and play a vital part in future economic development. Europe and the United States are currently seen as the main beneficiaries of such growth, but countries such as India and China with their huge pools of technologically skilled manpower have exceptional opportunities. The authors have observed that a number of developing countries have pursued policies to formulate a consistently legal and regulatory framework to support electronic transactions across state, national and international borders. The development of the appropriate legal framework has required substantial re-thinking of traditional legal approaches. Many legal rules assume the existence of paper records, documents, signatures, physical cash, cheques, face to face meetings, and so on. As more transactions are made through electronic means, it is important to provide evidence of such activities for the demonstration to ensuing legal rights and obligations. India's Information Technology Act 2000 provides a legal framework so that transactions have the legal effect, the validity or the execution is not prevented from being in electronic form. In this paper, they have outlined the economic impact of e-commerce on the developing countries and reviewed the main provisions of the Information and Technology Act, 2000 in the context of contractual, jurisdictional, security, and regulatory issues.⁴¹

⁴⁰ E-Commerce Law in Developing Countries: An Indian Perspective, *available at*: <https://pdfs.semanticscholar.org/e5d3/40b2b66e55baacec1242a3a8ed18e98108be.pdf> (Visited on November 10, 2017).

⁴¹ Subhajit Basu and Richard Jones, "E-Commerce and the Law: A Review of India's Information Technology Act, 2000" 12 *JCSATFO* (2010).

Anshuman Jagtap and Abhay Devadhar (2014): in their article observed that online purchases and the use of online services are becoming more frequent due to their convenience, low prices and, often, discounts. There are many benefits and services offered by online service providers. However, there are some defects that have been marked with themselves, which include, among others, the risks of inaccuracy or lack of goods or services that are provided to consumers. In case of lack of service, the issue of jurisdiction for the purpose of referring and resolving disputes or complaints is a critical issue that must be addressed on behalf of consumers who use online services over the Internet. The authors stated that, although online transactions have increased the efficiency of transactions and access to consumers, there are still many difficulties that have not yet been satisfactorily addressed. While the growth of the electronic commerce industry is sweeping the country, it seems that supervision and laws are insufficient and are related to the quality control of the products of the companies and the services they offer.⁴²

Bejon Misra (2017): the author presented his text on the proposed amendment to consumer protection. The author noted that, as a result of the dramatic increase in the popularity of electronic commerce, the proposed amendment sought to include electronic commerce transactions in accordance with the law. Under the current Consumer Protection Act, a consumer can take legal action against the seller only at the place where the transaction is made. The new bill contains provisions that provide consumers with claims electronically and in consumer courts that have jurisdiction over the plaintiff's place of residence. Policymakers and legislators must realize that, in the absence of an effective, modern and modern consumer protection framework, these initiatives will be similar to those of dead plants. Consumers are the backbone of the economy and there can be no real progress without protecting their interests.⁴³

Sardana M.M.K (2014): has observed that, with the increasing sophistication of the Internet infrastructure for commerce, there are drastic

⁴² Protection of Consumer Rights in the Digital Era, *available at:* http://www.hariani.co.in/newsletters/4511_Protection_Of_Consumer_Rights_In_The_Digital_Era.pdf (Visited on November 10, 2017).

⁴³ No Time to Lose on Consumer Protection, *available at:* <http://www.thehindubusinessline.com/opinion/issues-regarding-consumer-protection-in-india/article9786478.ece> (Visited on November 10, 2017).

changes in our ability to store, process and transmit information, which leads to changes in the way products are packaged and delivered. Because e-commerce techniques are subject to change, they require a review of various laws, policies and institutional arrangements to address them. Until a new set of understandings is reached between the various interactive States and parties, leading to the enactment of appropriate legislation necessary for the smooth functioning of electronic commerce in electronic commerce, the existing legal instruments will continue to be applied and developed to through judicial sentences.⁴⁴

Ramroop K Sharma (2016): in his article explained that e-commerce has become a powerful tool for doing business. E-commerce is useful in daily activities. It has witnessed stupendous growth based on growing consumer potential in the Indian market. Now, the e-commerce firms have experienced the initial phase and they are moving a more structured and matured phase. It is evident that more and more Indians have started doing e-commerce transactions. The author of this paper makes an attempt to provide a holistic outlook on the growth of e-commerce in India, issues and future implications. It is a descriptive research. Secondary data are used from various sources. The findings suggest that there is the growth of in e-commerce in India and such growth is expected to continue in near future. Simultaneously there are issues including the issue of payment frauds which is on the rise. There is the need for strict and focused steps to support e-commerce such as enactment of e-commerce law. Also, there is the need for transparency at all levels in organizations to reduce incidents of frauds to propel e-commerce.⁴⁵

Anubhav Singh & Aditi Pandey (2016): in their article explained that with the advent of e-commerce, the Indian retail market has witnessed a revolution post-2000. With world's second largest mobile phone user base and third largest internet connections base with around 100 million broadband subscriber base, the e-commerce scene is redefining and reshaping how businesses are conducted today. With the augmentation of the internet, the virtual retailer's new retail format has emerged and obligated the existing retailers to consider retailing's e-tailing

⁴⁴ Evolution of E-commerce in India: Challenges ahead, *available at:* <http://www.isid.org.in/pdf/DN1407.pdf> (Visited on November 11, 2017).

⁴⁵ Ramroop K. Sharma, "Growth of E-Commerce in India, Issues and Future Implications" 4 *IJEER* (2016).

model. With favored demographics such as a fairly young population, rising income levels, access to latest technology, a plethora of young entrepreneurs and a huge market potential is giving a boost to the "Brick to click to mobile" growth story. The authors have tried to analyze the current market perspective, ecosystem, investment scenario and operational challenges on the e-commerce trends in India and the fast-changing consumer preferences driving it.

Aindrila Biswas & Mousumi Roy (2014): in their work discussed the Internet has changed consumer habits and the means to satisfy the demands of comfort. Online shopping is more common in the developed world than five years ago, but it is not the same in India for its own reasons. There is great interest among marketing specialists and academics in understanding how to divide consumers online to better meet their needs. The authors suggested that marketers should resort to promoting online shopping by highlighting attractive offers that can improve the quality-price ratio. The use of celebrity endorsements on online shopping sites can reduce the risk perception of online shopping from the minds of consumers. Multiple payment options, especially cash on delivery, must be available to reduce the fear of loss. The free helpline service can be provided to consumers to facilitate the repair and replacement of the product. Warranties and guarantees can also be used to reduce the fear of dissonance after purchase.⁴⁶

Shruti Pollock & Tamanna Bansal (2017): in their article focused changing lifestyles in today's modern society; e-commerce is now a necessity in today's world. E-commerce in India started mainly in the year 2000. The e-commerce industry, in turn, has implemented many business models by bypassing the creation of traditional commercial structures. The establishment of this industry has helped facilitate other industries by introducing radical transformations. Recently, it was observed that the e-commerce industry faced many problems related to tax transactions due to the absence of national borders and the nature of the treatment of products within the industry. The authors tried to add some areas that would focus on the legal validity of electronic transactions in the e-commerce industry, security problems, preventing the implementation of certain

⁴⁶ Leveraging Factors for Online Shopping-A Study in an Emerging Economy, *available at:* http://jmisenet.com/journals/jmise/Vol_1_No_1_June_2014/2.pdf (Visited on November 11, 2017).

investment policies and more importantly on issues related to consumer protection, property intellectual and the content of it.⁴⁷

⁴⁷Shruti Pollock & Tamanna Bansal “Revolution of the Indian E-Commerce Industry: Legal Perspectives and Issues Pertaining to its Growth and Development” 1 *IJLI* (2017).

CHAPTER-III

RESEARCH METHODOLOGY

In pursuing the present study, the researcher has followed a doctrinal method of research. It involves the collection of data from primary and secondary sources; primary sources like statutes, reports of the commissions and committees and secondary sources like books written by eminent authors and articles found in the journals and websites. Use of online resources also became very relevant to find out the most updated, relevant and apt information which helped the researcher in exploring the subject from various dimensions. Inductive methodology i.e. getting general results from specific points by analysis of literature studied has also been used. The researcher would be conducting a critical and analytic enquiry into the history, growth, challenges and future of online shopping in India and also consumers' rights and its protection while doing shopping through online.

In particular, the texts of the Consumer Protection Act, the Indian Contract Act, the Sale of Goods Act, the Information Technology Act and similar legislation in other regions, reports, articles, journals, debates and discussions on the topic have used. There are limited numbers of books available on the concerned topic. So to make the study effective the researcher has taken help from various online resources in the form e-books, articles, journals and writes ups, etc.

Further, the researcher has also procured information on the functioning of Consumer Forum and its intervention in various cases regarding shopping via online through online media and websites. Opinions and views articulated by experts, academia, research scholars, consumer activists, policy analysts, etc., have also gathered for information. Research journals and print media are used as inputs to this work for making pragmatic suggestions and recommendations. Important decided cases reported in various legal journals and articles were also helpful for understanding the interpretation of the letter and tenor of the legal provisions.

In brief, the researcher used the following two methods of sources of information;

Primary Sources

Information mainly procured from the authoritative texts on the Consumer Protection Act, the Indian Contract Act, the Sale of Goods Act, the Information Technology Act and similar legislation in other regions, debates and discussions in the Parliament at the time initiation of the relevant Bill on consumer protection law. Important cases decided by the Supreme Court on the matters pertaining to consumer protection, e-commerce and information technology are also found as a significant part of the primary source of information gathered by the researcher.

Secondary Sources

This information procured from the views and opinions articulated in print and online media by the academia, advocates, economists, chartered accountants, jurists, policy makers, etc. Opinions expressed and articulated in different print media vehicles by research scholars, experts, consumer activists, etc., have also been gathered. Views and opinions published in law journals by consumer law experts were also used to shed more light on the text of the Indian consumer protection law in connection with e-commerce and online shopping.

CHAPTER-IV

DETAILED DISCUSSION

This Chapter deals with the concept of consumer protection in the era of e-commerce in its all dimensions. The researcher has made an equivalent focus on the existing legal provisions and how they safeguard the rights of consumers in the digital era of commerce. This primary purpose of this chapter is to analyze the role of law for the consumers' protection in the modern world of electronic commerce. The researcher has done his research work through the existing legal enactments such as the Consumer Protection Act, 1986, Information Technology Act, 2000, the Indian Contract Act, 1872, etc. This chapter also focuses on the Consumer Protection Bill, 2017 which has been incorporated e-commerce under the purview of law regarding consumer protection for the internet age in India. This bill, 2017 is going to be a change which is expected to completely overhaul the current laws stipulated under the archaic Consumer Protection Act, 1986.

4.1 Consumer Protection in India

The present era is marked as the era of consumers. No country can ignore the interest of the consumers knowingly or unknowingly. This can be argued on the basis of secure enactment of consumer protection laws in almost all part of the world. Apart from the consumer protection laws in the developed world, we could find the increasing rate of lawmaking for consumers in developing countries.⁴⁸ India is not an exception to this rule. The Consumer Protection Act, 1986 treated as a milestone in the history of socio-economic legislation to protect the interests of the consumers⁴⁹ in India. The legislation to protect and advance the interest of consumers in India was finally developed after a deep study of consumer protection laws also operating in other countries and in consultation with representatives of consumers, trade and industrial parts of India and abroad. In

⁴⁸ S.K. Verma & M. Afzal Wani, *A Treatise on Consumer Protection Laws*, 18 (Indian Law Institute New Delhi, 2004).

⁴⁹ The Consumer Protection Act, 1986, s.2(d) "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".

order to properly help in the interests of the consumer and to resolve their disputes, Consumer Council and other authoritative mechanism are also being established.⁵⁰ It is to be argued that there must be the proper discussion about the concept of 'consumer protection' centers around the problems of consumers in a world of sellers. The technological developments have increased the needs of consumers and have changed the tradition that guided our living in the past. The rapid industrial growth has not only brought new innovations and products into common use but has also changed the mode and outlook of our living. The simple goods which served the needs of consumers have been replaced by complex and complicated goods. The socio-economic also changes the life of consumers so it is necessary to establish movement a strong and broad-based consumer movement which may give impetus and bring about socio-legal measures necessary for consumer protection.

The main objective of the Consumer Protection Act is to secure the better protection of consumers. The existing laws which are preventive in nature, the provisions of this Act are compensatory in nature. The Act is also designed to provide simple, speedy and cheap redressal to the consumers' grievances, and relief to the special nature and award of compensation whatever suitable to the consumer. The following are the salient features of the Act:

- The Act applies to all goods and services unless specifically exempted by the Central Government.
- It includes all the sectors whether private, public or co-operative.
- The provisions of the Act are compensatory in nature.

It enshrines the following rights of consumers:⁵¹

1. Right to be protected against the marketing of goods and services which are hazardous to life and property of the people;
2. Right to be informed about the quality, quantity, potency, purity, standard and price of goods or services so as to protect the consumer against unfair trade practices;

⁵⁰ *Common Cause v. Union of India*, (1991) 2 CPR 523(SC).

⁵¹ The Consumer Protection Act, 1986, s.6.

3. Right to be assured, wherever possible, access to a variety of goods and services at competitive prices;
4. Right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums;
5. Right to seek redressal against unfair trade practices unscrupulous exploitation of consumers; and
6. Right to consumer education.

It is also important to note that the Act also envisages the establishment of The Consumer Protection Councils at the Central and State levels.⁵² The objectives of The Consumer Protection Act will be to protect and promote the consumer's rights. One of the main objectives of consumer protection is to defend the whole rights of the consumer from unfair and dishonest trade and marketing practices.

In India tradition of protecting consumer interest can be traced from historical past. In Kautilya's Arthashastra, the references of the consumer protection against the exploitation by the trade, industry, authority, measures, adulteration and the punishment for these offences is also provided. Prior to independence, the main laws protect the interest of consumers were the Indian Penal Code, Agriculture Production, Grading and Marketing Act, 1937, Drugs and Cosmetics Act, 1940. Consumer Rights and their Effectiveness in India and eight rights are incorporated in the United Nations Guidelines for Consumer Protection (UNGCP),⁵³ the right to safety, right to information, right to choose, right to be heard, right to redress, right to education, right to basic needs, and right to healthy environment. The Government of India also included the above rights in its Twenty-Point Programme.⁵⁴ The consumer rights are also enshrined in the Consumer Protection Act, 1986.

⁵² The Consumer Protection Act, 1986, ss.4, 7, 8A.

⁵³ United Nations Guidelines for Consumer Protection, *available at*: http://unctad.org/en/PublicationsLibrary/ditccplpmisc2016d1_en.pdf (Visited on December 22, 2017).

⁵⁴ Twenty Point Programme 2006, *available at*: <http://mospi.nic.in/twenty-point-programme/twenty-point-programme-2006> (Visited on December 28, 2017).

4.1.2 Consumer Protection in Indian Constitutional Mandate

The Constitution of India does not contain any clear provision relating to the consumers, but there are many provisions that have a direct bearing on the interests of the consumer. Most of these provisions mentioned in the Directive Principles of State Policy. As a part of fundamental freedoms, the Constitution guarantees under sub-clause (g) of Article 19(2), freedom of profession, trade or business, thereby ensure that the State cannot prevent a citizen from carrying on a business, except by a law imposing a reasonable restriction in the interest of the general public. However, under Article 19(2), no such right can be enforced where the business is dangerous or immoral. Such a business may be absolutely prohibited or may be required to be licensed.⁵⁵ Moreover, restrictions can be imposed on business in terms of place and time also. There is no right to carry on a business at every place or at any time. There can be reasonable restrictions on 'business on the streets'⁵⁶ and any 'harmful trade'⁵⁷ or 'dangerous trade'.⁵⁸ Reasonable restrictions can be imposed for public convenience also.⁵⁹

In the context of licenses and permits required for carrying on a business or trade, the grant of such licenses cannot depend upon the absolute discretion of an administrative authority, but clear policies have to be laid down on which the discretion can be exercised, taking due note of consumer interest. The discretion has to be exercised judicially. If the law requiring license does not set out the considerations, it would be void. If considerations are set out in the law but are departed from by the competent authority, while administering the law, then the order of the competent authority would be void, despite the law being valid. Generally, an existing license cannot be revoked without giving the licensee an opportunity of being heard.⁶⁰ There can be restrictions on licenses but these must be reasonable.⁶¹ The restrictions should be, *inter alia*, in the interest of

⁵⁵ D.D. Basu, *Introduction to the Constitution of India* 101 (LexisNexis Butterworths Wadhwa, Nagpur, 20th edn., Reprint, 2011).

⁵⁶ *Pyare Lal v. Delhi Municipality*, AIR 1968 SC 133.

⁵⁷ *Hari Shankar v. Deputy Commissioner*, AIR 1975 SC 1121.

⁵⁸ *Lakhan Lal v. State of Orissa*, AIR 1977 SC 722.

⁵⁹ *Ebrahim v. Regional Transport Authority* (1983) SCR 290.

⁶⁰ *Dwarka Prasad v. State of Uttar Pradesh* (1954) SCR 803, *Faruk v. State of Madhya Pradesh*, AIR 1970 SC 93, *Fedco v. Bilgrami* (1960) SCJ 235, *Sukhnandan v. Union of India*, AIR 1982 SC 902.

⁶¹ *All Delhi Rickshaw Union v. Municipal Corporation*, AIR 1987 SC 648.

consumers, accordingly, total prohibition can be imposed against the manufacture of drugs or preparations which are injurious to health.⁶²

Article 21 of the Indian Constitution guarantees every person to live with dignity, free from all kinds of exploitation. Article 38 of the same Act imposes the obligation on the State to bring a social order in which political justice, social-justice and economic can be regulated to all the institutions of life. The consumer cannot be ignored while giving any practical shape to this obligation. According to Article 39(b) and (c), also, the State is required to direct its policy towards securing the ownership and control of the material resources of the community in equal distribution so that it sub serve the common good, and the operation of the economic system should not result in the concentration of wealth and means of production to the common detriment.⁶³ This is the most important directive to the State under Chapter IV⁶⁴ of the Constitution, which supports the whole public distribution system and the administrative mechanism to control hoarding and profiteering in India. *The Oil and Natural Gas Commission and Another v. Association of Natural Gas Consuming Industries of Gujarat and Others*, the Supreme Court has held that a statutory corporation, even if it may not be a public utility, has also to comply with Article 39 of the Constitution and charge only fair prices.⁶⁵ For commodity, not vital for consumers, greater consideration can be given to profit.

The Constitution has divided the subjects, relating to product and service regulation, between the Centre and the States for their better quality and efficiency. The Concurrent List deals with most of the subjects relating to Consumer Protection. The relevant entries⁶⁶ are: Preventive Detention for the reasons connected with maintenance of supplies and services essential to the community, Adulteration of Foodstuffs and other goods, Drugs and poisons excepting cultivation manufacture and sale for export of opium, Economic and Social planning, Commercial and Industrial Monopolies, Combines and Trusts, Legal, Medical and Other Professions, Trade and Commerce in the production,

⁶² *Lakshmikant v. Union of India* (1997) 4 SCC 739.

⁶³ *Supra* note 55 at 43.

⁶⁴ Directive Principles of State Policy, Constitution of India, Part IV.

⁶⁵ AIR 1990 SC 1851.

⁶⁶ The Constitution of India, art.246.

Supply and Distribution of the products of any industry where the control of such industry by the Union is declared by Parliament by law to be measured for the public interest, and imported goods of same kind as such products food stuffs; including edible oilseeds and oils, cattle fodder, including oil cakes and other concentrates, raw cotton, whether grained or engrained and cotton seed, raw jute, weights and measures except establishment of standards, price control, electricity, news papers, books and printing press.

4.2 Law Relating to E-Commerce: International Scenario

The Economic and Social Council of the United Nations, recognizing the need for protection of the rights of consumers, drafted a set of model guidelines on consumer protection which were adopted by the General Assembly in 1985. The United Nations Guidelines for Consumer Protection (UNGCP) as an international reference point of the consumer movement, however since it has been over a quarter of a century since they were first drafted, there is a strong argument for revising them to bring them in line with new developments in technology and business practices.⁶⁷ In order to pave the way for the development of e-commerce and internationally acceptable level of legal uniformity and compatibility of rules and practices, the United Nations Commission on International Trade Law (UNCITRAL) established by the United Nations General Assembly in 1996 has adopted the Model Law of Electronic Commerce in 1996. It is intended to facilitate the use of EDI, e-mail, telegram, telex or telegraphy etc., by providing standards with which their legal value can be assessed. There are two Model Laws directly or indirectly relating to e-commerce and subsequently a Convention is adopted which is discussed as under below:

- (i) UNCITRAL Model Law On Electronic Commerce, 1996
- (ii) UNCITRAL Model Law On Electronic Signature, 2001
- (iii) United Nations Convention on the Use of Electronic Communications in International Contracts, 2005

⁶⁷ Vipul Kharbhanda, Are Indian Consumer Laws Ready for the Digital Age? , *available at*: <https://cis-india.org/a2k/blogs/are-indian-consumers-laws-ready-for-digital-age> (Visited on October 14, 2017).

4.2.1 UNCITRAL Model Law on Electronic Commerce (MLEC), 1996

The Model Law on Electronic Commerce (MLEC) indicates to empower and encourage trade to conduct business by electronic means. By providing national legislation to legislators with an internationally accepted set of rules, it should aim to eliminate legal barriers and increase legal predictability in e-commerce. In particular, its objective is to overcome the barriers derived from legal provisions that cannot be modified contractually by providing equal treatment of paper-based and electronic information. Such equal treatment is necessary to facilitate the use of paperless communications, thus improving efficiency in international trade. The Model Law was adopted in 1996 to promote the use of modern means of communication and information storage, such as Electronic Data Interchange (EDI), electronic mail and electronic downloading. Its main objective was to harmonize national laws on electronic commerce. It has provided legal recognition of the data message and the digital signature. National legislators have encouraged the adoption of a set of internationally accepted standards for the health of electronic commerce by providing the same treatment of paper and electronic information. This equal treatment is necessary to facilitate the use of paperless communications, thus improving efficiency in international trade.⁶⁸

The MLEC was the first legislative document to adopt the basic principles of non-discrimination, technological neutrality and functional equivalence.⁶⁹ To ensure that the document is not rejected for any legal effect, validity or application only on the basis that it is in electronic format. The principle of non-discrimination has been incorporated. The principle of technological neutrality includes neutral provisions in relation to the technology used. The principle of functional equality makes electronic communications equal to paper communications.⁷⁰

This law has been divided into two parts i.e., part I dealing with e-commerce in General consisting of 3 Chapters and part II consisting of only Chapter 1.

⁶⁸ Jyoti Rattan, "Law Relating to E-Commerce: International Scenario with Special Reference to India" 01 *IJSSEI* 1-9 (2015), available at: <http://isij.in/images/article/IJSSEI1/1ijssei.pdf> (Visited on December 15, 2017).

⁶⁹ *Ibid.*

⁷⁰ Pranab Kumar Bhattacharya, "Legal Framework of Electronic Commerce: A Study with Special Reference to Information Technology Act 2000" 54 *IJC* 201 (2001).

The first part refers to the establishment of equality and functional concepts, such as "written" and "signature" and "original" paper, since this part defines the validity and formation of contracts concluded by the rules of electronic means. To assign data messages, acknowledge receipt and to determine the time and place to send and receive data messages. On the other hand, some of the provisions of the International Compensation Convention modified by the Electronic Communications Convention in light of recent e-commerce practices. The second part of the MLEC, the electronics of interest with respect to the transfer of goods and complemented by other legislative documents, including the United Nations Convention on the international carriage of goods totally or partially by Sea ("Rotterdam Rules") ") to be the subject of additional work by UNCITRAL in the future.⁷¹

Salient Features of MLEC

Salient features of this Model Law are:

- The first feature of this law is "electronic equivalence". The Model Law does not directly consider electronic communications valid but it provides that information or documents will not be refuse legal effect or enforceability only because they are in electronic format. Therefore, it conferred validity on e-transaction indirectly.
- The model law granted many rules specifying conditions which must be fulfilled for an electronic communication to constitute a legal validity to substitute for a conventional and paper-based communication.
- It further presents that it is a legal requirement to provide information or a document sent "in writing" is satisfied by its electronic equivalent if it is in a form that can be subsequently accessed and used by the recipient.
- According to MLES Electronic documents are treated as "original" documents if there is a reliable guarantee regarding the integrity of the information. This information can be shown to the person to whom it will be provided. In addition, the information must be complete and remain

⁷¹ *Supra* note 68 at 46.

unchanged regardless of the addition. If there is any change in the connection, storage and display. However, reliability is determined by all circumstances, including the purpose for which the document was created.

- MLEC provide the validity to e-evidence. It provides that evidentiary rules do not refuse to admit an electronic communication only on the grounds that it is in electronic form.
- It also establishes data retention conditions. It establishes that the message should be kept in the form in which it was created and that any information indicating the origin, destination, date and time of the message should be retained. Another important condition is that the information contained in the email must be available so that it can be useful for later reference.
- The Model Law follows a legislative guide that provides background information and explanatory information to help States develop the necessary legislative provisions.

4.2.2 UNCITRAL Model Law on Electronic Signatures (MLES), 2001

The UNICITRAL approved the Model Law which came into force in 2001. Its main purpose was to harmonize national laws on electronic signatures and provide legal recognition of electronic signatures. It consists of two parts, namely the first part of 12 articles and the second part, the guide of legislation of the multilateral system.

Salient Features of MLES

Model Law only applies where electronic signatures are used in the commercial activities. However, it does not override any rule of law intended for the protection of consumers. Important features of this Model Law are:

- The Model Law establishes the legal recognition of the electronic signature. It establishes that if the law requires the signature of a person, this requirement is met with respect to a data message if an electronic signature is used. But the signature is also required to be reliable as

appropriate for the purpose for which the data message was created or transmitted. Reliability is determined in light of all circumstances, including any relevant agreement.

- It also defines electronic signature as "data in electronic form in, affixed to, or logically associated with, a data message, which may be used to identify the signatory in relation to the data message and indicate the signatory's approval of the information contained in the data message".⁷² Two parties involved in data message are: Signatory means a person that holds signature creation data and acts either on its own behalf or on behalf of the person it represents.⁷³ Relying party who may act on the basis of certificate or an electronic signature.
- Present Model Law regarding an electronic signature is reliable but it fulfilled the following four conditions: the signature creation data are linked only to the signatory; the signature creation data was under the sole control of the signatory; any alteration of the electronic signature, made after signing, is detectable; and where the purpose of the signature is to provide assurance as to the integrity of the underlying information, any alteration of that information must be detectable.
- It is the duty of the signatories to use reasonable care to avoid unauthorized use of their electronic signature. When it comes to the knowledge of the signatories that the security of their electronic signature has been unsecured then they must notify any person that might be affected without delay.
- It also imposes the duty on a relying party (a party receiving certificate or re-record) to verify the reliability of an electronic signature. A certificate is a data message that established a link between the signatory and the creation data. When relying party fails to verify the reliability of an electronic signature, then such party will be liable for legal consequences.

⁷² UNICITRAL Model Law on Electronic Signatures, 2001, art. 2(a).

⁷³ UNICITRAL Model Law on Electronic Signatures, 2001, art. 2(d).

- It is important to mention that signatories who use e-signature must have Electronic Signature Certificate (ESC) issued by a certification service provider. According to Law certification service providers must fulfill certain acts which as: to act in accordance with States' policies and practices; to exercise reasonable care to ensure the accuracy of any information found on its certificates; to provide reasonably accessible means whereby parties relying on a certificate can confirm certain information pertaining to the certificate; and to utilize trustworthy systems.
- Further, following factors must be considered when determining the trustworthiness of the certification service providers.⁷⁴ Which are as following:⁷⁵ Financial and human resources of the provider, Quality of hardware and software systems, Procedures for processing certificates, Availability of information to signatories and relying upon parties, Regularity and extent of independent audits, and Regulation or licensing by government authorities.

4.2.3 United Nations Convention on the Use of Electronic Communications in International Contracts, 2005

It was adopted in November 2005 and entered into force on March 1, 2013. Its objective is to facilitate the use of electronic communications in international trade by ensuring that contracts and other interconnections are valid and valid as their traditional paper counterparts. Its objective was to promote the harmonization of standards on electronic commerce and to promote uniformity in the enactment of the UNCITRAL Model Laws on electronic commerce at the local level, as well as to update and update some of the provisions of those model laws in light of modern practice. The Convention can provide countries that have not yet done so to adopt provisions on electronic commerce with modern, uniform and carefully designed legislation.⁷⁶

⁷⁴ UNCITRAL Model Law on Electronic Signatures, 2001, art. 6(3).

⁷⁵ UNCITRAL Model Law on Electronic Signature 2001, art. 10.

⁷⁶ *Supra* note 68 at 46.

Important provisions of the Convention

The Electronic Communications Convention is based on the UNCITRAL Model Law on Electronic Commerce and the UNCITRAL Model Law on Electronic Signatures, which speaks of three basic principles in e-commerce legislation, namely, non-discrimination, technological neutrality and functional equivalence. Significantly, the Convention also emphasizes these principles.⁷⁷

The Convention shall apply to all electronic communications exchanged between parties whose business centers are located in different States when at least one party has its business center in a contracting State. It can also be applied under the choice of the parties. It is important to note that only commercial and non-personal contracts are included in the Convention because they clearly indicate that contracts for personal, family or domestic purposes, such as those related to family law and succession, are also excluded from the scope of application of the Convention agreement.

In addition, the Convention establishes the general principle that communications should not be denied legal validity solely because they are made in electronic format. It is important to note that MLEC and MLES mention criteria to determine the functional equivalence between electronic communications and paper documents, as well as between electronic authentication methods and handwritten signatures. In the same way, the Convention establishes the time and place of sending and receiving electronic communications, while adapting the traditional rules of such legal concepts to the electronic context and innovation with respect to the provisions of the Model Law on Electronic Commerce. Specifically, given the proliferation of automatic message systems, the Convention allows the execution of the contracts concluded by these regulations, even when no individual person reviews their individual actions.

The Convention also clarifies that the proposal to conclude a contract by electronic means instead of specific parties is equivalent to an invitation to negotiate, instead of an offer that accepts the acceptance of the offeror. In

⁷⁷ Vivek Kumar, "An Study of E-Commerce And its Legal Frame Work" 3 *RJIF* 89-94 (2017), available at: www.lawjournals.org/download/124/3-3-29-194.pdf (Visited on December 17, 2017).

addition, the Convention provides solutions in case of entry errors by individuals who enter information into automated messaging systems.

Finally, the Convention allows the contracting Parties to exclude their request or change their terms within the permissible limits to conclude derogatory agreements permitted by the legislative provisions.

4.3 Law, E-commerce and Consumer Protection: Indian Scenario

In general, consumer rights provided for in national legislation, such as Section 6 of the Consumer Protection Act of 1986 in India, are also available to the electronic consumer since no special provisions have been established in most of the consumer laws with respect to the application or non-application of electronic transactions. But because of the difference in nature and the workplace or the business center, some of the unique practical problems, such as the workplace, the judicial issues, and the lack of a common system for dispute settlement, since that there are many possibilities for the treatment of the electronic cross-border system (essential for electronic purchases), that is, purchases from a country from a seller from another country or vice versa, in the case of electronic transactions or e-commerce, which undoubtedly they require special measures not foreseen in the legislation of the current consumer. The right of consumers and electronic consumers is equally theoretical, but varies in process or enjoyment. Therefore, in the case of buying and selling products or services in the virtual world, the buyer is known as the e-buyer, the seller knows the name of the e-seller, the retailer is known as the e-retailer, the consumer is known as an e-consumer and the transaction is known as e-transaction. Due to the ease of treatment, the number of electronic consumers is growing at a high rate and in a very short period, the actual consumer will be defeated.⁷⁸

Issues related to consumer protection in the context of electronic commerce have attracted great attention from academics and legislators. On the other hand, governments discuss, as well as intergovernmental organizations, the relevant issues and developed a variety of frameworks. Some of these instruments address

⁷⁸ Shashi Nath Mandal, "E-Consumers' Protection in India" 16 *GJMBR* (2016), available at: https://globaljournals.org/GJMBR_Volume16/1-E-Consumers-Protection-in-India.pdf (Visited on December 20, 2017).

the problems of consumers in electronic commerce in particular, while others address consumer protection in general. Despite this interest, the review of existing legal frameworks shows that they did not meet the needs of the electronic consumer. It has become public policy dominated by the commitments of economic progress frameworks and the freedom of companies to do business of their choice, and to protect consumers who have violated their rights in the interests of the traditional model. They cannot protect consumers from violating their rights in electronic methods. Even those frameworks that started from the consumer's point of view, had been frozen off dramatically at the right time, due to technological advances, or due to the lack of willpower legislation to make the current law so dynamic so that preventive issues can be covered both for violations of consumer rights that are very long in their current form and its provisions. In India, we have a lot of fragmented laws to address the challenges mentioned in the previous paragraphs, regardless of the Consumer Protection Act of 1986. However, we need a unified law to address all the cases mentioned above, for that they can send by mail the consumer is protected the right to be properly.

4.3.1 The Consumer Protection Act, 1986

Consumers have many rights that are granted to them by the provisions of various consumer laws enacted in the country. The Consumer Protection Act, 1986 lays down and guarantees the rights to consumers. This Act provides the three-tier redressal mechanism namely at the District, State and National levels to redress any consumer dispute. However, the law until recent times was ambiguous as to whether such provisions would be applicable to online transactions. On July 8, 2014, the Minister of State for Consumer Affairs, Food and Public Distribution, in a written reply in Lok Sabha made an announcement those online transactions also in the ambit of Consumer Protection Act, 1986.⁷⁹ This fundamentally meant that complainants can approach various Consumer Forum District Consumer Forum, State Commission and National Commission for the settlement of their grievances.⁸⁰ Though such an announcement does not

⁷⁹ Press Information Bureau, Ministry of Consumer Affairs, Food and Public Distribution, India, available at: <http://pib.nic.in/newsite/PrintRelease.aspx?relid=106174> (Visited on October 5, 2017).

⁸⁰ *Society of Catalyts v. Star Plus T.V.*, 2008 CPJ 1 (NC).

necessarily transform into a law, it was a vital step to bring into effect, a mechanism for safeguarding the rights. However, even this does not mean that there is a separate mechanism for redressal of disputes arising out of online transactions or that new provisions that specially cater to e-commerce have been introduced. In effect the provisions of The Consumer Protection Act, 1986 are made applicable to online transactions as well.

Prior to this express declaration, the Consumer Protection Act, 1986 was impliedly applied to online transactions, in accordance with the definitions provided under the Act. Any person who buys any good or avails or hires any service for any consideration, whether paid or otherwise, except for commercial use is regarded as a consumer under the Consumer Protection Act, 1986.⁸¹ Buyer as per the Sale of Goods Act, 1930⁸² is defined as any person who buys or agrees to buy goods. Thus following these two definitions, any person who pays or agrees to pay a price for a particular good can be regarded as a consumer, irrespective of such a sale is online. Additionally, contract of sale as defined under the Sale of Goods Act, 1930 is indicative of the fact that such may apply to online transactions along with regular transactions.⁸³

Thus, earlier though there was absolutely no express mention of e-commerce falling under the ambit of the Consumer Protection Act, 1986 these provisions impliedly provided a right to the consumer to seek redressal under the same. However, the Consumer Protection Act, 1986 only provides a narrower picture. The Act does not provide a solution to the various loopholes that are brought about by online transactions due to their impersonal nature, which may be considered their flipside as well. The scope that the Consumer Protection Act, 1986 has with respect to e-commerce is thus restricted to providing a redressal mechanism that is applicable to direct transactions as well. Further, the Consumer Protection Act, 1986 becomes applicable when there is a "defect in goods" or "deficiency in services".⁸⁴ Hence only if one of the above two criteria are satisfied

⁸¹ The Consumer Protection Act, 1986, s. 2(d).

⁸² The Sale of Goods Act, 1930, s. 2(1).

⁸³ The Sale of Goods Act, 1930, s. 4(1) a contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price.

⁸⁴ Nishith Desai Associates, "E-Commerce in India-Legal, Tax and Regulatory Analysis" (2015), available at: http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/E-Commerce_in_India.pdf (Visited on January 10, 2018).

The Consumer Protection Act, 1986 would come into play. In e-commerce, the major concern is about the efficient delivery of the goods. However, there is no redressal provided if goods are not delivered in the time specified. Such intricacies create more trouble for the online consumers due to the anonymity of the seller. Many complaints have been filed by online consumers regarding the same in consumer forums, however, the unclear laws and the consequent ambiguity has resulted in their grievances not being paid heed to.⁸⁵

Applicability of COPRA in the Digital Paradigm

To answer the question of whether physical "goods" sold online or digital goods sold online or in a store could be under the jurisdiction of the Consumer Protection Act of 1986 (COPRA). The main requirements for such a transaction are:

1. There should be a 'Good' or 'Service' sold or provided

This issue is fairly obvious when it comes to online purchases of physical goods, but may not be easy to answer for digital goods. This raises the question of whether digital goods can be classified as "goods" under the COPRA. The definition of "good" under COPRA refers to the definition of "good" under The Sale of Goods Act, 1930. The definition of "goods" under The Sale of Goods Act is "goods means every kind of movable property other than actionable claims and money, and includes stocks and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under contract of sale".⁸⁶ The term "property" has been defined in the Sale of Goods Act to mean "the general property in goods and not merely a special property"⁸⁷. The definition of "goods" in the Sale of Goods Act is also of wide import and means every kind of movable property. Therefore "goods" would comprehend tangible and intangible properties, materials, commodities and articles and also corporeal and incorporeal materials, articles and commodities. "Goods" under the Sale of Goods Act would also include software or computer programmes because if a distinction is sought to be made between tangible and intangible properties,

⁸⁵ Kanika Satyan, "E-Commerce and Consumer Rights: Applicability of Consumer Protection Laws in Online Transactions" (2015), *available at*: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2626027 (Visited on October 25, 2017).

⁸⁶ The Sales of Goods Act, 1930, s. 2(7).

⁸⁷ The Sales of Goods Act, 1930, s. 2(11).

materials, commodities and articles and also corporeal and incorporeal materials, the definition of goods will have to be rewritten of comprising tangible goods only which is impermissible.⁸⁸ A Full Bench of the Supreme Court of India has in *Tata Consultancy Services v. State of Andhra Pradesh*, held canned software to be a 'good' sold under the Sales Tax Act and therefore liable to sales tax. The test in this regard as laid down by the Full Bench of the Supreme Court is this:

*A 'goods' may be a tangible property or an intangible one. It would become goods provided it has the attributes thereof having regard to its utility; capable of being bought and sold; and capable of transmitted, transferred, delivered, stored and possessed. If a software whether customized or non-customized satisfies these attributes, the same would be goods.*⁸⁹

Although the above statement has been made in the context of the Tax Code, the principles should apply as they relate to the nature of computer software, even outside the scope of taxes. In another case, study if computer programs can be covered in the scope of COPRA, the Supreme Court of India in *Birla Technologies Limited v. Neutral Glass and Allied Industries Ltd*,⁹⁰ held in the facts of this case are that the programs designed for Neutral Glass and Allied Industries are the sale of goods to Birla Technologies for commercial purposes. Since the sale was for commercial purposes, the Supreme Court held that the case would not fall within the scope of the COPRA Act, but the court appeared to have accepted in one way or another the idea that the software would be "good" under the Act. COPRA.. Therefore, it can be said that both online purchases of physical goods, such as the sale of digital goods, can also be covered within the scope of COPRA.

2. Such 'Good' or 'Service' must be 'sold' i.e. there must be a 'sale'

This question is again simple when asked in relation to the sale of physical goods using the Internet but may not be so when talking about digital goods. When a purchase of a physical good is made using the Internet, a sale may be

⁸⁸ *Tata Consultancy Services v. State of Andhra Pradesh*, AIR 2005 SC 371, available at: <https://indiankanoon.org/doc/153638/> (Visited on January 10, 2018).

⁸⁹ *Ibid.*

⁹⁰ (2011) 1 SCC 525.

said to have occurred when the owner of the good passes from the seller (website) to the buyer (consumer) and the payment and delivery are complete. However, the question whether the sale of software would actually constitute a 'sale' requires a little more analysis. This exact issue was under discussion before the Supreme Court of India in the case of *Tata Consultancy Services v. State of Andhra Pradesh*, (although in the context of sales tax) and a Full Bench of the Supreme Court addressed this issue in detail. This issue is important because as we have seen, most non-customized software is actually attempted to be licensed and not sold.

The court held that the "sale" of packaged software could be the sale of goods and, therefore, taxable under the Sales Tax Law. We are more interested in justifying before the court that software can be intellectual property, but that personal IP in a medium is bought and sold and is valuable. It is sold in various forms, such as diskettes, discs, CD-ROMs, punched cards, magnetic tapes, etc., these means in which intellectual property is included in a marketable product. A program that contains instructions in the language of the computer is the subject of the license, has a value for the buyer and is useful for the person who intends to use the hardware, that is, the computer, effectively so that can obtain the desired results. Therefore, the court concluded that the program was undoubtedly a matter of trade and commerce. These media containing the software are not available in the market at a single price, but are marketed as a product in the market. What is necessary for a merchandise to become merchandise is its marketability. Since software is always circulating in the market as a marketable product, it can be said that software is a commodity and its sale in the market as a subject of commerce and trade.

Using the above analysis, an argument could be made that the so-called license by software makers to use the software is actually a sale and not a plain vanilla license. However, this argument has not been tested in courts and is not backed by case law specific to the COPRA. This is an issue which, in the e-commerce paradigm and specifically in the context of the sale of digital goods has a huge significance when it comes to protection of consumer rights. As discussed above, if it is a good sold to a consumer, then it can definitely come within the

scope and ambit of the COPRA and the consumer would have all the remedies available to it under the COPRA to claim compensation for a 'defect' in the good.⁹¹

3. There must be a 'defect' in the good

The COPRA defines "defect" to mean any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law of the time being in force under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods.⁹² Some instances where goods have been held to be defective are electric household appliances which were not in accordance with the standards prescribed by ISI and therefore were unsafe;⁹³ a gas cylinder with excessive gas has also been held to be a defective good.⁹⁴ Therefore in terms of physical goods, whether sold over the Internet or not, the concept of 'defect' would not change, but digital goods which have DRM measures applied to them might require some more examination. The definition of "defect" under the COPRA is an exhaustive one which (in legal terms) means it would be difficult to imagine that the courts would recognize any defects which are not covered specifically by the definition. Any type of defect not mentioned in the definition may not be entertained by Consumer Forums. This would be the last hurdle that e-commerce consumers would have to cross before they can claim the rights available under the COPRA.

4. The consumer should file a complaint in the forum which has jurisdiction

Once a consumer claims that the good sold to him is defective the consumer has to approach the forum which has jurisdiction over the matter. There can be various situations that can arise while doing online purchases and there may be certain situations in which the COPRA may not be applicable, for e.g. if the transaction is a cross-border transaction and there is a clause specifying the

⁹¹ Vipul Kharbada, India-Consumer Protection Laws and Online Environment, Updating the United Nations Guidelines for Consumer Protection for the Digital Age, *Consumers International* (2013), available at: http://www.iplaw.uct.ac.za/sites/default/files/image_tool/images/317/Publications/Overview/updating-ungcp.pdf (Visited on January 14, 2018).

⁹² The Consumer Protection Act, 1986, s. 2(f).

⁹³ *Farooq Hazi Ismail Saya v. Gavabhai Bhesania*, 1991 CPJ 452 (Guj).

⁹⁴ *Dayanand A. Avasare v. Bharat Petroleum Corporation Ltd*, 1993 CPR 278 (Mah).

governing law and place of disputes resolution. On the other hand, if the contract has taken place entirely in India and the vendor is an Indian entity, then it would be highly likely that the transaction would be governed by the COPRA. However in a situation where the vendor is not a resident of India (for e.g., Amazon), but the transaction is governed by Indian law even then it cannot be said that the consumer forum would not have the power to try the case. Just because the vendor is not a citizen of India and does not reside in India does not mean that he cannot be sued. Section 13(4)(i) of the COPRA specifically provides that the district consumer forum shall have the same powers as a court under the Civil Procedure Code in the matter of summoning and enforcing the attendance of any defendant or witness. Order V, Rule 25 of the Code of Civil Procedure specifically provides for the procedure for service of notice where the defendant does not reside in India and does not have an agent in India. Reading the above two provisions, it can safely be said that just because the party complained against resides outside India, it cannot be said that the provisions of COPRA would not apply to a transaction entered into with that party.

Another possible question that may arise is whether online retailers can shirk responsibility for defective products on the grounds that, in the case of manufacturing, the manufacturer, not the retailer, should be prosecuted, for example, eBay selling Reebok shoes that turn out to be defective. In general, when the consumer finds a defect in the products, he demands the person who bought it. This is because the consumer has a privacy agreement with the seller. If the drawback is a manufacturing defect, the consumer can sue both the manufacturer and the seller. Therefore, the manufacturer is a possible party and not a necessary part.⁹⁵

4.3.2 Information Technology Act, 2000

The Government of India has enacted the Information Technology Act 2000 for implementation of the UNCITRAL Model Law on Electronic Commerce, 1996 and adopted the Information Technology (Amendment) Act 2008 for implementation of the UNCITRAL Model Law on Electronic Signatures, 2001 in

⁹⁵ *Supra* note 88 at 56.

India.⁹⁶ It is important to note that India was a signatory to the 1996 UNCITRAL Model Law on Electronic Commerce, which is why India was obliged to enact its IT Law in accordance with this Model Law. The Information Technology Law of 2000 aims to provide legal recognition of transactions through electronic exchange of data and other means of communication, commonly referred to as "electronic commerce", which implies the use of alternatives to methods of communication and storage of information on paper to facilitate the electronic submission of documents.

The law consists of important provisions related to electronic commerce. It includes provisions for the legal recognition of electronic record rules and digital signatures for the attribution of the electronic record, for the method and method of recognition, to determine the time and place of sending and receiving electronic records. Significantly, under this law, the certification authority is a focal point for this law, since most of the provisions relate to the regulation of certification authorities, that is, the appointment of an auditor of the certification authority, the granting of authorization to the certified authorities and the recognition of the foreigners CAs and the duties of subscribers of digital signature certificates. In addition, the law establishes civil liability, that is, cyber contraventions and criminal violations, sanctions, the establishment of the Adjudicating Authority and the Cyber Regulatory Appellate Tribunals. In addition, the Act also amended the Indian Panel Code of 1860, the Indian Evidence Act of 1872, the Banking Evidence Act Book of 1891, and the Indian Reserve Bank Act of 1934, and related or related matters.⁹⁷ The main purpose of these amendments is to address issues related to electronic commerce, cybercrime and evidence, and to allow for greater regulation in relation to the electronic transfer of funds. The Information Technology (amendment) Act of 2008 was incorporated into the implementation of the 2001 UNCITRAL Model Law on Electronic Signatures in India, which introduced many changes to facilitate electronic commerce, that is, introduced the electronic signature concept. It is commendable to note that the Law recognizes the legal validity and applicability of digital signatures and electronic records, and

⁹⁶ Jyoti Rattan, "Law Relating to E-Commerce: International and National Scenario with Special Reference to India" 1 *IJSSEI* 1-9 (2015), available at: <http://isij.in/images/article/IJSSEI1/1ijssei.pdf> (Visited on December 30, 2017).

⁹⁷ *Ibid.*

emphasizes secure digital signatures and secure electronic records, thus encouraging the growth of electronic commerce in India. Because secure computer-based signatures will automatically reduce the occurrence of electronic forgeries, promote the ratification of computerized communications and facilitate commerce through electronic means of communication.

In addition to the main consumer protection law, many other laws cover online transactions. Information Technology Law of 2000 is another comprehensive legislation that provides a legal framework for electronic commerce. It mainly covers commercial transactions, in specific between the government through of its many functionaries and the citizens. The transactions are focused towards e-governance and are aimed at implementing measures for authentication of the electronic records by usage of digital signature certificates⁹⁸ etc. for carrying out day to day business transactions like filing and viewing official documents in the electronic format. The IT Act, 2000 is an attempt by the govt. to digitalize its workings by making every piece of information available online and further ensuring that such transactions are secured. Further, it provides for remedial measures like the appointment of Controller⁹⁹ and setting up a Cyber Regulations Appellate Tribunal¹⁰⁰ for penalizing the cyber offences as laid under Section 43 to 47 of the Act.

The most significant characteristic of this Act, however still is that it provides legal recognition to electronic records.¹⁰¹ In effect, it also amends the Evidence Act, the Indian Penal Code, the Bankers' Books Evidence Act and the Indian Stamp Act. This legal recognition forms the foundation of all the e-commerce undertaken by customers and also guarantees effective enforcement of the rights of consumers if infringed.

This act does not holistically cover all the aspects of e-commerce with respect to consumer rights. It primarily covers business or commercial transactions that are undertaken by business to government or vice versa. It provides details about filing, retaining, viewing documents with respect to a

⁹⁸ The Information Technology Act,2000, Ch.VII.

⁹⁹ The Information Technology Act,2000, s.17.

¹⁰⁰ The Information Technology Act,2000, Ch. X.

¹⁰¹ The Information Technology Act, 2000, s. 8.

business and safeguards and authenticates those documents with the help of digital signatures, asymmetric cryptosystem etc. An ordinary Indian man does not, in his daily life enter into such transaction; instead, they mostly utilize electronic commerce for online shopping, online banking and money transfer activities etc. No specific provisions for the same have been laid down under the Act even though it is the need of the hour for the enactment of such provisions.

The objectives of the Act include facilitation and giving legal sanction to electronic fund transfers between banks and financial institutions in addition to giving legal recognition for the keeping of books of accounts by bankers in electronic form. Though nowadays such facilities have been made possible, no legal framework for the protection of consumer rights is provided under the IT Act. Thus this significant aspect of e-commerce is not covered.

4.3.3 The Indian Contract Act, 1872

Each transaction concluded, especially if it is a business-to-consumer model, is essentially for all effects and purposes of the electronic contract. The basic and fundamental elements of a contract in accordance with Section 10 of the Contracts Act of India, 1872 also apply to the electronic contract, which in fact provides legal recognition of the provisions of the IT Act of 2000. As a result both the Consumer Protection Law and the IT Law gave the approval to the recognition of the concept of electronic contracts.¹⁰² Further, the Information Technology (Amendment Act), 2008 introduced Section 10A which afforded validity to contracts formed through electronic means.¹⁰³ Section 10A states that:

“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 un-enforceable solely on the ground that such electronic form or means was used for that purpose.”

¹⁰² Harish Kumari, “E-Commerce in India: Challenges and Legal Issues” 2 *IJBM* 682-692 (2015), available at: www.ijbm.co.in/downloads/vol2-issue1/34.pdf (Visited on January 15, 2018).

¹⁰³ *Trimex International FZE Ltd. Dubai v. Vedanta Aluminum Ltd.* (2010) 3 SCC 1.

The Amendment thus has brought out validity even to e-contracts and clearly lays down the method for the implementation of the fundamental principles for the formation of a contract like acceptance, revocation etc. Hence, the validity and legal recognition granted to e-contracts are a step towards ensuring that rights of the consumers who carry out e-commerce are taken care of. All that being said, it is important to note that though the concept itself is valid, in practice it is difficult to ensure that the essentials of a valid contract are complied with. It is difficult to distinguish between a person competent to contract or otherwise when transacting online. This often results in minors, lunatics and other incompetent people entering into contracts. As held in the landmark case of *Mohribibi v. Dharmodas Ghose*¹⁰⁴ contracts with minors are void. Contracting with such a minor online would also result in the contract becoming void as no safeguards are provided online.

The existence of the two forms of contracts i.e. Click Wrap contracts and Shrink Wrap contracts while carrying out e-commerce makes protection of consumers, a difficult task. Click-wrap contracts are those whereby a party after going through the terms and conditions provided in the website or program has to typically indicate his assent to the same, by way of clicking on an "I Agree" icon or decline the same by clicking "I Disagree". Shrink-wrap agreements have derived their name from the "shrink-wrap" packaging that generally contains the CD Rom of software's. The terms and conditions of accessing the particular software are printed on the shrink-wrap cover of the CD and the purchaser after going through the same tears the cover to access the CD Rom.¹⁰⁵ Sometimes additional terms are also imposed in such licenses which appear on the screen only when the CD is loaded to the computer. The user always has the option of returning the software if the new terms are not to his liking for a full refund.¹⁰⁶

These kinds of contracts are available all over the Internet and it is difficult to utilize the facilities that internet offers without having entered into any of such contracts some time or the other. However, the disadvantage of the same is that the customers herein do not have the opportunity to negotiate the terms and

¹⁰⁴ (1903) 30 Cal.539.

¹⁰⁵ *Hill v. Gateway 2000.Inc*, [1997] 105 F.3d 1147.

¹⁰⁶ *Supra* note 88 at 56.

conditions due to their impersonal nature.¹⁰⁷ Thus there is no other option, except, to accept the terms of the contract, if the consumer wants to move forward with the transaction. Many believe that since the service provider is in a position to dominate the will of the consumer, such contracts may even lead to undue influence as laid down under Section 16(3) of the Indian Contract Act, 1872. However, such contracts have been held valid and enforceable in the plethora of judgments which proves the earlier argument invalid. Since these are held valid any consumer right violated due to the breach of these agreements can be brought to court; however, the disadvantage still remains that consumers, in this case, need to follow straight jacket terms as laid down.¹⁰⁸

It is well known that stamping of a document is essential to consider it admissible in the eyes of law under the Indian Evidence Act, 1872. However, in common practice, only physical instruments are stamped. There were great debates as to whether e-contracts should be liable for stamp duty as well, considering their newly created validity and legality. However, there seems to exist a dichotomy between the Central and the State laws in this regard. The Bombay Stamp Act, 1958 by the way of an amendment in the year 2005, introduced Article 51A which levies stamp duty on the record of transactions relating to purchase or sale of gilts, shares, debentures and other securities. On the other hand, the Indian Stamp Act, 1899 not only, does not provide any provision with respect to stamp duty on e-contracts but also under Section 8A provides that there should be no stamp duty on securities. Thus clearly, the amended provisions of Bombay Stamp Act are inconsistent with that of the Central Stamp duty Act. As a consequence of this ambiguity, the law in the country itself is vague and hence unclear which in turn creates uncertainty in the consumer rights.

The major rationale behind stamping of documents is to provide admissibility in the eyes of law. As the law on stamp duty is unclear, the Indian Evidence Act, 1872 makes provisions for providing admissibility to electronic commerce and the contracts entered as a consequence of that. It provides

¹⁰⁷ Neeraj Dubey, "India: Legal Issues in E-commerce: Think before you click!" *PSA* (2014), available at: <http://psalegal.com/wp-content/uploads/2017/01/TMTBulletin-IssueXIV.pdf> (Visited on January 20, 2018).

¹⁰⁸ Shruti Pollock, Tamanna Bansal, "Revolution of the Indian E-Commerce Industry: Legal Perspectives and Issues Pertaining to its Growth and Development" 1 *IJLI* 143 (2017), available at: www.ijli.in/assets/docs/ShrutiTamanna.pdf (Visited on February 2, 2018).

provision for the admissibility of the electronic records It states that any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be also a document and shall be admissible in any proceedings, without further proof or production of the original, as evidence.¹⁰⁹ Hence, an e-contract can thus be admissible as evidence and such a positive step ensures that the contracts if entered by a consumer online for the provision of a particular good or service if breached can be brought into the limelight. Not only does the laid down law but even the courts believed that it is the need of the hour to recognize electronic record as evidence.

In the case *State of Delhi v. Mohd. Afzal & Others*,¹¹⁰ the court held that electronic records are admissible as evidence and further observed that if someone challenges the accuracy of a computer evidence or electronic record on the grounds of misuse of system or operating failure or interpolation, then the person challenging it must prove the same beyond the reasonable doubt. The Courts have thus taken a pro e-commerce and e-governance approach. This can be concluded by the precedents laid down by the court in *Societe Des Products Nestle S.A. Anr. v. Essar Industries And Ors*,¹¹¹ where the court recognizing the increasing scope of e-commerce in the recent times, laid down that increased reliance placed upon electronic record by the world at large necessitated the laying down of a law relating to admissibility and proof of electronic record.

The court keeping in view the large scope brought about by electronic records, has also focused on amendments brought about on other Acts to include in their ambit the scope of growing use of internet and electronic records. In *State Of Punjab & Ors. v. M/S Amritsar Beverages Ltd. & Ors*¹¹² referring to the recent amendments on account of the internet and other information technologies observed that "Section 464 of the Indian Penal Code deals with the inclusion of the digital signatures. Sections 29, 167, 172, 192 and 463 of the Indian Penal Code have been amended to include electronics documents within the definition of 'documents'. Section 63 of the Evidence Act has been amended to include

¹⁰⁹ The Indian Evidence Act, 1872, s. 65(B).

¹¹⁰ (2003) 107 DLT 385.

¹¹¹ (2006) 33 PTC 469 Del.

¹¹² 2006 (7) SCALE 587.

admissibility of computer outputs in the media, paper, optical or magnetic form. Section 73A prescribes procedures for verification of digital signatures. Sections 85A and 85B of the Evidence Act raise a presumption as regards electronic contracts, electronic records, digital signature certificates and electronic messages.”

Thus amendments and new introductions brought about in the ancillary Acts with respect to electronic records guarantee that consumer rights are being protected by legally recognizing the contracts and further making them admissible as evidence. The irony, however, is that, even with the application of such laws, consumer rights in e-commerce are still infringed. This is due to the fact that contracts. Further one of the frequent setbacks with trade conducted with the use of the internet is data protection. Protection of data that is made available online by the consumers is misused and this is one of the major concerns that have emerged in the recent times. Generally, the terms of data protection are dependent on the contract that the parties have entered into. The disclosure and non-disclosure of the same would thus depend on that contractual relationship. If there is any disclosure of information in breach of lawful contract, knowingly and intentionally, without the consent of the person concerned, Then the person should be held liable for such actions and is punishable with imprisonment for a term extending to three years and fine extending to INR 5, 00,000.¹¹³

Nonetheless, there is no express legislation that contains provisions for data protection in the country. The Information Technology Act covers some aspects e.g. Section 43A of the Information Technology Act, 2000, provides that a body corporate who is possessing, dealing or handling any sensitive personal data or information, and is negligent in implementing and maintaining reasonable security practices resulting in wrongful loss or wrongful gain to any person, then such body corporate may be held liable to pay damages to the person so affected.¹¹⁴

These are the only provisions that act as a legal framework for data protection in the country. Apart from the legal safeguards available, it is also

¹¹³ The Information Technology Act, 2000, s.72(A).

¹¹⁴ M.M.K. Sardana, Evolution of E-Commerce in India: Challenges Ahead (Part 2) *ISID Discussion Notes* (2015), available at: <http://www.isid.org.in/pdf/DN1407.pdf> (Visited on December 22, 2017).

necessary that each entity that collects the information has a current privacy policy, the consent of the confidential information provider and the maintenance of reasonable security practices and procedures.¹¹⁵ You must verify unauthorized access to personal information and any improper use of such personal information by online providers or services.¹¹⁶

Another one of the major concerns of a person dealing online is the jurisdiction of cases in cases of disputes. Though it is a well-known fact that consumers can approach the District, the State and the National consumer protection forums depending on their pecuniary limits, the question as to which of these courts has jurisdiction is one of the areas of ambiguity that exists. In general civil cases, suits are filed following the provisions of Section 20 of The Code of Civil Procedure, 1908 which states suits can be filed in the courts in the local limits of whose jurisdiction the defendants voluntarily resides, or carries on business, or personally works for gain; or the cause of action, wholly or in part, arises.¹¹⁷ Whether this law would be applicable to online transactions is where the area of confusion lies.¹¹⁸ Essentially, the consumer courts itself state that jurisdiction for purchases made online exists where the company has its main or branch office and if this is not possible, the complaint may be filed where the events took place i.e. where the cause of action arose.

However, things may become very complicated or impractical in case of online transactions as the website can be accessed from anywhere in the country. Consumer courts, in practice, sometimes treat online and offline transactions in a similar manner. In such a case, Section 20 of the Code of Civil Procedure, 1908 would come into the picture and as stated above cases could be filed where the registered office of the company is or where the cause of action arose. The difficulty, however, arises as none of the above said is a laid down law and thus the questions regarding jurisdiction arise again and again. That being said, a case, where the online good or service provider is based in another country, poses more

¹¹⁵ *Supra* note 108 at 64.

¹¹⁶ Bhumika Choubisa, "Consumer Protection in Cyber Space" 1 *IJIRMF* 179-184 (2015), available at: <http://www.ijirmf.com/wp-content/uploads/2016/11/201510033.pdf> (Visited on January 10, 2018).

¹¹⁷ *ABC Laminart Pvt.Ltd v. AP. Agencies Salem*, AIR 1989 SC 1239,(1989) 2 SCC 163.

¹¹⁸ *M/s. Swastik Gases Pvt. Ltd. v. Indian Oil Corporation Ltd*, Civil Appeal no.5086 of 2013.

problems with regard to jurisdiction. In such cases, courts exercise 'long-arm jurisdiction' whereby the operations of local laws have extraterritorial application.¹¹⁹

Section 1(2) of Information Technology Act, 2000 read along with Section 75 of Information Technology Act provides that the Act shall apply also to any or contravention there under committed outside India by any person and 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 network located in India. In addition, Section 3 of the Indian Penal Code, 1860 provides that any person who is liable, by any Indian law, to be tried for an offence¹²⁰ committed beyond India shall be dealt with according to the provisions of the IPC for any act committed beyond India in the same manner as if such act had been committed within India. As a result, though minute uncertainty exists here and there with respect to jurisdiction, whether national or international, such provisions guarantee that consumer rights are not redressed on the garb of not having jurisdiction to file such a consumer suit.

When dealing with the question of e-commerce, online shopping portals cannot be forgotten and the violation of consumer rights in this regard also forms an important facet. Online shopping portals provide various reliefs in case of defective products, considering the shopping portal is notified within the prescribed and mandated time. Myntra provides a 30-day exchange window for some of its items like apparels and accessories. On the other hand, Home Shop 18 requires you to notify them of defects within 48 hours from the time of delivery. Consumer's rights can be violated in cases where the online shopping portal itself is fraud. In the recent times, the case of Timtara.com was brought into the limelight, where the customers were duped of their money after the goods for which advance money was paid were not delivered. Goods were promised to be delivered within 21 days but in this case, were never delivered. In the end, the directors of Timtara.com were arrested after the consumers created a hue and cry in social media

¹¹⁹ Ankit Singh, "Cross-Border E-Commerce and Consumer Protection: Indian Perspective" 2 *SAJMS* 150-161 (2013), available at: <http://sajms.com/volume-3-issue-1/cross-border-e-commerce-consumer-protection-indian-perspective/> (Visited on January 11, 2018).

¹²⁰ Eira Mishra, Online Shopping and Consumer Protection in India, *Career Guru* (2017), available at: <http://lex-warrior.in/2017/06/online-shopping-and-consumer-protection-in-india/> (Visited on January 11, 2018).

platforms. This served as a teaching to all the consumers who earlier did not make an effort to be aware of the rights afforded to them. The true meaning of the proverb Caveat Emptor was thus exhibited here.

In not all circumstances would traders take care of the consumer rights. The consumer should be well aware of their rights and should take such measures that will ensure their safety and the protection of their rights as consumers. One of the best methods that one can apply while shopping online is by paying cash on delivery. In such a scenario, the credit and debit card information and other personal information is not provided. Additional safety measures should be adopted by consumers to ensure safeguards.

A majority of the banking transactions are now conducted online. This is an area where a lot of safeguards is to be provided and the Reserve Bank of India has been carrying out various measures for the same. A variety of circulars have been issued by the RBI to mitigate the risk caused by online transactions. A system of providing for additional authentication/validation based on information not visible on the cards for all on-line cards, not present transactions. A system of "Online Alerts" to the cardholder for all 'card not present' transactions of the value of Rs. 5,000/ and above. To protect the rights of consumers and in their interest, the RBI has directed the banks to secure both card payment transactions and electronic payment transactions. These range from converting all existing Magnetic Stripe cards to EMV Chip card for all customers who have used their cards internationally at least once for or through e-commerce to framing rules based on the transaction pattern of the usage of cards by the customers in coordination with the authorized card payment networks for arresting fraud. This would act as a fraud prevention measure. In addition, banks should provide easier methods (like SMS) for the customer to block his card and get a confirmation to that effect after blocking the card.

The electronic modes of payment like RTGS, NEFT and IMPS have emerged as channel agnostic modes of funds transfer. These have picked up to a large extent through the internet banking channel and hence it is imperative that such delivery channels are also safe and secure as these are frequently used by

customers for e-commerce purposes.¹²¹ Thus any setback caused in these would lead to a violation of customer rights both of the bank and of the online service provider. Limit on the number of beneficiaries that may be added in a day per account could be considered. A system of alert may be introduced when a beneficiary is added. Banks may explore the feasibility of implementing new technologies like adaptive authentication, etc. for fraud detection.

Apart from electronic and card payment, mobile banking is one of the other constructive facilities provided by banks for facilitating the transfer of funds through mobiles. Safeguards need to be taken in this arena as well and thus RBI has introduced Master Circular that provides operative guidelines for banks. Information Security is most critical to the business of mobile banking services and its underlying operations. Therefore, the technology used for mobile banking must be secure and should ensure confidentiality, integrity, authenticity and non-reputability. In this regard, consumer complaints and consumer protection issues have been dealt with by the bank. Taking into account the risks arising out of unauthorized transfer through hacking, denial of service on account of technological failure etc. banks providing mobile banking would need to assess the liabilities arising out of such events and take appropriate countermeasures like insuring themselves against such risks, as in the case with internet banking. Banks are required to make mandatory disclosures of risks, responsibilities and liabilities of the customers on their websites or through printed material. In cases where the customer files a complaint with the bank disputing a transaction, it would be the responsibility of the service providing bank, to expeditiously redress the complaint. Banks may put in place procedures for addressing such customer grievances. The grievance handling procedure including the compensation policy should be disclosed. Customers' complaints or grievances arising out of mobile banking facility would be covered under the Banking Ombudsman Scheme. The jurisdiction of legal settlement would be within India.

Thus, it can be rightly stated that a number of ancillary Acts act towards prevention of consumer rights in the country. However, without questioning its usefulness and value, it is also necessary at this time to draft comprehensive

¹²¹ *Supra* note 102 at 62.

legislation covering all aspects of electronic commerce. In addition, the consumers should also become aware of the rights afforded to them and the appropriate redressal mechanism in case they are violated.

4.4 The Consumer Protection Bill, 2017

Focused on faster redressal of consumer grievances and to ensure stringent action against unfair trade practices, the Cabinet approved the introduction of the Consumer Protection Bill 2017 to amend the Consumer Protection Act, 1986.¹²² This is important because it is expected that this new law will completely reform the existing laws of the former Consumer Protection Act of 1986. It is reported that the new law takes into account the changing nature of the Indian economy, which has seen greater awareness of the consumer and a marked development in the scene especially in the electronic field.

The current bill has replaced the one tabled in 2015, which underwent changes following a vetting by a parliamentary standing committee. In the new bill, the changes sought by the committee have been included. The Bill has been introduced with the aim to ensure swift redressal of the grievances of the consumers and stringent action is taken against unfair trade practices. Features of the new Consumer Protection Bill are as follows:

1. For the first time, India will have the Central Consumer Protection Authority, which will serve as a national regulatory body for the protection of consumer rights. The agency, designed as the US Federal Trade Commission. This agency will take strong action against companies that practice unfair business practices at the expense of consumers.¹²³ Consumer complaints are now heard through the three-tier consumer court system. This will continue, but the new authority will have the necessary powers to take suo moto action and also approve orders on issues of national importance in a three-tier system.

¹²² Nishtha Saluja, "Cabinet Approves Consumer Protection Bill" (2017), *available at*: <https://economictimes.indiatimes.com/news/economy/policy/cabinet-approves-consumer-protection-bill/articleshow/62186199.cms> (Visited on December 30, 2017).

¹²³ "Cabinet Approves New Consumer Protection Bill" *Hindustan Times*, Dec. 20, 2017, *available at*: <https://www.hindustantimes.com/business-news/cabinet-approves-new-consumer-protection-bill/story-U9h4bYauoD3pPKkUm1xo1O.html> (Visited on January 3, 2018).

2. The bill will introduce class action lawsuits to India, which means that a group of people with the same or similar injuries caused by the same product or action can sue the company as a group. If the verdict goes in their favor, all consumers in the group stand to benefit.¹²⁴
3. In the event of a consumer suffering from injury, death or damage resulting from any defect in the product as a result of faulty manufacturing, construction, design, testing, packaging and labeling, among other facets of the production process, the manufacturing company will be held liable.
4. One of the main new features of the bill is the provisions relating to disputes related to online purchases. Currently, the law is not clear about refunds or dispute resolution for online buyers. In addition, under current law, a consumer can only initiate a legal action against the seller when it is said that the transaction in question has occurred. If the new bill is approved, the consumer can file a complaint electronically or in the consumer court closest to their residence.
5. The new bill also has provisions that subscribe hefty penalties and jail terms for adulteration and misleading advertisements by companies. Moreover, celebrities found to endorse such advertisements are liable to pay a hefty fine, endure a ban on any endorsement and even suffer a jail term.¹²⁵ One of the main new features of the bill is the provisions relating to disputes related to online purchases. Currently, the law is not clear about refunds or dispute resolution for online buyers. In addition, under current law, a consumer can only initiate a legal action against the seller when it is said that the transaction in question has occurred. If the new bill is approved, the consumer can file a complaint electronically or in the consumer court closest to their residence. On misleading ads, the bill provides for fine and ban on celebrities. In case of the first offence, the fine will be up to Rs. 10 lakh and a one-year ban on any endorsement. For the second offence, the fine will be up to Rs. 50 lakh and up to three years' ban.¹²⁶ For manufacturers, the penalty is Rs. 10 lakh fine and a two-year jail term for

¹²⁴ Rinchen Norbu Wangchuk, "Consumer Protection Bill Cleared by Union Cabinet: Six Things You Should Know" (2017), *available at*: <https://www.thebetterindia.com/125324/consumer-protection-bill-six-things-know/> (Visited on January 4, 2018).

¹²⁵ *Supra note 123 at 68*

¹²⁶ The Consumer Protection Bill, 2017, s. 21.

the first offence. Repeat offenders will suffer fines up to Rs 50 lakh and a five-year prison term. Adulteration, meanwhile, could incur a life-term jail sentence.¹²⁷

6. If any consumers shall file the false or frivolous complaints, then according to bill he will be liable for the penalty from Rs 10,000 to Rs 50,000.

Consumer courts are quasi-judicial in nature. In many instances, they have been unable to effectively deal with “unfair trade practices” due to limitations within the law.¹²⁸ Earlier, unfair trade practices, misleading ads, cheating and overcharging were dealt with by The Monopolistic and Restrictive Trade Practices (MRTP) Act. When The Competition Act, 2002, replaced MRTP Act, it left out the provisions dealing with ‘unfair trade practices’, creating a major lacuna in consumer protection. The bill cleared by the Cabinet corrects this anomaly by vesting the new consumer authority with powers to monitor unfair practices as well as intervene unilaterally with laid-out provisions. Under the current system, the forum in the area deals with consumer disputes where the value of the property or compensation claimed is less than 5 lakh and the state committee handles claims cases that exceed 5 lakh but do not exceed 20 lakh. The National Commission hears cases that more than 20 lakh complaints and also decides on cases that challenge lower court judgments. Class action suits will now be expanded to include consumer laws, so that a complaint against a defective product or service can be treated as a group of people with interests in similar circumstances.

4.4.1 Central Consumer Protection Authority

The Consumer Protection Act of 1986 was enacted to provide better protection for the interests of consumers and provide provisions for the establishment of Consumer Protection Councils and other authorities to resolve consumer disputes, etc. The central government noted many shortcomings in the administration of the various provisions of the law. The emergence of the global supply chain, the increase in international trade and the rapid development of

¹²⁷ S.S.Rana &Co. Advocates, “The Union Cabinet Approves the Consumer Protection Bill, 2017”, available at: <http://www.mondaq.com/india/x/663966/Consumer+Law/The+Union+Cabinet+Approves+The+Consumer+Protection+Bill+2017> (Visited on January 4, 2018).

¹²⁸ Pradeep Mehta, *CUTS International*, available at: <https://www.legallyindia.com/views/entry/conversation-with-mr-pradeep-s-mehta-founder-secretary-general-of-consumer-unity-trust-society-cuts-international> (Visited on January 11, 2018).

electronic commerce have led to new systems of delivery of goods and services and have provided new options and opportunities for consumers. This has made the consumer vulnerable to new forms of unfair trade and immoral commercial practices. Misleading advertising, telemarketing, multi-level marketing, direct sales and electronic commerce pose new challenges to consumer protection and will require appropriate and rapid operational interventions to avoid harm to the consumer.

The Central Government introduced The Consumer Protection Bill, 2017 in the Lok Sabha with the proposal to repeal the existing Consumer Protection Act, 1986. The new Bill provides for the establishment of an executive agency as the Central Consumer Protection Authority¹²⁹ to-

- promote, protect and enforce the rights of the consumers;
- make interventions when necessary to prevent consumer detriment arising from unfair trade practices, and
- to initiate class action including recall, refund and the return of products etc.

Establishment of Authority

The Central Government shall, by notification, establish with effect from such date as it may specify in that notification, a Central Consumer Protection Authority to be known as the Central Authority 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 public and consumers and to promote and enforce the rights of consumers as a class.¹³⁰ The Authority shall consist of a Chief Commissioner and such number of other Commissioners as may be prescribed to be appointed by the Central Government.

Powers and functions of the Authority

The Authority shall regulate the procedure for transaction of its business and allocation of its business amongst the Chief Commissioner and Commissioners as may be specified by regulations. The Chief Commissioner

¹²⁹ The Consumer Protection Bill, 2018, Clause 10(1).

¹³⁰ *Supra* note 90 at 56.

shall have the powers of general superintendence, direction and control in respect of administrative matters of the Authority. The Authority shall-¹³¹

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

For the above purposes, the Authority may-¹³²

- inquire or cause an inquiry or investigation to be made into violations of consumer rights or unfair trade practices, either *suo moto* or on a complaint received or on the directions from the Central Government;
- file complaints before the District Commission, the State Commission or the National Commission;
- intervene in any proceedings before the District Commission or State Commission or National Commission, in respect of any allegation of violation of consumer rights or unfair trade practices;¹³³
- review the matters relating to, and the factors inhibiting the 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;
- recommend adoption of international covenants and best international practices on consumer rights to ensure effective enforcement of consumer rights;
- undertake and promote research in the field of consumer rights;
- spread and promote awareness on consumer rights;

¹³¹ The Consumer Protection Bill, 2018, Clause 18(1).

¹³² The Consumer Protection Bill, 2018, Clause 18(2).

¹³³ *Cox and Kings (I) Pvt. Ltd. v. Joseph A. Fernandes*, 2006 CPJ 129 (NC).

- encourage non Governmental organizations and other institutions working in the field of consumer rights to co-operate and work consumer protection agencies;
- mandate the use of unique and universal goods identifiers in such goods, as may be necessary, to prevent under unfair trade practices and to protect consumers' interest;
- issue safety notices to alert consumers against dangerous or hazardous or unsafe goods or services;
- advise the Ministries and Departments of the Central and State Governments on consumer welfare measures;
- Issue necessary guidelines to prevent unfair trade practices and protect consumers' interest.

Consumer empowerment is one of the main components of the new Act. Misleading ads will be tackled even more strictly. The new law will also provide for proper definition and scope for e-commerce, and the rules regulating the sector. As the internet is a multidimensional junction of online commerce that involves so many legal issues like e-contracts, e-banking, rights of online consumers and authenticity of e-commerce websites, therefore, a lethargic approach has given India a setback in the area of online commercial activities.

CHAPTER-V

CONCLUSION & SUGGESTIONS

The primary purpose of this chapter is to recapitulate and summarize some of the important points discussed throughout the research work and to highlight the emerging issues in the context of consumer protection in the era of e-commerce. As already mentioned in the introductory chapter, the present work is primarily a doctrinal, critical and an interdisciplinary study on the topic of "Protection of Consumers' Right in the Era of E-commerce". The role of law has been analyzed in the context of e-commerce through this research work of law for the protection of consumers. This research work is generally focused on the existing laws for the protection of consumers and new challenges produced by e-commerce.

Over the past two decades, technologies diffuse rapidly in the modern global economy as a consequence of continuing electronic, technological and scientific advancements. The globalization of the marketplace, economy and the means of accessing the market through the national and global information superhighways have given a new dimension to the concept of business or commerce. Technologies that are associated with the electronic commerce have brought a revolution in the way business takes place. In simple words, e-commerce is web-enabling existing business processes to conduct transactions over the internet. It opens new doors for customers around the world, improves efficiency, increases profits and delivers better customer services. From the perspective of commerce or trade, the businessman must have customer-oriented marketing plans. The study of marketing is focused on the point that consumer satisfaction is the primary motto of commerce. It is the consumer on whose choice the entire marketplace is established.

Consumers are the pillars of economic development in any country as the entire economy revolves around them for existence. E-consumerism is considered as a new social dimension and a protest which aims at unveiling the evil practices of manufacturers and service providers in internet marketing. It aims at giving necessary strength to consumers seeking to redress, retribute and remedy for the

dissatisfaction caused by products and services in an online shopping. The consumers demand only trust in their day to day transactions in the market. Since 1970's the notion of consumer protection has entered into the legal lexicon. Due to unrestricted operation of cyber world and internet the consumers are unable to negotiate any important terms under which the services or goods are supplied because of bargaining power or technical expertise. The count of e-consumers is boosting day-by-day and their vulnerability to risks associated with modern commerce through electronic mediums is also increasing. The increasing number of e-consumers has also posed a number of legal and consumer challenges against consumer interests such as privacy threats, security issues and vague jurisdiction in case of online transaction. This makes sturdy protective measures essential and calls for expedient protective machinery.

The foregoing chapters revealed that in the new digital economy there appears that for the general growth of Indian economy in the online market system there is a direct relation between the 'Consumer Protection' and 'development of e-commerce'. To maintain this sustainable development in the Indian economy, the government has to give special care to the issue relating to protection of consumer's rights in the era of e-commerce. Unfortunately, along with the growth of the digital economy, there appears to be an increasing 'digital divide' between the profit and consumer rights in an online shopping. As the consumers have stepped into a new e-market, hence the chances of their exploitation have also been increased as well as transformed. Due to the development in the new phase, the market has been changed from physical to digital economy. Thus the consumers are facing new challenges due to the change in the modes of shopping. It is gathered from the study that e-commerce is a branch of e-revolution and UNCITRAL was adopted the two model Laws one was MLEC, 1996 and another was MLES, 2001. Significantly, the Model Laws acted as models in all over the world to perform their cyber laws for the countries to maintain uniformity. Unluckily, these models are not lawfully implemented on the online contracts and so, the principles of non-discrimination, functional equivalence and technological neutrality laid down. On the other side, a legally binding document which relates to Model laws is United Nations Convention on the Use of Electronic Communications in International Contracts, 2005 which was used to encourage

the rules regarding harmonization of e-commerce. After an analysis of the said Conventions and Model Laws designates the a number of legal issues such as IPRs, cross-border taxation, jurisdiction and domain names, arising out in the activities of e-commerce in cyber world still untouched and are dragging the attention of international society.

An analysis of the Indian legislation on consumer protection laws in the context of electronic commerce was carried out. The Consumer Protection Act of 1986 guarantees the rights of consumers to suppliers of goods and services and protects them in India. Since most e-commerce sites in India operate on a market model, it was not clear if they could be considered service providers for the Consumer Protection Act. This ambiguity regarding the applicability of the law to online transactions was explained in a written response from the Secretary of State for Consumption, Food and Public Distribution, which states that all consumer business transactions, whether online or through otherwise, they are covered by the law. Plaintiffs can go to various consumer forums provided by law to resolve their complaints. It should be noted that The Consumer Protection Act has been enacted to address consumer problems that arise when the consumer actually interacts with a seller's goods or services. The law does not take into account the various problems that may arise from online transactions due to their impersonal nature and does not provide any separate mechanism to address complaints that may arise from an online transaction.

The Consumer Protection Act, 1986 extends protection to electronic transactions and sale and purchase made through e-commerce websites. The Act does not render any specific provision dealing with such transactions, however; the electronic transactions are adequately covered under the Act. The essential requirement for consumer case under the Consumer Protection Act, 1986 is that the goods complained of shall have been bought for a consideration i.e. money should have been paid for it and services complained of shall have been availed for a consideration. Hence, any person who has suffered the deficiency in services can approach the appropriate Consumer Forum under the Consumer Protection Act, 1986. A new Consumer Protection Bill, 2017 is approved by the government and it has been apprised that the Bill would contain specific provisions to deal with

e-commerce transactions and may also empower the Centre to make rules to prevent unfair trade practices in online trade. To recall the products and initiate suit against defaulting companies, the government replaces the 30years old CPA with the Consumer Protection Bill, 2017 to set up a regulatory authority which will have some powers regarding online transactions. Although the Consumer Protection Bill, 2017 may seem to be a step in the right direction, many consumer advocacy groups want a separate law that is specifically targeted at the e-commerce sector in order to protect the rights of internet consumers in India.

The study conducted on the e-commercial laws reveals that The Information Technology Act, 2000 is a boon to the online business transactions. Much before the reporting of cyber crimes in India, electronic commerce flourished with considerable speed. As the internet is a multidimensional junction of online commerce that involves so many legal issues such as e-contracts, e-banking, rights of online consumers and authenticity of e-commerce websites, therefore, a lethargic approach has given India a setback in the area of online commercial activities. The Cyber Law of India is technology-centric and not much attention is given to commerce and economy in this legislation. The Information Technology (Amendment) Act, 2008 has given importance to cybercrimes and their magnitude of hazards to the security of India. The concern for consumer protection in online commercial activities has highly been ignored in this law. In the absence of a sound legal framework, e-commerce cannot create a success story in India. Indian Government must give attention to the fact that for safe and secure business environment in cyberspace, a sound legal framework is needed. It is suggested that court systems and e-commerce participants should incorporate Online Dispute Redressal Mechanism as a modern justice system for online transactions wherein consumers are victims of e-commerce frauds. It has been argued that The Information Technology Act, 2000 is just a skeleton legislation where all provisions are enhanced in a very systematic and proper way. But there is no provision for a normal consumer who is not a computer engineer or a lawyer or cyber expert merely a victim of online frauds.

To protect and enforce the consumer's rights, the new Bill constitutes an executive authority the name is The Central Consumer Protection Authority

(CCPA). The authority will be their whenever required for the consumer's protection from unfair trade practices and take appropriate action like refund, enforcing recall and return of products. The way of work of this body will be the same as in the other jurisdictions such as the Federal Trade Commission (FTC) in the US. This will be a milestone step in improving the implementation of law in the global standards.

Moreover, to assure safe products to consumers, the Bill has a provision for the liability of product and gives sufficient powers to the regulatory authority on the complaints of consumer's more than one person to recall products and cancel licenses. This is the first time in the consumer protection structure that powers to take action for damage caused by a product. Because of this step the liability question has increased for the manufacturers. The Bill also has several other provisions pointed at clarifying the dispute resolution process for the consumers. The pecuniary jurisdiction of the Consumer Grievance Redressal Agencies also improved, the State and District Commissions have the power to review their orders, and setting up a 'circuit bench' to give faster settlement of complaints.

The Bill at District, State and National levels also proposes to set up Consumer Mediation Cells which will be connected to the redressal commissions. Further it helps to reduce the overload of cases and reduces the burden on redressal forums. Surely, this bill will lead to significantly reducing the huge overload of cases and also stop extra stalling of disputes. The new Bill is introduced on the lines of systems in the US, and in European countries which gives that the basis of a consumer protection law should be derive from the contract law and the law of sale of goods. The consumer protection laws will be confusing and conflicting without its base. It is important to amends the CPA and includes e-commerce transactions in the Act because there is enormous development in the demand of e-commerce. A consumer can file an action against the seller only where the transaction take place under the present Consumer Protection Act. But the new Bill provides provision for the consumers to file complaints electronically, and the consumer courts have the jurisdiction to hear the complaint where the complainant has been reside.

In the offline purchase, the consumers enter in a store and examine and

judge the purchases for themselves the loyalty of a retailer. On the other side the online world does not give the same chance to the buyer. So, many consumers are required to do it on faith, knowing precious few about the retailer to whom they are trusting their credit card data. With the establishment of the Consumer Protection Act, 1986 is the reason where the consumer change has been received. The definition of 'unfair trade practice' in the Consumer Protection Act assures a complete disclosure about the measures. One of the gaps in the Act is that it does not properly cover the problems of unfair terms in a contract. Sometimes the buyer is also not sure about the information he has to make a knowledgeable decision. This type of problem arises only when a consumer purchases financial services through the internet. Suggestions and recommendations on the study are as follows;

- Today e-commerce is facing a challenging problem in India is digital illiteracy. On the other side, the constant journey of skilled computer engineers to other countries has bared for India. This is a real warning to India's information technology industry. The solution for this problem is restricting the computer brain and uses it in the same country. The Indian consumer is also portrayed for his different personality. Normally, when the food of consumer's choice whenever he wants is available nearby stores then the Indian consumers does not prefer to go away. That's why the consumer does not scan the internet knowing the hassles of connectivity and other botheration. To build up faith on the electronic media also takes some time specially when the merchant is located away from the place.
- For the resolution of consumers grievances proper authorities should be placed at different levels and also include the cyber experts in the authorities.
- To make a complete legislation to directing the national and cross-border electronic transactions. The law should provide a authority to solve the disputes and the jurisdiction should also mentioned clearly.
- Another essential sector is lack of information for buying online with safety. It is necessary to understand that all computer systems are not one hundred percent safe, the risk is always include in using the internet for buying goods. Thus, it is always require a user-friendly and strict law which

provides the safety to the consumers at the time of shopping but also secures the interest of the e-consumer for post transactional results.

- The e-commerce is growing high in India. There is need to augment this growth with supporting internet network, high bandwidth, legal framework and security setup. As e-commerce is growing at fast speed and attracting newer customers, any fraud or mischief for the customer may result in the bad impression of e-commerce in masses. So apart from government efforts, professional associations should tie-up with e-commerce companies in spreading awareness and benefits with respect to secured e-commerce among Indian citizens. The print, as well as electronic media needs to be widely used in creating awareness for secured transactions over the internet and local language should be preferred in creating the awareness. Cyber police stations need to be increased and more lawyers need to opt for specialization in cyber laws considering growing need in the cyber domain.
- Finally, the consumer movement in the country is needed to be adequately supported and strengthened by making appropriate amendments in the existing laws and to sensitize consumers to adopt appropriate measures to save themselves from unfair trade practices and frauds in the digital world.

In the above discussion although there is no restriction on the current structure of the Indian laws that have limited their application to digital transactions. Most of the vendors adopted one sided contractual framework in digital marketplace. It should suggest that the laws in India would accurately recognize in the digital world the rights of consumers. Further, the study displayed that the Indian laws are enough wide to protect consumer's rights in the digital marketplace. But still if these kinds of problems occur in real life then in which way the law will be interpreted. This is a lack of particular guidance on this issue makes the law very uncertain. It must be added that if Indian laws are amended according to the proposed amendment on Consumer protection by UN Guidelines then such type of an amendment would not go against the principles of Indian Consumer law which operate in India. But one of the important things will be to simplify and clarify the applicability of these laws in the digital world. In fact Indian laws have certain principles such as the 'unfair trade practice' but the definition is very wide.

The issues of consumer protection in the era of e-commerce want an important attention from both sides' policy makers and academics. In fact, the government, as well as inter-governmental organizations involved in this to discuss about these issues and developed various frameworks. Apart from this attention, a review of current legal frameworks shows that they have failed to fulfill the needs of e-consumer. In India, we have a lot of framed laws to deal with the challenges mentioned in the above paragraphs apart from the Consumer Protection Act, 1986. But to properly protect the rights of electronic consumers we need a consolidated law to deal with all above-mentioned conditions.

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