

Analytical Study About the Consumer Protection Against the Use & Misuse of Social Media Platforms with Respect to Sale of Goods & Services

Dr. Shilpa S. Dolharkar¹

Researcher is President of District Consumer Dispute Redressal Commission at Nashik & Palghar, Maharashtra

Abstract: - Now a day E-commerce is a increasing phenomenon. People are using social media in day-to-day life for purchasing goods and services as well as numbers of vendors and businessman are using social media to sell their goods and services. It is good source to buy and sell of goods and services without much investment or hard work. Therefore, social commerce combines e-commerce features with the sound social interaction that social media fosters. But at the same time social media sites are used by the deceivers that's why consumer challenge their self-assurance.

This research paper explore some important trend as to how social media platform are used for the advertising and with the help of social media, numbers of goods and services are sold or buy and evaluates their compliance with Consumer Protection laws. At the same time social media platform misused by the frauds. Though we have the consumer protection Law 2019, consumers have been faced numbers of challenges in particular with the rapid growth of e-commerce scams perpetrate on social platforms.

With this research paper, researcher tried to replicates on a variety of ways i.e. self-regulation, intermediary liability, collective actions, public enforcement to progress the protection of consumers who are habitually involve in socially E-commerce or using social platforms more commonly for purchasing goods and services. Numbers of time consumers are disillusioned by this social media platform.

With this drawback researcher choose the topic i.e. "Analytical Study about the Consumer Protection against the use & misuse of Social Media Platforms with Respect to Sale of Goods & Services" for research purpose.

I.INTRODUCTION

It is settled principal that, always laws made for the betterment and welfare of the society. Now a days consumer protection is a burning issue in e-commerce sector not only in India but throughout the world.

Today we are living in digital era, with the help of the internet consumers are in strengthen position in the market. Every consumer would be able to access a global marketplace as per their convenience. Now a day's consumer obtain all information about product and prices through social tools and would be expanded through collaborative tools such as consumers review or ratings on the product purchasing experience.

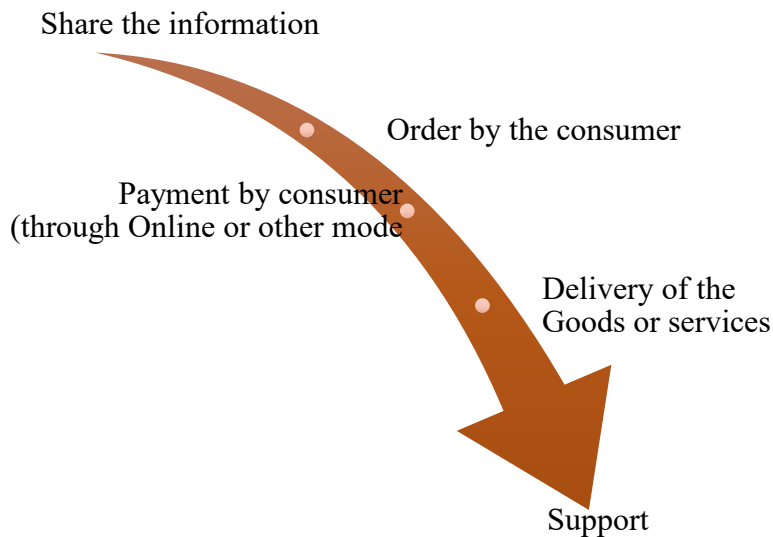
From the primitive era, Consumer protection within domestic markets is no doubt a well-established concept. But the same does not hold in the international monarchy. The Organisation for Economic Co-operation and Development (OECD) in its recommendations concerning Guidelines for Consumer Protection in the Context of Electronic Commerce adopted in 1999, rightly identified e-commerce as being 'inherently international in nature'. This being the scenario, the global network environment challenges the capability of each country to address impediments relating to consumer protection appropriately. The ubiquitous reach of information technology has expanded business operations and the volume of trade has increased very easily, leading to a proportional increase in the number of consumer frauds.

¹ Researcher is President of District Consumer Dispute Redressal Commission at Nashik & Palghar, Maharashtra

The Model Law on Electronic Commerce (MLEC) was adopted by United Nations Commission on International Trade Law (UNCITRAL) in 1999, to enable and facilitate commerce conducted using electronic means by providing national legislators with a set of internationally acceptable rules aimed at removing legal obstacles and increasing legal predictability for electronic commerce. The fundamental principles of non-discrimination, technological neutrality and functional equivalence adopted by the Model Law makes it widely regarded

as the founding elements of modern electronic commerce law².

Based on the UNCITRAL Model law, the Indian Information Technology Act, 2000, provides legal recognition to transactions carried out by electronic means. The Act refers 'electronic commerce' to transactions carried out by means of electronic data interchange and other means of electronic communication, which involve the use of alternatives to paper-based methods of communication and storage of information. Generally, e-commerce following some steps like



E-business has indeed emerged as a major opportunity for India. With the phenomenal spread of mobile telephony and the advent of 3G in the country, buyers from small towns and cities are also buying online in large numbers. It is a fact that internet has dissolved the discrimination factor between the small and the big cities enabling buyers from small towns to have access to the same branded goods, and quality products which earlier was a privilege of large city buyers³

Despite existence of a legal framework that covers consumer protection in the online marketplace, there

exist some specific challenges that create detriment to consumer welfare in online shopping as compared to the traditional brick and mortar. When a dispute arises in a face-to-face transaction, consumers have a wide variety of options available to help them resolve the issue. The buyer usually takes the item back to the store where he purchased it, demonstrate the problem and get remedy directly from the seller. If the seller does not respond well, the buyer approaches the conventional law enforcement body to report the problem or approach the consumer court to sue the

²United Nations Commission on International Trade Law (1996), UNCITRAL Model Law on Electronic Commerce with Guide to Enactment, with additional article 5 bis as adopted in 1998, available at http://www.uncitral.org/pdf/english/texts/electcom/05-89450_Ebook.pdf, (visited on october30,2023)

³Maitra Dilip, E-commerce is a new dream for India Inc., Deccan Herald, (10/07/2013) <http://www.deccanherald.com/content/210955/e-commerce-dream-india-inc.html%20>

seller. Societies around the world have developed these institutions for quick and speedy redressal. But what about problems that arise in purchases using distance communication? A buyer cannot immediately walk back to the store where he purchased to get a refund. More so, if the seller is non-responsive to the buyer's queries, it is very difficult for a consumer to rely upon local law enforcement to handle the matter. This gets even more complicated when the consumer has purchased the goods from a region outside India. Hence, the virtual aspect of online shopping throws up newer confronts to consumer trust and confidence.

Information about the online business, goods and services and information at every stage of the online transaction is pertinent to consumer decision making. Lack of information or low quality or obscure information provided by the online platform is an important challenge that remains unanswered in traditional consumer law. Secondly, with insufficient consumer education and awareness measures, it is much easier for rouge traders to swindle consumers in the online markets. Thirdly, application of traditional territorial based jurisdiction and enforcement provisions to the non-territorial online shops need careful interpretation by the consumer grievance redressal agencies, which can otherwise seriously impact consumers' right to seek redressal in matters relating to online shopping complaints. Absence of uniform disclosure guidelines also impact service of notice and such other formalities in grievance redressal.

In a recent move towards addressing such issues in the e-commerce business, members of the All-India Online Vendors' Association, a group of retailers selling on ecommerce platforms, raised the issue during a meeting with Union Commerce and Industries Minister Nirmala Sitharaman, requesting for establishment of a regulator for the ecommerce sector to prevent issues such as the pending payments from troubled ecommerce platform. Setting up of one such regulatory body to regulate the ecommerce industry is the need of the hour

The importance of consumer rights lies in their enforceability. An increased number of complaints on online purchases before various fora in the recent times have indeed developed into a body of case laws. Cases brought before the Consumer Fora reveal that online shopping is not just confined to major metro cities across the country, but has spread across smaller

towns and cities too. Study reveals that most of the online shopping consumer complaints have claim value of less than Rs.20 lakh and fall within the jurisdiction of district consumer forums. Only some cases have gone on appeal before State Commissions and National Commission. Study indicates that about 60% of the complaints brought before the Consumer Fora related to refund issues followed by complaints relating to defective products sold online, pricing, cancellation, warranty, replacement and false promotional offers. The Consumer Protection Act, 1986 requires every complaint brought before the District Forum to be heard as expeditiously as possible and endeavour shall be made to decide the complaint within a period of 3 months from the date of receipt of notice by the opposite party where complaint does not require analysis or testing of commodities and within five months, if it requires analysis or testing. Any delay in proceedings is required to be sufficiently reasoned in writing. Study reveals that only 27% of the cases that are brought before the District Fora have complied with the stipulated time period of less than three months in settling consumer grievance. Study also indicates that there have been instances, where complainants have had to wait for up to 1 year or even more for claims less than Rs.5000.

Study also reveals that lack of understanding of the technicalities involved in electronic commerce among Consumer Redressal enforcement agencies is one of the reasons for varied decisions on the subject-matter of jurisdiction in the online shopping context. Many consumer complaints have been dismissed by the District Consumer Fora for want of jurisdiction, because the consumer did not transact with the branch office of the web portal within the jurisdictional limitation of the forum. In case of online shopping transactions, it is often difficult and unreasonable if the consumer has to trace back to the existence of registered office / branch offices of the online shop for the purpose of proof of cause of action. Often, the business carrying online activities has its registered office in one place and branch offices spread out in various other locations, with respect to various activities such as warehousing, location of servers, delivery centres etc. Dismissal of complaints on the grounds that a mere presence of branch office with no cause of action arising in such location does not confer territorial jurisdiction is totally irrational. Such precedents will only encourage rouge traders to escape

liability for want of proper jurisdiction. The new amendment of including the consumer's residence or place of business will hopefully address such issues of bench hunting in online consumer cases.

There are also instances where the district consumer redressal forums have also misinterpreted the definition of "consumer" within the Consumer Protection Act, 1986 in the online shopping context. Despite clear interpretation by the National Commission in the case of *Rediff.com v. Urmil Munjal*, the Fora have been in favour of the web portal where they have argued that service of portals are free for everyone to access, who agrees to terms and conditions and for this online order no consideration is paid by the purchaser and therefore the purchaser is not a consumer with the meaning of Section 2 (1) (d) of the Consumer Protection Act, 1986.

Dismissal of consumer complaints on the grounds of mis-joinder or non-joinder of parties is another procedural aspect on which several consumer cases have been dismissed, despite having strong facts. Lack of awareness among consumers on documentation during online transaction has also been a hindrance to sufficient documentary evidence in online contracts. Online shopping companies, which are also called 'born-global' companies, pose further challenges to jurisdiction and enforcement in settling consumer grievance across borders. It is, no doubt, convenient for a consumer to procure goods/services from any corner of the world at the click of a mouse in an internet driven market. But it may be inconvenient or impractical for the consumer to resolve disputes arising out of such transaction considering factors such as cost and time involved in settlement, jurisdiction and other prohibitive factors. In such situations, the consumer may be left without a remedy despite there being an effective Consumer law to protect his interests.

Though the present study is limited to examining the position of the dispute resolution agencies in India in handling consumer grievance in the online markets, an attempt is made to understand the international co-operation with regard to consumer protection in the borderless online space. Study reveals that one of the main focuses of international cooperations through bilateral and multipartite agreements in protection of consumers in the online environment is dispute

resolution across borders. In this context, international cooperations and regional trade agreements promote redressal of cross-border consumer complaints through alternate dispute resolutions. Information and Communication Technology is not only being used for the purpose of carrying out electronic transactions, but also has a burgeoning application in terms of dispute resolution. Mediation is seen as a preferred Redressal mechanism than Arbitration in consumer disputes because unlike in arbitration, mediation is much less formal in terms of applicable law, place of arbitration and enforceability of awards.

The Supreme Court of India in *M/s Afcons Infra Ltd. vs. M/s Cherian Varkey Construction Company Ltd. and Others*⁴ while enumerating matters that are suitable for Alternate Dispute Resolution (ADR), held that all consumer disputes including disputes where a trader/supplier/manufacturer/service provider is keen to maintain his business/professional reputation and credibility or product popularity can be referred to ADR. In view of the above, the need for mediation in the consumer context in India has been recognised under the proposed Consumer Protection Bill, 2015. The Bill has introduced mediation in consumer cases, where disputes can be referred to mediation either at the commencement of proceeding before the Consumer Forum or at any time during the proceeding. Study reveals that 82% respondents are keen on an online mechanism of redressal of grievance, such as mediation that can help resolve consumer complaints in a quicker and cost-effective manner. Hence, researcher is of the opinion that online dispute resolution such as mediation can act as a good supplant to grievance redressal in online shops given the various jurisdictional and enforcement issues that arise in the online purchases.

The Act requires notices to be served by delivering a copy thereof by registered post acknowledgement due or by Speed Post or through any Courier Service approved by the Redressal Agencies. Study of consumer complaints reveals that there are some issues that have been faced by the District Fora in issuing such notice to the Opposite Parties with online shops providing inadequate or no information about their geographical address. In most ex parte judgements, the reasoning of the Forum is that the notice was neither acknowledged nor received back

⁴Civil Appeal No.6000 OF 2010

undelivered. Hence, lack of adequate prior information about the online portal impacts consumers' access to grievance redressal also.

CONCLUSION

mere assertion of jurisdiction does not necessarily entail the enforcement of judgement. The question is not just about which law or regulation governs an activity on the internet, but rather whether it is enforceable in a coherent and satisfactory manner. Protection of consumers who purchase goods and services offline/online are no doubt, protected by a wide range of consumer protection laws. The Consumer Protection Act, 1986 and the corresponding proposed amendments, no doubt also lay sufficient provisions for enforcement of orders of the Consumer Dispute Redressal Agencies. However, where multiple complaints of the same nature arise against a single online portal, spread across various District and State Fora, such as the one that occurred in the case of *timtara.com*, monitoring of enforcement of a large number of decisions becomes a real challenge.

REFERENCES

- [1] Consumer Protection Act, 2019. Ministry of Consumer Affairs, Government of India, 2019. Available from: <https://consumerhelpline.gov.in>
- [2] Bansal A, Gupta R. Consumer Protection in India: A Comprehensive Analysis of the Consumer Protection Act, 2019. *J Law Policy*. 2020;12(2):45-67.
- [3] Choudhury R. The Role of the Central Consumer Protection Authority (CCPA) in the Consumer Protection Act, 2019. *Indian J Law Justice*. 2020;11(1):23-37.
- [4] Kumar A. E-Commerce and Consumer Protection: An Analysis of the Consumer Protection (E-Commerce) Rules, 2020. *J Digital Commerce*. 2019;
- [5] 5(3):14-29. Mohan R. Consumer Rights in the Digital Age: Navigating the Consumer Protection Act, 2019. *Indian J*