
E-commerce and Consumer Confidence

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Abstract—In recent times E-commerce has been growing rapidly across the world. While the industry in India is, still at its infancy i.e. remains low with respect to full potential of the market and one of the primary reasons is lack of confidence in the e-commerce transaction. Generally consumers are more concerned about losing their money, not obtaining what they ordered further payment security, product delivery, refunds and withdrawal conditions, unfair use of personal data and identity theft are equally important.

For better growth of e-commerce industry in India greater customer choice and improved convenience are mandatory. Legislative instruments along with proper enforcement are the life line of consumers' confidence in the marketplace. It includes policy framework against misleading advertising, and unfair contract terms and protection against unfair use of personal data.

This paper aims to explore the evolution of e-commerce in India; legislative instruments which provide electronic transaction require protection and validity and finally will suggest measures for confidence building.

1. BACKDROP

As the Information technology come up with new and unique concept of internet the whole process of communication change throughout the world and equip both seller and consumers with new idea of commerce that is e-commerce which is one of the primary functions of internet technology together with knowledge sharing.

Market equips consumers with plastic money (Debit/Credit Cards) and start offering and selling products and services online and with the passage of time it has become an integral part of everyday life which is started in India post 2000. But this process involves various steps and complex security codes through which transactions actually take place.

A computer network with the help of protocol i.e. standard sets of rules which both machines have to follow if they want to 'network' with each other and computer machine after receiving instructions show output as result after processing and finally the whole data is available on internet which is worldwide series of connected computer networks. Thus, computer machine is a medium and internet is a global linked network. Any individual with access to the internet may take advantage of a wide variety of communication and information.ⁱ

With growing number of internet users India is a prime location for the growth of the e-commerce sector and government of India also has approved projects to enhance connectivity at remote level to provide various services like e-education, e-health, e-entertainment, and e-commerce and e-governance to people and business setup. This is further likely to boost e-commerce in India.

2. E-COMMERCE

E-Commerce is where electronic systems such as internet are used to transfer ownership or right to use goods or services. It's a way of conducting business through Internet and other computer networks. It involves various functions such as:

- Buying and selling of products or services
- Electronic funds transfer,
- Supply chain management,
- Internet marketing,
- Online transaction processing,
- Electronic data interchange (EDI),
- Inventory management systems, and
- Automated data collection systems.
- Exchange financial data to facilitate domestic and international business.

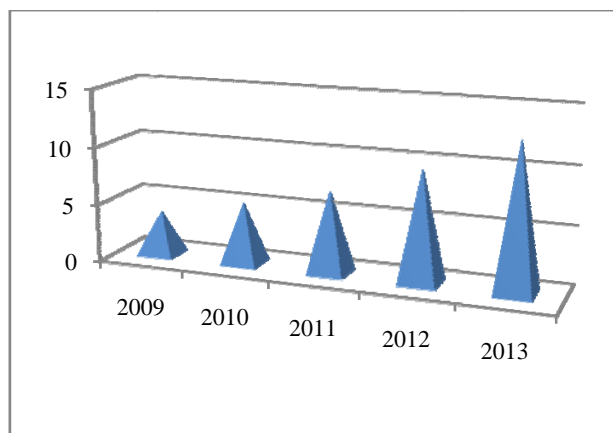
3. TYPES OF E-COMMERCE

- **Business-to-business** – One business unit provide certain services to another business unit in consideration of payment.
- **Business-to-consumer** – Selling products and services online to consumers.
- **Consumer-to-business** – Business houses pay to consumer for their product and service development ideas.
- **Consumer-to-consumer** – Some sites provide platform to consumers to sell their belonging to another consumer e.g. Quikr and olx etc,ⁱⁱ
- **Growth story of e-commerce in India**

According to the data provided by Crsil, IAMAI, PwC analysis and Industry experts India's e-commerce market is

growing at an average rate of 35% approximately and will go higher in upcoming years, online travel industry dominates from all other e-commerce sector and have highest market share however, e-retail is the fastest-growing segment in e-commerce industry.

Given below figure clearly show the year wise growth on e-commerce industry and yearly revenue generation from 2009 to 2013 that is 3.8, 5.3, 7.0, 9.5 and 12.6 US billion dollars respectively.ⁱⁱⁱ



4. E-CONTRACT

An agreement enforceable by law is a contract,^{iv} whereas agreement is a set of promises which form consideration for the respective parties.^v

Therefore agreements which are enforceable by law are an integral part of any business. Like any other contract, e-contracts are also valid and binding when the following conditions are satisfied:^{vi}

- There is some consideration for it.
- The parties are competent to contract.
- Their consent is free.
- Their object is lawful.

5. FORMS OF E-CONTRACTS

E-contracts are of following types:

- click wrap,
- browse wrap and
- Shrink wrap.

Here in each case the way how the terms and conditions of the contract are made available to the party of the contract is

significantly different from how it is made available in usual paper contracts.

Where in an electronic contract the parties to the contract expressly gives consent by clicking on the 'I Accept' or 'I Agree' button it is a **click wrap agreement**. That is the user prior to the use of the product has to go through the terms and conditions.

Where a contract is binding on the parties to the contract by the mere use (or browsing) of the website it is a **browse wrap agreement**.

Where the parties to the contract by opening the box which the product is packed or opening the terms and conditions of the license agreement by clicking on the icon provided it is a **shrink wrap agreement**.

These e-contracts such as the click-wrap agreements when they fulfil the requirements of a valid contract as per the provisions of the Indian Contract Act would be enforceable and valid unless and until they are expressly prohibited under any statute.

E-commerce contracts are generally standard form contracts and there hardly any scope for negotiations between the contracting parties therefore at various occasions judiciary has to determine whether such contracts meet the standard requirements of a valid contract or not and when court find any such contract a clear example of unconscionable contract then court may struck down them.

According to the Indian contract Act-1872 when the consideration or object of the contract is opposed to public policy then the contract itself cannot be valid. On such condition the burden of proof that there was no undue influence is generally on the person who is having the dominant position in the contract.^{vii}

Pertaining to restricting the benefit of the policy only to certain and specific person is arbitrary and void under article 14 of the Constitution.^{viii}

Because of the absence of any physical proof and documents, the authentication of e-documents is debatable concern therefore for the protection of consumers and reliable service, IT Act come up with a new concept of digital signature and gives legal recognition to the authentication of any information by affixing digital signature.

Digital signature is used to provide authentication to the attached message or any written text and the identity of the sender of a text provided if it is not in the contravention of the IT Act.^{ix} Whereas IT Act also regulate the certification of digital signature and certifying authorities provided with

laying down the procedure for certifying authorities for issuance of digital certificates along with appointment, functions and powers of controller and other certifying authorities.^x

6. BUILDING CONSUMER CONFIDENCE

Competitiveness of the Indian economy is the basic objective and priority of the government and protection of consumer from unfair practices is one of the essential elements that facilitate the competitiveness. In addition to it its further success of e-commerce is also depend upon the mechanism dedicate for its protection and prevention from exploitation.

In spite of rapid development in the growth of internet users various issues under e-commerce like online payment, product delivery, product information, warranty/guarantee schemes; refund and withdrawal option is continuing to suffer from lack of consumer confidence.

Though at the outset, the prospect of conducting business through e-commerce may seem uncomplicated and economical, there are a variety of legal factors that an e-commerce business must seriously consider and keep in mind before commencing and while carrying out its activities. Further, privacy and data protection issues have assumed great significance with the Indian Government notifying specific rules for data protection.

So technology except from widens the scope of market also poses new challenges for the judicial system of the country almost in both civil and criminal wrong. Therefore legal system of the country should be competent to deal with new issues and give proper assurance to citizens that laws are stringent and enforcement is enough to give to give criminal require deterrence.

7. MODES TO BUILT CONSUMER CONFIDENCE

1. Statutory protection

- A. Information technology Act - 2000 & Information technology amendment Act – 2008
- B. Consumer protection Act – 1986

Purpose of IT Act and ITAA – 2008:

- Providing legal recognition for transactions carried out by means of EDI generally known as e-commerce.
- Facilitating electronic filing of documents with the Government agencies
- Protecting computer based crimes and ensuring best security practices and
- To amend the Indian Penal Code, the Indian Evidence Act, 1872, the Bankers' Books Evidence Act, 1891 and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto.”

The Act shall not apply to the following:

- A negotiable instrument as defined in Sec.13 of the Negotiable Instruments Act, 1881;
- A power of attorney as defined in Sec.1A of the Powers of Attorney Act, 1882;
- A trust as defined in Section 3 of the Indian Trusts Act, 1882;
- A Will as defined in Sec.2 (h) of the Indian Succession Act, 1925 including any other testamentary disposition by whatever name called;
- Any contract for the sale or conveyance of immovable property or an interest in such property.

Being the first of any such legislation on information technology, subject to extensive debates & reviews both favourable and critical, was finally amended in 2008 which expressly focussing on data privacy, digital signature technology and security practices for the corporate and the role of intermediaries etc,^{xi}

8. CONSUMER PROTECTION ACT - 1986

In the absence any separate consumer protection law with respect to online transactions, Consumer protection Act regulate the relationship between consumers and service providers and products sellers therefore in case of any:

- Deficiency in service
- Defect in goods and
- Occurrence of any unfair trade practice etc,

Accused is liable to pay damages under Consumer protection Act- 1986. However free of cost services are excluded from the scope of this Act.

Therefore in case of any online retailing of any products, buyer will be treated as consumer and appropriate authorities have jurisdiction according to the provisions of Consumer protection Act – 1986.

In addition of above mentioned 2 statutes there are number of Rules which regulate e-market and protect consumers from misleading advertising, and unfair contract terms, transparency requirements on commercial communications, consumer grievance redress mechanism and data protection have been enacted by government to boost consumer confidence in e-commerce.^{xii}

2. Jurisdiction Issues

Internet has made the world come closer in a lot of ways. Contracts are not limited to any particular state or region anymore. Therefore where there is a contract between two parties belonging to two different states following different law it is very important that there is a proper mechanism to

decide the jurisdiction, which law will be applied if a dispute occurs.

Usually two approaches:

A. Country of Origin Approach:

Here jurisdiction is decided by identifying the location of the source of transaction i.e. where the offer of contract originally occurred the court there will have jurisdiction.

B. Country of Destination Approach:

This approach permits consumers to exercise the domestic protection available in their country. This approach is more inclined towards consumers as it gives them the option to bring suits under domestic laws in case of violation of cross-border transactions over internet.^{xiii}

3. Regulatory authorities

For the purpose of policy matters, R&D, promotion of IT, co-ordination between different departments, regulation of license and to enhance the security of India's Communications and Information Infrastructure following authorities are responsible:

- Department of Electronics and Information Technology, Ministry of Communications & Information Technology, Government of India
- Controller of Certifying Authorities (CCA)
- Cyber Appellate Tribunal
- Indian Computer Emergency Response Team (ICERT)^{xiv}

4. Liability of intermediary

IT Act also deal with liability of intermediary, telecom service providers, internet service providers, payment sites and cyber cafe etc, are termed as intermediary where as detailed definition is given under interpretation clause of IT Act.

However exemptions from liability is also provided if requirements of section 79 are fulfilled in addition to it detail due diligence procedure provided by the government which is required to fulfil by intermediary to protect himself from any unwelcome liability.^{xv}

5. Payment security

Receiving payment from consumers is one of the crucial parts of e-commerce transaction because consumer has fear of losing their card and PIN number which may cause to lose their money through any fraudulent process.

In order to make the process of payment through debit and credit cards safe and secure, RBI has done a plausible job and issued various notifications and circulars ("Directives") with respect to such transaction when cards are not present at the time of transaction which generally a case on e-commerce transaction.

In card not present transactions additional authentication or validation and online alerts, irrespective of amount, is mandatory which is based on such information that not available on the cards such as one time password (OTP), transaction password and account pairing.^{xvi}

6. E-commerce fraud

E-commerce fraud has increased a lot in India. But most of the cases of fraud go unreported. This is mostly due to the lack of awareness of the public in the field of cyber law. The e-commerce website which are operating in India has to fulfil requirements of **Cyber law due diligence in India and internet intermediary liability**.^{xvii} Where these are not followed e-commerce websites which are operating in India attract penalties both civil and criminal.

However there is no proper law to protect the Indian consumer from online frauds. In this regard the government has initiated the process to amend the **Consumer Protection Act** safeguard buyers from online frauds.^{xviii}

The most important point here is that any investigation or enquiry will occur only when some credible information is received relating to frauds. In India where the e-commerce customers are not aware of the legal provision the above said point hinders the proper protection of consumers. In other words till the time no one reports a fraudulent website can continue operating without any problem.

Further there are not many cyber law firms which can assist the aggrieved customers. Due to which many of the fraudulent sites still remain out of the reach of the Indian law.

In today's time **Section 420^{xix}** is applicable in seeking remedies from fraud, also in online frauds. No legislation can totally stop frauds, it will always be there. It can only be mitigated and controlled with proper vigilance by the state as well as the public.

Complaints can be filed to the **Securities and Exchange Board of India (SEBI)** as well as the bank or the payment processor when one has been cheated out of a commercial transaction.

9. CONCLUSION

E-commerce is the most growing platform of consumer purchasing having lots of benefits such as price, features, brand comparing and user review option etc, While due to absence of physical presence and fear of consumer to get cheated make reluctant them to buy products online therefore consumer confidence in e-tailing and protection of their interest is necessary for its optimum growth.

Efficient legislative instruments are the first step toward building consumer confidence in e-commerce. Enforcement of consumer protection legislation is another challenge which demands organized enforcement authorities and their co-ordination that can only effectively tackle the upcoming challenges/threats.

To achieve highest economic growth and to eliminate the difficulties of buyer and seller is the primary aim of government and to realize it completely government need all round support from businesses engaged in e-commerce and consumer as well.

Paying due regard to the interest of consumers, avoiding unfair business or marketing practices, avoiding unreasonable risk of harm to consumers and providing accurate or accessible information of product and services to consumers are the primary duty of businesses engaged in e-commerce.

Above mentioned practices enable consumers to make an informed decision having full knowledge of associated risk and benefits which should be given to consumers before entering into the transaction.

Government, media and educational institutions should also avail all possible way to educate consumers about relevant consumer protection laws and remedies in an easily accessible and lucid form. Further fair and timely dispute resolution through court of law, alternative dispute resolution (ADR) and other redressal mechanism without undue cost or burden will also serve the purpose.

Finally the nature of e-commerce is more global rather than regional therefore effective consumer protection reflects proper communication and co-ordination between enforcement authorities at international level which can be achieved through cross border knowledge/information sharing, policing against unfair commercial conduct and multi-lateral agreements between participating nations with respect to mutual recognition for their respective policies and case laws.

Therefore initiatives toward building consensus, both at the national and international levels, on core consumer protection issues and overall handling of the transaction will enhance consumer confidence and make the perception of consumer toward e-commerce positive and trustworthy.

ⁱ ACLU v. Reno, 521 US 844

ⁱⁱ Available at available at http://www.designersplus.co.uk/unit3/forms_of_e-commerce/level3.html, ("Forms of E-commerce" by Paul Beynon Davies)

ⁱⁱⁱ Source: Internet and Mobile Association of India research report cited in "Evolution of e-commerce in India-Creating the bricks behind the clicks" by ASSOCHAM (INDIA)

^{iv} Section 2(h), Indian contract Act-1872

^v Section 2(e), India contract Act-1872

^{vi} Section 10, Indian contract Act -1872

^{vii} Section 16(3) & Section 23 of the Indian contract Act – 1872

^{viii} LIC India v. Consumer Education & Research Centre (1995AIR 1811)

^{ix} Section 3,4&5 of the IT Act-2000 and ITAA-2008

^x Chapter-4 of the IT Act

^{xi} Information Technology Act, 2000 & amendments therein by E.K. Bharat Bhushan

^{xii} The Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011, The Information Technology (Procedure and Safeguards for interception, monitoring and decryption of information) Rules, 2009 & The Information Technology (Security Procedure) Rules, 2004

^{xiii} 831 F. Supp. 759 (D. Ariz. 1993)

^{xiv} DIPP – Discussion Paper on E-Commerce – 2013-14

^{xv} The Information Technology (Intermediaries guidelines) Rules, 2011

^{xvi} Directive issued by RBI under Payment and Settlement Act, 2007 - RBI / DPSS No. 1501 / 02.14.003 / 2008-2009 and RBI/2010-11/449 DPSS. CO. PD 2224 /02.14.003/2010-2011

^{xvii} Given under the IT Act 2000

^{xviii} The Economic Times, Dec 12, 2014, 02.57PM

^{xix} Indian Penal Code 1860

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